

H-2A ROUNDTABLES

Salinas - June 19, 2018

Sonoma – June 20, 2018

Napa – June 21, 2018

SPONSORING & SUPPORTING ORGANIZATIONS



Special Thanks to the Planning Committee

Julia Belliard — Executive Director, APMA

Marla Livengood — Regulatory Affairs Manager, California Strawberry Commission

Ruben Lugo — Regional Ag Enforcement Coordinator, USDOL Wage and Hour – Western Region

Jeanne Malitz — Principal, Malitz Law, Inc.

Kimberly Naffziger — V.P. Ag Specialist, Zenith Insurance Company

Martin Otero — Planning and Outreach Representative, USDOL Wage and Hour, San Francisco

Jeremy Reichard — Investigator and Ag Enforcement Lead, USDOL Wage and Hour, San Francisco

Jason Resnick — V.P and General Counsel, Western Growers

Guadalupe Sandoval — Executive Director, California Farm Labor Contractor Association

Mike Saqui — Principal, The Saqui Law Group

For Roundtable materials, please visit the Agricultural Personnel Management Association (APMA) website at

<http://agpersonnel.org/programs/>

PROGRAM AGENDA

8:00 - 8:25 am — REGISTRATION AND CONTINENTAL BREAKFAST

8:25 am - 12:00 pm — MORNING PROGRAM

WELCOME AND INTRODUCTIONS

Marla Livengood — Regulatory Affairs Manager, California Strawberry Commission (Salinas Program)

Susana Blanco — District Director, USDOL Wage and Hour Division - San Francisco

H-2A CERTIFICATION PROCESSING TRENDS AND CONCERNS PANEL

Discussion Leader:

Jason Resnick — V.P. and General Counsel, Western Growers

Panelists:

Roman Diaz — Manager, EDD Foreign Labor and Ag Outreach Group

Brian Pasternak — Director of Policy, USDOL ETA, Office of Foreign Labor Certification

WAGE AND HOUR VIOLATION TRENDS PANEL

Discussion Leader:

Michael Saqui — Principal, Saqui Law Group

Panelists:

Jennifer Amore — Branch Chief, USDOL, Wage & Hour Immigration and Farm Labor

Ruben Lugo — Western Region AG Enforcement Coordinator – USDOL, Wage and Hour Division

H-2A HOUSING COMPLIANCE ISSUES AND TRENDS PANEL

Discussion Leader:

Jeanne Malitz — Principal, Malitz Law, Inc.

Panelists:

Cesar Ponce — Administrator, State of CA Housing and Community Development

Patricia Ochoa — H-2A State Housing Coordinator – CA EDD

Nicole Delahanty — Senior Advisor, USDOL Wage & Hour, Immigration and Farm Labor

Noon - 12:30 pm — LUNCH

LUNCH KEYNOTE: CA AG OVERVIEW AND H-2A IMPLICATIONS (SALINAS PROGRAM ONLY)

Phil Martin — Ph.D. Professor Emeritus, Agricultural and Resource Economics, University of California Davis

12:30 - 3:30 pm — AFTERNOON PROGRAM

H-2A VISA APPLICATION EFFICIENCIES AND VISA FRAUD

Katryn Carney, Visa Fraud Manager, U.S. Consulate General Monterrey, Mexico

WORKERS' COMPENSATION IMPLICATIONS WITH THE H-2A PROGRAM

Discussion Leader:

Kimberly Naffziger — V.P. Ag Specialist, Zenith Insurance Co.

Panelists:

Honorable Pamela Foust — Workers' Compensation Judge (ret.), Consultant, Zenith Insurance Company

Fred Martinez — AVP, Zenith Insurance Company (Salinas program)

Rachael De la Cruz — Supervisor Claims, Zenith Insurance Company (Sonoma/Napa Programs)

HOT TOPIC AND BEST PRACTICES PANEL

Discussion Leaders:

Jeanne Malitz — Principal, Malitz Law, Inc.

Jason Resnick — V.P. and General Counsel, Western Growers

Panelists:

Jennifer Amore — Branch Chief, USDOL, Wage & Hour Immigration and Farm Labor

Roman Diaz — Manager, EDD Foreign Labor and Ag Outreach Group

Ruben Lugo — Western Region AG Enforcement Coordinator – USDOL, Wage and Hour Division

Brian Pasternak — Director of Policy, USDOL ETA, Office of Foreign Labor Certification

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PRESENTER BIOS

US DOL Wage and Hour Division

JENNIFER AMORE

Jennifer Amore is the Branch Chief for the Immigration and Farm Labor Programs in the Division of Enforcement Policy and Procedures. Jennifer began her career with the Wage and Hour Division in September 2010 as a senior analyst with the Division of Regulations, Legislation, and Interpretation in Washington, D.C. Jennifer worked on regulatory issues concerning the Family and Medical Leave Act (FMLA), the Fair Labor Standards Act (FLSA), and the H-2A and H-2B nonimmigrant worker visa programs. Jennifer joined the Immigration and Farm Labor Programs branch in 2014, and served in the roles of senior analyst and senior advisor before becoming Branch Chief. The Immigration and Farm Labor Programs branch oversees the national implementation and enforcement of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and the H-1B, H-2B, and H-2A nonimmigrant worker visa programs.

NICOLE DELAHANTY

Nicole Delahanty started with the Wage and Hour Division in 2009 as an investigator in Minneapolis, MN conducting investigations under the Fair Labor Standards Act, Migrant and Seasonal Agricultural Worker Protection Act, H-2B, and H-2A programs, amongst others. In 2015, she became the Regional Enforcement Coordinator—Immigration/Agriculture (H-2A/H-2B) for the Midwest Regional Office in Chicago, IL overseeing all H-2A and H-2B investigations and providing guidance and technical assistance to the District Offices and field staff across 10 states. In 2018, she joined the National Office, Immigration and Farm Labor Programs Branch as the Senior Advisor to the branch.

RUBEN LUGO

Ruben Lugo is the Ag Enforcement Coordinator for the western region of the USDOL Wage and Hour Division. Ruben working as an investigator for DOL Wage and Hour in 1995 and conducted federal labor investigations on various types of industries with a specialization in agriculture in Central California. Ruben was promoted to Agricultural Enforcement Coordinator for Wage and Hour Western Region in 2010 overseeing agricultural enforcement, agricultural investigative training and agricultural outreach activity in the states of CA, AZ, NV, ID, WA, OR, AK and HI. Ruben also manages the compliance levels of Farm Labor Contractors and is the point of contact for any technical questions on the Migrant and Seasonal Agricultural Protection Act and the H2A program for the Wage and Hour's Western Region.

State of California Housing and Community Development

CESAR PONCE

Cesar has been with HCD for nearly seven years. Prior to joining HCD, Cesar worked as a construction field inspector with local cities and private organizations. Cesar started his career at HCD as an office District Representative in the Manufactured Housing / Factory-built Housing and HUD State Administrative Agency programs. He was promoted to Administrator I within the MH/FBH/SAA program and was then promoted to Administrator II with the Mobilehome Parks/Special Occupancy parks/Employee Housing and Mobilehome Assistance Center programs. As Administrator for HCD's Employee Housing program, Cesar directs a team of individuals who oversee the construction, maintenance, use, and occupancy of privately-owned and -operated employee housing facilities providing housing for five or more employees to assure their health, safety, and general welfare. Cesar also enforces state laws and regulations related to the Employee Housing Act through local enforcement agencies who assumed the enforcement of the Employee Housing Act.

State of California Employment Development Department

ROMAN DIAZ

Roman Diaz is the manager for the Employment Development Agricultural Service Unit- Foreign Labor and Agricultural Outreach Group. Roman has been with EDD for 25 years and has managed the H2A and H2B certifications for the last 6 years. My experience includes working in the Unemployment Insurance and Workforce Services branches of EDD.

PATRICIA OCHOA

Patricia Ochoa is the Statewide Housing Coordinator for the H-2A Program. She has been employed by the Employment Development Department, Foreign Labor and Agricultural Outreach Group since March 2014. Patricia manages the H-2A Housing Inspection Process in coordination with the Agricultural Business Representatives (ABRs), collaborates with Housing and Community Department staff to secure the Permit To Operate, interacts with local governments, farm labor groups, and agricultural employers and employees. Patricia has a working knowledge of the employer registration job clearance process, reviews the ETA 790's - Agricultural and Food Processing Clearance Orders, assist with prevailing wages and practice surveys, recruitment process and on-site field checks with employers.

U.S. Department of State / U.S. Consulate

KATHRYN CARNEY (KATE)

Kate Carney is a consular officer assigned to U.S. Consulate General Monterrey, Mexico. Prior to her tour in Monterrey, Kate served in the U.S. Mission to the International Organizations in Vienna, Austria and in Bujumbura, Burundi. Kate has received multiple meritorious and superior honor awards during her seven years with the Department of State. Before joining the Foreign Service, Kate worked in pharmaceutical advertising as an account and project management executive for several well-known American consumer brands. Kate is from Doylestown, Pennsylvania and holds a degree in English Literature from the University of Notre Dame in Indiana.

USDOL Office of Foreign Labor Certification Employment and Training Administration

BRIAN PASTERNAK

Brian Pasternak currently serves as the National Director of Policy, Regulations and Program Planning for the Office of Foreign Labor Certification in the Employment and Training Administration. As the National Director, Mr. Pasternak is responsible for the development and implementation of strategic program planning, procedures, and stakeholder engagements for all permanent and temporary visa programs administered by the Department of Labor. In this capacity, he also serves as a senior advisor to the Agency and Executive Secretariat staff on policy, legislative, and regulatory issues affecting the organization and operation of employment-based immigration programs, particularly the H-1B, H-2A and H-2B visa classifications. Mr. Pasternak has served the U.S. Department of Labor for the last 14 years. Prior to joining the Federal service in May 2003, Mr. Pasternak spent 6 years working for the State of Maryland as a Senior Policy Advisor and Deputy Assistant Secretary for the Division of Employment and Training, Maryland DOL, Licensing and Regulation, as well as a Senior Policy Analyst for the Maryland Governor's Workforce Investment Board. His state level experience focused on program planning, policy development, and operational management of employment and job training programs, including foreign labor certification, through local one-stop career centers across the state. He holds a BA in History from the University of North Carolina at Wilmington, and a Master of Public Policy from the College of William & Mary with a concentration in labor economics.

Industry Experts

RACHAEL DE LA CRUZ

Supervisor Claims, Zenith Insurance Company

Rachael de la Cruz began her insurance career with State Fund in 2003 upon graduating from California State University, Sacramento with a degree in Government. While at State Fund, she developed a Permanent Disability Training Program and Reference Material for statewide Claims Operations. She joined Zenith Insurance Company in January 2012 as a Senior Claims Specialist promoting to Claims Supervisor in October 2012. Rachael currently supervises a group of examiners, including a remote Arizona examiner handling both California and Arizona jurisdictions, Serious Loss Claims and a Claims Supervisor Trainee. She also serves on Zenith's California Process Improvement Committee, working to develop technological and process improvements within the Claims Operation.

HONORABLE PAMELA FOUST

Workers Compensation Judge (Retired) – Consultant Zenith Insurance Co.

Judge Pamela Foust graduated from UCLA with a Bachelor of Arts degree in psychology and earned her law degree from the University of West Los Angeles School of Law where she graduated cum laude in 1978. She was admitted to the Bar in the same year and practiced workers' compensation law until 1985 when she was appointed a Workers' Compensation Judge.

Judge Foust is the author of a reference book on lien issues, *California Lien Claims in Workers' Compensation Cases*, 4th Edition, 2002: James Publishing, and a contributing author of *California Workers' Compensation Practice*, 4th Edition, 2000, published by the Continuing Education of the Bar.

Judge Foust has written numerous articles on workers' compensation issues, particularly those involving lien claims and other topics of interest to medical providers, and has been a frequent speaker on educational programs.

In 2010, the Workers' Compensation Section of the State Bar presented Judge Foust with a Lifetime Achievement Award. She also received the Carrie Nevans Community Service Award from the Division of Workers' Compensation in 2014.

In January 2010, Judge Foust retired from the bench and joined Zenith Insurance Co. as Vice-President Claims Legal. She retired from Zenith in July 2017 but continues to be associated with the company in a consultant role.

JEANNE M. MALITZ

Jeanne M. Malitz is the principal of Malitzlaw, Inc., a boutique law firm specializing in employment-based immigration matters. Malitzlaw, Inc. has a national presence representing employers on a wide variety of immigration-related matters with an emphasis on permanent labor certification and temporary labor certification for agricultural employers. Her practice also includes counseling on employment verification including E-Verify and I-9-related issues. Ms. Malitz actively participates in advocacy for immigration reform through national committee work on behalf of the American Immigration Lawyers' Association (AILA) and the National Council of Agricultural Employers (NCAE). She is a member and former co-chair of AILA's national Department of Labor Committee. Ms. Malitz also chaired the H-2A Committee for the NCAE. She frequently presents and writes on immigration-related topics.

Ms. Malitz received her B.A. degree from the University of San Diego (Magna Cum Laude, 1985) and her J.D. degree from the Boston University School of Law (1990). She was employed by several national and international law firms including: Gray Cary Ames & Frye and Morrison & Foerster. Ms. Malitz and has been nominated as a San Diego "Top Lawyer" for the years 2013 to the present.

PHIL MARTIN, Ph.D.

UC Davis, School of Agricultural and Resource Economics

Philip Martin is Professor emeritus of Agricultural and Resource Economics at the University of California—Davis, editor of Rural Migration News (<http://migration.ucdavis.edu>), and the author of numerous research publications on migration and farm labor. His most recent book is *Managing Merchants of Labor: Recruiters and International Labor Migration* (Oxford, 2017). (plmartin@ucdavis.edu)

FRED MARTINEZ

Zenith Insurance Company, Assistant Vice President

Fred Martinez is an Assistant Vice President Client Services for Zenith Insurance Company for California's Central Coast region. He has worked in the workers' compensation insurance industry for over 20 years. Throughout that time he has worked in claims as an investigator, examiner, and customer service manager. He consults with clients and insurance agencies on implementing best practices for claims while managing a marketing territory from the Bay Area to Santa Maria. He has a bachelor's degree in Economics, an MBA and is an AFIS designee.

MICHAEL SAQUI

Principal, The Saqui Law Group

Michael Saqui's highly successful track record spanning almost three decades makes him a powerful partner to the clients he represents in all aspects of employer-employee relations. Michael has fought and prevailed against many of the biggest and best financed labor organizations in the U.S. He has managed over 100 union avoidance campaigns in dozens of states, resulting in maintenance of union-free status. He has successfully tried hundreds of grievances and arbitrations involving just cause discipline, seniority, technological advances impacting bargaining units, and other contract interpretation issues. Michael represents clients before the NLRB and other federal and state agencies and courts. He has also formulated and implemented preventive labor relations programs, trainings, procedures and union avoidance protocols for employers of all sizes and from virtually all industries.

Michael is one of the most sought after public speakers in California on labor and employment matters, and does extensive public speaking including seminars and in-house training, to counsel employers in developing proactive approaches to address employment and labor relations matters. He has also written numerous trend reports and management guides that help clients understand the legal climate and build strategies to undo vulnerabilities, enhance labor relations and manage crises when they arise.

JASON RESNICK

Western Growers, Vice President and General Counsel

Jason Resnick joined Western Growers in 2003 as a staff attorney. Today as Vice President and General Counsel, he has responsibility for overseeing the organization's legal affairs. Jason works closely with the Western Growers executive team on legal, business and policy matters and he has primary staff responsibility for the Western Growers Labor Committee.

Jason is a frequent speaker and magazine contributor on employment law and Ag labor issues. He serves on the board of directors for the Agricultural Personnel Management Association (APMA) and is a past co-chair of the Agribusiness Committee of the State Bar of California.

Prior to joining Western Growers, Jason was a litigator at a prominent Orange County law firm. His litigation experience includes trying jury and bench trials, administrative proceedings before state and federal agencies, and drafting appellate briefs to the California Supreme Court and state and federal courts of appeal.

Jason received his bachelor's degree from the University of California, Irvine and his JD from the University of the Pacific, McGeorge School of Law.