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Bill aims to make farmworker safety guidelines mandatory

By Jessica Mach

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State COVID-19 safety guidelines for agricultural employers have been recommended rather than made mandatory throughout the pandemic — a situation that workers' advocates say needs to change, especially as some farms have started to expand their workforces from an influx of furloughed and laid off workers from other industries.

But attorneys representing agricultural employers argue inflexible safety rules — and nationwide shortages in personal protective equipment — could make it nearly impossible for some farms to operate, especially those with fewer resources to begin with.

The food industry has always been held to high workplace safety and sanitation standards because worker safety is so closely tied to product quality, but the coronavirus introduced requirements that are hard for many farmworkers to meet, said Richard A. Rogan, co-chair of the bankruptcy group at Jeffer Mangels Butler & Mitchell LLP. Rogan's clients include agricultural businesses.

"Although the employees in many areas of agriculture can space themselves out, there are times they have to be in relatively close contact with one another," Rogan explained.

S. Brett Sutton, who represents agricultural employers at Sutton Hague Law Corporation, said workers often need to take vans or buses together to reach the crops, while dairy and other food processing facilities typically use assembly line machines that would be hard to operate within social distancing standards.

Cal/OSHA and the state Depart-



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ment of Food and Agriculture have COVID-19 safety guidelines for the agricultural industry that employers can adopt on a voluntary basis, but that may soon change.

On Wednesday, the state Assembly Committee on Labor and Employment passed AB 2043 by a 5-1 vote, which would require agricultural employers to adopt Cal/OSHA's COVID-19 safety guidelines.

Guidelines are not enforceable, the bill's author, Assembly Member Robert Rivas, D-Hollister, noted. But AB 2043 would "direct Cal/OSHA's standards board to adopt occupational health and safety standards for COVID-19 infection and prevention — standards that can be enforced," he explained.

For the most part, Sutton said his clients have not only been trying to comply with the guidelines, but to go further. In addition to screening workers for symptoms, some of Sutton's clients have been taking workers' temperatures, staggering shifts and breaks, installing Plexiglas dividers to limit contact, and granting additional paid sick leave "over and above what the law requires," he said.

Sutton's clients from across the state include stone fruit and citrus growers as well as dairies.

Nayamin Martinez, director of Central California Environmental Justice Network's Fresno County office, said farmworkers she's spoken to have reported a different experience. Employers are not enforcing social distancing, not providing safety training specific to COVID-19, and not providing personal protective equipment, including masks, she said.

The risk of infection has also increased at some farms, Martinez added, as workers who have lost their jobs in other industries seek out work. A worker on a cherry farm in Stockton, for instance, told Martinez where there used to be 30 or 40 people in their crew, there are now about 90 — all of whom are required to share two or three bathrooms, which are often left uncleaned.

Martinez said she reported these concerns to Cal/OSHA, but believes the agency isn't conducting inspections right now because they're overwhelmed. "I hear from farmworkers saying it's pointless for us to call them," she said.

In an email, Erika Monterroza, a spokesperson for Cal/OSHA, said the agency "has received more than 2,300 COVID-19 related complaints since Feb. 1, many more than can be investigated in person."

The agency has been communicating with employers via phone and letter, and has responded to 1,900 COVID-19 complaints, Monterroza said.

Martinez said she believes making Cal/OSHA's COVID-19 safety guidelines mandatory could put pressure on employers to comply.

Sarait Martinez, organizing director at Californians for Pesticide Reform, another coalition that works with farmworkers, said she's also seen an absence of training and masks.

Sutton said many of his employer clients have had trouble getting access to masks at all — especially at the beginning of the pandemic.

"I think the supply chain was not really ready for this," Sutton said. "The demand worldwide for those items was so huge and the supply just wasn't there."

He resisted the notion that safety guidelines need to be made mandatory.

"There's always some exceptions," Sutton explained. "A 'one size fits all' for all of this can create difficulties for some employers, depending on the nature of their business, how their plant is laid out. You have the larger ones ... who have more capital to make adjustments. Then you also have the small farmer."

Sutton said he hasn't heard of any clients resisting or not complying with recommended guidelines.

"It's not in the business' interest if there's an outbreak of any type of disease. It's not only bad for the workers. ... It's also bad for the business as a whole," he said. "So they're very motivated to even follow the recommended guidelines and not just hit the minimum."

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