

April 27, 2020

Governor Jay Inslee  
Office of the Governor  
PO Box 40002  
Olympia, WA 98504-0002

RE: The Bunk Bed Regulation

Dear Governor Inslee:

We are writing to urge you to once again exercise leadership in this time of crisis for our nation. Specifically, we are asking you to significantly revise Emergency Regulations for Agricultural Employers who provide housing for workers, better known as the Bunk Bed Rule.

A little background is needed. Twenty-five years ago, farmers in the state began stepping up to solve a real public health crisis – farmworkers who were camping outdoors or living in overcrowded or makeshift camps. What happened? The state established too-tough-to-meet regulations on migrant and seasonal labor camps, and this forced farmers to shut them down. If you speak with former Governor Locke, I am sure he will recall the crisis in the late 1990s that occurred after the standards for farmworker housing were established.

Contrast that to today, where well-built garden apartments with central heating and air conditioning are available in most agricultural communities in Central Washington. In the last 20 years, we are aware of more than \$200 million spent by farmers, agricultural associations, and our state taxpayers (in the form of low interest loans and grants from the Department of Commerce) to build or purchase quality housing for seasonal farm workers. **By any measure, and compared with any other state, the Washington Temporary Workers Housing program is a success story.**

We face a similar crisis today. Like 25 years ago, it is precipitated by the threat of a regulation. In this case, it is the bunk bed rule. The state Department of Labor and Industries and Department of Health are proposing an emergency regulation to ban bunk beds in licensed Temporary Worker Housing for the next 120 days – from May 1 to approximately September 1. If implemented, this rule would eliminate approximately half of the harvest workers – more than 10,000 workers – because they would have no place to sleep at night.

The intent of the regulation is to implement six-foot social distancing in housing, and that would preclude bunk beds, because the top and bottom bunk bed are only three feet apart. The proposed regulation has challenges in many areas. Here are a few.

- **Farmers need flexibility to establish safe workplaces, not prescriptive regulations.**  
In fact, operators of licensed housing facilities are working on their own to test occupants

and establishing contracts with hotels and other facilities to create isolation centers where needed.

- Contrast the fate of a worker living in a licensed facility to a migrant and seasonal worker who is living “on the economy.” The worker in a licensed facility generally sleeps in a large room with three other workers that is cleaned and disinfected daily, while the worker living on the economy typically sleeps in a cramped apartment with many other people, if not in his car.
- It is physically impossible, and therefore not feasible, for people to remain six (6) feet apart at all times in a group home setting, especially when eating and preparing food. People can easily achieve an adequate separation when sleeping in bunk beds if they merely position themselves so that the head of the person on top is above the feet of the occupant on the bottom.
- As proof that bunk beds can be used successfully, look no further than Harborview Hall. Harborview Hall is the newly opened COVID-19 Isolation Center, for patients who are awaiting test results after exhibiting symptoms and patients who have tested positive for COVID-19 but are recovering. The brand-new facility contains bunk beds, which would be banned under the Proposed Regulation.<sup>1</sup>
- Compared with the population at large, farmworkers are disproportionately young, which means they have less risk of serious complications from COVID-19. Because of the strenuous physical labor required for the job, farmworkers are also disproportionately free from debilitating co-morbidities present in other segments of the population that are at high risk for serious medical complications resulting from COVID-19. Given your Stay Home/Stay Healthy Order, farmworkers that live and work on a farm have greater protection than workers living in a community setting because they do not have contact with the public, thus further lessening the opportunity to contract COVID-19.

There is a more fundamental consideration – the sanctity of our food supply. Agriculture is an essential industry, and farm workers are essential workers, for a reason. They are on the front lines fighting to keep our grocery shelves stocked with fresh fruits and vegetables that are grown in America.

It has been stated that there are plenty of local seasonal workers to pick up the slack, however considering other workers, the Employment Security Department (ESD) has studied the domestic migrant/seasonal workforce and has conclusively determined there is no appreciable source of domestic seasonal workers that could make up for the level of workforce reduction caused by the Proposed Regulations.<sup>2</sup> For example, for all of 2018, the last full year for which statistics exist, only 35 domestic workers were referred to H-2A employers, and only four accepted offers of

<sup>1</sup> See KIRO 7 video, “A look inside Harborview Hall, a recovery site for coronavirus patients.”  
<https://www.kiro7.com/news/local/look-inside-harborview-hall-recovery-site-coronavirus-patients/J634AUY7HRBWHOUDB7NLBOI5EM/>

<sup>2</sup> ESD November 22, 2019 briefing to Agricultural and Seasonal Workforce Services Advisory Committee.

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employment.<sup>3</sup> In contrast, approximately 20,000 H-2A workers were offered employment in the state in 2018. How will employers make up for a 50 percent reduction in this workforce?

As you know, agriculture, particularly the fruit and berry industry, is facing tough times, caused by a collapse of export markets and increased operational costs that are pricing our products out of international markets. We must harvest 100% of our crop to preserve our producers and protect our nation's food supply.

The farmers of our state want to work with you to protect workers. Let's roll up our sleeves and get it done.

Sincerely,

C: Joel Sacks, Director, Department of Labor and Industries  
John Wiesman, Director, Department of Health  
Derek Sandison, Director, Washington State Department of Agriculture

<sup>3</sup> *Id.*