This report is based on 530 surveys with New York State farmworkers on more than one hundred farms. This is the largest number of the state’s migrant, seasonal, and year-round farmworkers to participate in a single survey. The goal of the survey was to collect data about farmworkers’ on-the-job injuries, compensation for lost worktime, working hours, and wages. This survey also sought to evaluate the implementation of the overtime provision of New York’s 2019 Farm Laborers Fair Labor Practices Act (FLPA).

Historically, farmworker voices have been absent in public discussions of New York farmworker policy. The state’s farmworkers are generally not citizens—they are undocumented and guestworkers—so they have good reasons to hesitate before speaking up about problems related to their workplaces, particularly if their housing is tied to their jobs. Many farmworkers fear that their employer may retaliate against them by cutting their hours, firing them, illegally evicting them, or calling immigration authorities. This report foregrounds farmworkers’ experiences and opinions to help mitigate the absence of their voices in policy debates about their working conditions and wellbeing.

KEY FINDINGS

Respondent Demographics:

- 63% of respondents are from Long Island and 37% are from Upstate.
- The vast majority of respondents (91%) hail from two regions—Long Island (63%) and the Finger Lakes (28%).
- Men are 55% of respondents and women are 45%.
- The main sectors represented in this data are nurseries (21%), greenhouses (21%), vineyards (20%), fruit and vegetable farms (17%), and dairies (16%).

Percentages of ten or more are rounded to the nearest whole number; as a result, for some responses, the sum of percentages may not equal 100.
Lost-Worktime Injuries:

- 19% of respondents reported having a workplace injury that resulted in lost worktime.
- 33% of those with a lost-worktime injury are employed in dairy and 24% work on fruit and vegetable farms.
- The percent of Upstate respondents (29%) who reported a lost-worktime injury is more than double the percent of Long Island respondents (13%) who reported a lost-worktime injury.

The data reveal that almost one-fifth of respondents reported losing worktime as a result of being injured. Upstate dairy respondents reported the highest rate of lost-worktime injuries. Note that research reveals that many farmworkers continue to work even when they are experiencing pain due to a workplace injury.\(^3\)

Payment for Lost-Worktime Injuries:

- 49% of those who reported having a lost-worktime injury said they did not receive payment of any kind for the lost worktime or medical bills.
- 44% reported receiving some type of payment for lost worktime or medical bills.

Of all the findings in this report, the lack of payment for lost-worktime injuries is the most significant, and could potentially have a long-term effect on workers’ health. The FLPA requires that all agricultural employers provide workers’ compensation and disability insurance for their employees. Farmworkers are also eligible for paid sick leave under the New York State Sick Leave Law.

It is clear that workers are not pursuing workers’ compensation claims, nor paid sick leave under the New York State Sick Leave law. This is likely due to lack of knowledge, language barriers, fear, or because some employers take workers to the doctor themselves and pay out of pocket. Workers may not realize that without a workers’ compensation claim, they will likely have to pay for long-term injuries themselves or just suffer without further treatment.
Worker Quotes

The injury stories in this report detail workers’ pain, frustration over lost wages, how medical bills were paid (by respondents themselves or employers, generally not by workers’ compensation), and feelings that their employers do not care about them. Additional quotes relate to workers’ thoughts on pay, overtime, days off, union organizing, and other workplace conditions.

Hours Worked:

- 56% of respondents reported working 60 or fewer hours a week.
- 44% reported working more than 60 hours a week.

Overtime Pay:

- 72% of respondents who log more than 60 hours a week reported receiving the legally required overtime rate of time-and-a-half after 60 hours.
- 25% of respondents who log more than 60 hours a week reported not receiving the overtime rate of time-and-a-half after 60 hours (wage theft).

The data expose wage theft—one in four respondents who work more than 60 hours a week said their employer violated their right to overtime pay.

Method of Wage Payment:

- 95% of respondents receive either a hard-copy check or direct deposit for their wages.
- 5% are paid in cash.
- Less than one percent is paid both in check and cash.
Hourly Wage:

- 96% of respondents are paid at least the minimum wage.
- 4% are paid below the minimum wage (wage theft).
  - Those who are paid below the minimum wage (19 respondents) also reported a higher rate of overtime pay wage theft and a higher rate of injuries that resulted in lost worktime.
  - 32% of those not receiving the minimum wage work in dairy.
- Statewide: the 2022 average hourly wage is $15.55.
- Long Island: the 2022 average hourly wage is $16.19, $1.19 more than the minimum wage
- Upstate: the 2022 average hourly wage is $14.40, $1.20 more than the minimum wage.

The data show that the vast majority of respondents are paid the minimum wage or higher. While the number of respondents receiving less than the minimum wage (wage theft) is small, the data suggest that employers who do not pay the minimum wage also tend to violate other worker protections and oversee workplaces that are more dangerous.

**POLICY RECOMMENDATIONS**

**BIDEN ADMINISTRATION:**

*Under the Biden administration, the U.S. Department of Homeland Security (DHS) amended its deferred action program (which temporarily prevents detention or deportation) to include those involved in an active labor investigation. Those granted deferred action are generally permitted to remain and work in the US for an additional two years.*

The deferred action program should allow those with a work-related injury or illness to stay in the U.S. for necessary medical treatment, to **assure appropriate medical attention for those who contribute their labor to U.S. farms.** In addition, H-2A visa holders with a work-related injury should be given extensions on their visas to seek medical attention in the U.S.
CONGRESS:

Since 1976, Congress has added a small farms rider to the Annual Labor-Health and Human Services Appropriations Bill, which exempts farms with fewer than eleven non-family employees from Occupational Safety and Health Administration (OSHA) enforcement authority.

Prevent the addition of this rider to the Annual Labor-Health and Human Services Appropriations Bill, to address the lack of attention to, and absence of data on, farmworker injuries. This would allow for more accurate data on farm-related injuries and better inform policy decisions about farm safety and health. At a minimum, Congress should allow OSHA to investigate fatalities on all farms. This would improve tracking of work-related fatalities and prevent the miscategorization of fatalities as not work related. This, in turn, would facilitate families’ claims for death benefits from workers’ compensation.

THE NEW YORK STATE LEGISLATURE AND THE GOVERNOR:

Increase funding for the New York State Department of Labor (NYSDOL) to conduct outreach to farmworkers to better educate workers about their rights and identify labor law violations. This would help prevent the wage theft revealed in this report and is particularly critical as the agricultural overtime threshold is lowered every two years.

Provide additional funding for the New York State Department of Labor to prioritize anti-retaliation reports, a pressing concern as farmworker unionization efforts increase.

Pass the Securing Wages Earned Against Theft Bill (SWEAT) (Senate Bill S1977, Assembly Bill A46) that, in cases of wage theft, would allow an individual, the NYSDOL, or the state Attorney General to file a wage lien on an employer’s property. This would add an additional mechanism to assure workers are paid for the hours that they worked.

Pass the Empowering People in Rights Enforcement Bill (EMPIRE) (Senate Bill S541A, Assembly Bill A5876A) to allow workers or their representatives to initiate public enforcement actions against employers (currently only the NYSDOL can begin such actions) to compel employers to follow the state labor law. This would expand the enforcement of labor protections and add an additional mechanism to compel employers to respect workers’ rights.
Create designated funding for community-based organizations to conduct wage theft prevention training with farmworkers. Educating workers about wage laws and how to report wage theft is critical to **mitigate the underpayment of farmworker wages**.

Pass Senate Bill S1161, Assembly Bill A2034 to increase the workers’ compensation minimum weekly benefit and set it at one-fifth of the statewide average weekly wage. This would align the New York workers’ compensation minimum weekly benefit calculation with New Jersey. The current minimum weekly benefit of $150 is inadequate, and unfair to farmworkers whose employers pay them off the books. Increasing the weekly minimum benefit would **encourage more injured farmworkers to assert their rights**.

Increase funding for the New York State Workers’ Compensation Board for enforcement and community outreach. This would **allow the Workers’ Compensation Board to better fulfill its mission and protect the rights of more workers**. The Workers’ Compensation Board is currently funded by assessments, which is not viable, especially considering the 2 percent cap on the growth of assessments for farmland.

Increase funding for the New York State Workers’ Compensation Board to translate decisions and notices, currently only offered in English. Translation of these important documents would **create more accessibility for farmworkers who do not read or write in English**

Create designated funding for community-based organizations to conduct workers’ compensation training with farmworkers. Educating workers about workers’ compensation is vital to **ensure that workers who produce our food can secure appropriate medical services** when they suffer a work-related injury or illness.

Consider legislation to **better educate medical providers about workers’ compensation**, to require them to provide information directly to workers about workers’ compensation, and to file the standard CMS 1500 medical report in a timely manner.

Consider legislation to **improve farmworker access to medical attention**, such as requiring employers to transport workers for urgent medical care, this is especially important in remote rural areas.

Pass the Unemployment Bridge Program Bill (Senate Bill S3192, Assembly Bill A482) so that New Yorkers who are not eligible for regular unemployment insurance can receive compensation when they lose their jobs. This would **mitigate farmworkers’ fear of retaliation** for reporting unsafe and/or unlawful working conditions.
Pass the State Language Access Bill (Senate Bill S3381A, Assembly Bill A503A), which would **extend language access requirements** (the translation of documents and forms) to all state and county agencies and departments. Currently this is only required by agencies under the Governor’s jurisdiction.

Governor Hochul’s “Strategic Industry Task Force Lessening Obstacles to Agriculture (SILO),” which addresses labor issues, should **include farmworkers and farmers who represent the interests of workers and the unions representing them**.

**THE NEW YORK STATE DEPARTMENT OF LABOR:**

Continue to **prioritize addressing anti-retaliation reports** from farmworkers, a pressing concern as unionization efforts increase across the state.

Create handouts with large text size and graphics to **better educate farmworkers about their rights**.

**THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE:**

Create an easy form and process for farm employers to request the 118% refundable tax credit for the overtime premium.


6 New York, Senate. New York State Consolidated Laws. Chapter 60, article 1, section 42-A. nyssenate.gov, 2022, https://www.nyssenate.gov/legislation/laws/TAX/42-A. The 18% is intended to cover additional costs associated with increased worker pay, such as workers compensation and taxes.