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## Assembly Committee on Workforce Development and Economic Opportunities

Joint public hearing with the Senate Committee on Labor, Regulatory Reform, Veterans and Military Affairs

Tuesday, September 26, 2023  
10:00 AM  
417 North (GAR Hall)

### Department of Workforce Development Testimony on Clearinghouse Rule 23-030: Relating to migrant labor and affecting small business.

Thank you, Chair Testin and Chair Petryk, and committee members, for having me here today.

My name is Jennifer Wakerhauser. I am the Chief Legal Counsel for the Department of Workforce Development (DWD). With me today are Michele Carter, Administrator of DWD's Division of Employment and Training, Steve Laesch, Assistant Administrator of DWD's Division of Employment and Training; and Caitlin Madden, Deputy Legal Counsel, to serve as subject matter experts and address any questions you may have for DWD.

As you know, DWD is the state agency charged with the administration of state and federal laws regarding unemployment insurance, workers compensation, vocational rehabilitation, worker employment and training, and state employment laws, including migrant worker regulations.

Among the programs overseen by DWD are services to Migrant and Seasonal Farm Workers (MSFW). Under this program, DWD provides outreach to migrant and seasonal farm workers in their living, working, and gathering areas to inform seasonal farm workers about services available at local job centers and to provide them with referrals to agricultural and non-agricultural employment and training opportunities as well as supportive and job development services. DWD's MSFW program also oversees the federal Foreign Labor Certification program administration and the federal Monitor Advocate Services program. The Foreign Labor Certification programs allow employers to hire foreign workers if employers can demonstrate that there are not enough U.S. workers available that are willing and qualified to perform the work at wages that meet or exceed the prevailing wage for the occupation in that area of employment. Through the Monitor Advocate Services, DWD ensures employer compliance with U.S. Department of Labor (USDOL) regulations and ensures that issues raised by seasonal farmworkers through the Job Service Complaint System are either addressed by DWD or referred to partners (such as the Occupational Safety and Health Administration).

Section 103.905 (1) of Wisconsin Statutes requires DWD to promulgate rules to enforce and implement ss. 103.90 to 103.97, which relate to migrant labor. DWD's migrant labor rules are codified in Chapter DWD 301 of Wisconsin's Administrative Code.

DWD has not made any substantive revisions to chapter DWD 301 since 2007. The proposed updates address the following:

- Some rules in the current chapter do not align with Wisconsin statutes or updated federal guidance.
- The current chapter contains inconsistencies and outdated language.
- Based on feedback from stakeholders, some of the rules are unclear.

- When DWD promulgated emergency rules to protect workers' health and safety during the COVID-19 pandemic, the agency gained valuable insight about the importance of updating its permanent rules to be able to address potential future public health emergencies.

In developing proposed rule CR 23-030, DWD reviewed ch. DWD 301, the Migrant Labor Law, OSHA regulations, and federal regulations on migrant recruitment, migrant work agreements, payroll records, and provision of other information to migrant workers. DWD also reviewed migrant worker agreements and other records relating to migrant labor contractors and migrant labor camps submitted to the DWD in the course of DWD's duties in regulating migrant labor contractors and migrant labor camps.

DWD engaged with key stakeholders in drafting the proposed rule through the Governor's Council on Migrant Labor ("Migrant Labor Council"), including the Ad Hoc Committee on Migrant Seasonal Farmworkers. The ad hoc committee held three public meetings to review comments from committee members, other stakeholders, and members of the public regarding DWD's proposed changes to the rule. DWD also consulted with the Department of Health Services, the Department of Safety and Professional Services, and the Department of Natural Resources regarding the intersection of authority related to public health concerns, building inspection requirements, and pollution and water quality standards.

Pursuant to Wis. Stat. § 103.968, which requires DWD to submit proposed permanent rules to the Migrant Labor Council for review, DWD submitted CR 23-030 to the Migrant Labor Council on July 31, 2023, the same date it filed the notice of its intent to promulgate the rule with the legislature. The Council met on August 9, 2023; at which time it took no action to disapprove of the rule, therefore, under the statute DWD was authorized to move forward with the permanent rule.

In this proposed rule, CR 23-030, DWD revises the chapter to better align its requirements with Wisconsin statutes and federal guidance, correct inconsistencies, update outdated language, and provide clarification. DWD also proposes new requirements for disease and illness prevention in migrant labor camps with the intent of having a permanent rule in place in the event of a future public health emergency that may avert the need for emergency rules. These requirements include reporting certain diseases and symptoms to local health officials and isolating sick workers. In addition, DWD proposes new field sanitation standards for preventing heat illnesses. Finally, DWD proposes to make various other revisions to the chapter to promote health and safety in migrant labor camps.

Thank you for the opportunity to provide this information, and for your time and consideration.

DWD CONTACT: Legislative Liaison Arielle Exner, (608) 770-5223, [Arielle.exner@dwd.wisconsin.gov](mailto:Arielle.exner@dwd.wisconsin.gov)