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June 15, 2020

John Aguirre, CEO
1121 L Street, Suite 304
Sacramento, CA 95814
Email: john@cawg.org
VIA EMAIL

On Behalf of California Association of Winegrape Growers

Re: COVID-19 precautions among agricultural employers

Dear Mr. Aguirre:

The agricultural industry, its farmworkers, and other agricultural workers in the food supply chain play a vital role in feeding Californians and the entire nation. On March 19, 2020, Governor Gavin Newsom deemed that those working in agriculture, and fifteen other critical infrastructure sectors, may continue working during the State of Emergency resulting from the spread of the COVID-19 disease caused by the SARS-CoV-2 coronavirus strain. In these unprecedented times, the health and safety of the agricultural workforce is a main priority and directly impacts the health of the community at large.

Many grower and similar employer associations, local farm bureaus, and health and safety compliance businesses have shared resources with their members to help agricultural employers during the COVID-19 pandemic. Pursuant to the Attorney General's role as the State's chief law officer, we are conducting an examination of agricultural workplaces to ensure that adequate measures are being undertaken to protect the health and safety of agricultural workers. As your association continues to monitor conditions in the industry, we encourage you to engage with your membership by referring them to governmental guidance intended to aid agricultural employers in implementing the necessary procedures and practices to protect essential workers and the public health.

Protection guidelines from the United States Centers for Disease Control and Prevention (CDC), the California Department of Industrial Relations Division of Occupational Safety and Health (CalOSHA), and other regulatory and public health departments continue to alert employers to risks and how to manage them. Currently, CalOSHA has published safety and

health guidance for COVID-19 Infection Prevention for Agricultural Employers and Employees.¹ The guidance reminds employers that existing California law requires employers to establish and implement an injury and illness prevention program (IIPP) to protect employees from all worksite hazards, including infectious diseases. Employers have a duty to furnish employment and a place of employment that is safe and healthful for their employees, to furnish and use safety devices and safeguards, and adopt and use reasonably adequate practices, and “do every other thing reasonably necessary to protect the life, safety, and health of employees.”² As your employer-members are likely aware, each employer must create, implement, and maintain an effective IIPP in writing that comports with regulatory requirements.³ But the effectiveness of any IIPP depends on how well an employer addresses the regulatory requirements and fully puts the plan into practice in the workplace. To aid employers, CalOSHA has also published COVID-19 checklists for agricultural employers, which include employee training provisions.⁴

Guidance from CalOSHA also discusses the role of sick leave benefits in helping to prevent the spread of COVID-19 among workers. Special sick leave benefits are afforded by the federal Families First Coronavirus Response Act (FFCRA). On April 16, 2020, the Governor ordered supplemental coverage for sick leave for many food sector employees working for employers that were exempted from coverage under the FFCRA.⁵ The California Department of Labor Standards Enforcement (DLSE) published guidance regarding the supplemental coverage, which we also encourage you to share with your members.⁶

While each employer must identify and evaluate its own workplace conditions and practices, we’d like your association to communicate the above concerns about COVID-19 transmission to your membership of employers, whether they are engaged in field, packing house, greenhouse or other operations, and/or provide housing or transportation to their employees, including foreign H-2A workers.

¹ See CalOSHA’s “COVID-19 Infection Prevention for Agricultural Employers and Employees,” available at <https://www.dir.ca.gov/dosh/Coronavirus/COVID-19-Infection-Prevention-in-Agriculture.pdf> (available in multiple languages).

² See, e.g., Lab. Code §§ 6400 and 6401; *see also* 8 Cal. Code Regs. §§ 3457 (Field Sanitation, including hand washing facilities), and 3380 (Personal Protective Devices).

³ See Lab. Code § 6401.7, 8 Cal. Code Regs. § 3203.

⁴ See CalOSHA’s “COVID-19 Daily Checklist for Agricultural Employers,” available at <https://www.dir.ca.gov/dosh/Coronavirus/COVID-19-Daily-Checklist-Employers.pdf>; “COVID-19 General Checklist for Agricultural Employers,” available at <https://www.dir.ca.gov/dosh/Coronavirus/COVID-19-General-Checklist-Employers.pdf> (both are also available in Spanish).

⁵ See Executive Order N-51-20, available at <https://www.gov.ca.gov/wp-content/uploads/2020/04/4.16.20-EO-N-51-20.pdf>.

⁶ See DLSE’s “FAQs on Executive Order Concerning Supplemental Paid Sick Leave for Food Sector Workers at Companies with 500 or More Employees,” available at <https://www.dir.ca.gov/dlse/FAQ-for-PSL.html>, and its model notice to employees, “CA COVID-19 Supplemental Paid Sick Leave for Food Sector Workers,” available at <https://www.dir.ca.gov/dlse/COVID-19-Food-Sector-Workers-poster.pdf>.

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Thank you for your time in attending to these concerns. Please contact me if you have questions.

Sincerely,

/s/ Jennifer C. Bonilla
Deputy Attorney General

For XAVIER BECERRA
Attorney General