1. Introduction

Wage theft refers to a spectrum of practices that result in workers being unpaid or, more often, underpaid for their work (Bobo 2009, Glynn 2011). As wage theft occurs most often when workers are at a severe disadvantage to understand or act upon their rights—whether due to language barriers, education, financial status, etc—reliable estimates of the scale of the problem are difficult to make (Estabrook 2009, Glynn 2011). However, case studies of particular regions and in particular sectors, including clothing and apparel, private households, and agriculture, have found that wage theft practices can be prevalent (GAO 2009, Lynch 2011). The spectrum of practices resulting in wage theft, while varied, often have in common a power imbalance between employee and employer. In an extreme example from the tomato growing region of Florida, authorities have freed over 1,000 workers from conditions that are legally defined as slavery (Estabrook 2009). More commonly across the U.S. in agriculture, wage theft can take the form of not paying minimum wage, not paying employees at all, not paying for overtime work, docking pay for damage of equipment, preventing employees from filing for workers compensation, and misclassifying employees as independent contractors (Bobo 2009, Rogers 2010, SPLC 2011).

There is some evidence that wage theft practices in Minnesota agriculture are having a measurable impact on workers’ livelihoods and health. Workers advocacy organizations have received an increasing number of complaints from their members regarding wage theft on farm operations (Torres, Delehanty). However, to date wage theft in Minnesota’s agricultural sector has not been studied directly, and there is little sense of the character, magnitude, or scale of the issue.

This review compares strengths and limitations of legislation affecting wage theft practices in order to present an informative context for judging the state of Minnesota’s
current statutes, and to consider alternatives for policy improvement in the future. As the published literature concerning the degree of wage theft and its consequences is relatively undeveloped, in order to understand current statute in Minnesota, the focus is on characterizing federal, Minnesota, and other states’ wage theft laws.

To understand the present state of advocacy around wage theft in Minnesota, I’ve also conducted informal interviews with law and policy experts who are involved with, or who might have particular expertise on the issue of wage theft in agriculture. Experts in the MN law and policy community who are knowledgeable about, engaged with, or interested in studying wage-theft issues in the agricultural sector add valuable perspective for recommendations on further policy action in Minnesota.

Section 2 reviews the literature on wage theft in the U.S. agricultural sector. Section 3 presents the methodology. Section 4 presents the findings of the comparative review of federal and state wage theft statutes and court cases. Section 5 presents an analysis of possible wage theft protection models for Minnesota. Section 6 discusses recommendations for policy action in Minnesota and limitations of this review. Section 7 concludes the review.

2. Wage theft in the U.S. agricultural sector

Wage theft has been observed in many different sectors in the United States and internationally. Wage theft violations are defined by state or federal statutes including the Fair Labor Standards Act and its successors (US Dept of Labor, 6). Regardless of the sector, studies of wage theft confirm that this issue occurs principally at the very low-wage end of the labor market (Weil 2011, Glynn 2011).

The national literature on wage theft violations within the farmworker sector
demonstrates increasing attention to the issue, especially in areas of the country where growers are most dependent on migrant labor (Estabrook 2009, GAO 2009, Kandel 2008, Lynch 2011, Malm 2007, Robinson 2011, Villarejo 2010, Weathers 2004). In the past decade, there has been an increase in published articles on the general subject of wage theft (regardless of sector) when compared to the previous decade.

The theft of labor has not been part of traditional definitions of theft, because most theft statutes don’t include a person’s labor as property. Recently in California, however, the legislature explicitly elevated labor to the status of property, which allows the crime to be prosecuted under the state’s criminal theft provisions (Malm 2007).

U.S. agriculture relies increasingly on farmworkers, even as farmworker pay continues to be among the lowest in the country. As of 2006, about one third (approximately 1.01 million) of workers on farms were nonfamily hired farmworkers. The remaining two-thirds (2.05 million) of agricultural workers are farmers or their unpaid family members (Kandel). There are several drivers of an increased reliance on farmworkers. First, while the number of farmworkers employed in U.S. agriculture has decreased since the 1960s, the overall number of agricultural workers (including farmers) has decreased at an even faster rate—nonfamily hired farmworkers comprise an increasing proportion of total farm labor (Kandel). Another driver for increased reliance on paid nonfamily farmworkers is the increasing scale of farms—there are fewer but larger farms—even as the number of small farms (defined as those with gross sales less than $250,000) comprise about 90% of all farms (Kandel).

Farmworker pay continues to be among the lowest in the country, even as labor comprises a growing portion of farm expenses. For decades, farmworkers have been among the lowest paid workers in the United States. In 2006, the median wage for farmworkers in
non-supervisory roles was $6.75 per hour (Webster). At the same time, labor’s proportion of total farm expenses has been increasing since the 1980s. This trend makes changes in the minimum wage, overtime pay, or other factors affecting the cost of farmworker labor particularly impactful for farm employers, especially in sectors such as vegetables, fruits, and nuts that are particularly reliant on paid nonfamily farmworkers (Kandel). Further drivers for increased reliance upon farmworkers include agricultural productions methods that allow an extended production season, an increasing U.S. population, and increasing off-farm opportunities for self-employed farmers and their family members (Kandel). In part because of these trends, the U.S. agricultural sector is expected to be increasingly reliant upon farmworkers, especially unauthorized farmworkers (Kandel). There is reason to expect this trend to continue in Minnesota as well: as of 2002, Minnesota ranked 9th for hired farm and contract farm labor expenses (Kandel).

Farmworkers are among the lowest-paid and most vulnerable class of workers in the United States. The most recently available National Agricultural Workers survey (2006?) indicates that the vast majority (over 95%) of recently hired crop farmworkers didn’t have legal documentation to work in the U.S., while half of all crop farmworkers are estimated to lack legal documentation (Kandel, NAWS). Median weekly earnings for crop farmworkers are less than maids, groundskeepers, janitors, and all farmworkers make less than security guards, material movers, and construction workers (Kandel). This status makes farmworkers more vulnerable in negotiations over wage theft and safety issues. In addition, due to an increase in demand for year-round fruits and vegetables, more off-farm work opportunities for self-employed farmers and their family members, and changes in production methods, most farmworkers are not migrant, but are permanently settled in a particular area (Webster). This increase in permanent settlement of farmworkers has lead to growth in
nonmetropolitan counties, and may also contribute to high unemployment rates in the sector (Kandel).

Farmworkers are also exposed to significant levels of occupational and health risk while on the job. First, agricultural work remains one of the most dangerous occupations in the country, with workers in agriculture facing some of the highest rates of occupational injuries and illnesses of any sector (Webster). Risks include exposure to pesticides, extreme heat, and unhygienic sanitary facilities. In addition, farmworkers regularly face hazards from work with heavy machinery (Kandel, Webster). Unfortunately, farmworkers all face significant barriers in accessing health care. In a recent National Agricultural Workers Survey, Kandel notes that “Two-thirds of all farmworkers cited costs, and almost a third cited language barriers to explain their inability to obtain health care when needed.” Unauthorized workers were most likely to cite barriers to care, and just a fourth of crop farmworkers had health insurance (Kandel).

Evidence that wage theft is occurring on a wide scale in the agricultural sector is drawn primarily from only a few regions of the United States, and generally from cross-sectional surveys of migrant worker populations. For example, in eastern North Carolina, one study of migrant farmworkers found that a fifth of all migrant farmworkers experienced wage violations. For workers without H-2A visas the proportion experiencing wage violations increased to nearly half of those surveyed. In addition, this study found an association between the violation of certain pesticide regulations and between wage violations, suggesting that some producers generally violate regulations (Robinson 2011). Another study analyzed data from the 1999 California Agricultural Workers Health Survey (CAWHS), a sample for which most workers were from Mexico (91% of males, 89% of females) and about one quarter of workers self-reported having no documentation to work in the U.S.
Importantly, the analysis indicated an association between undocumented status of workers and increased occupational safety and health risks, as well as a general lack of knowledge of workplace protections, including the Worker’s Compensation system (Villarejo 2010).

A final theme is the impact of the Fair Labor Standards Act (FLSA), which sets a minimum wage and minimum hours for overtime pay. Several analyses discuss how this act addresses nonagricultural work, and that seasonal agricultural workers are explicitly not covered by the FLSA (US Department of Labor 2011). In any case, a recent investigation by the Government Accountability Office (GAO) of enforcement of FLSA wage violations found that the Department of Labor’s capacity to investigate claims of wage violations is severely deficient, and the slow speed of investigation made it likely that an employee’s complaint would become ineligible by moving beyond the FLSA’s statute of limitations (GAO, 2009).

Several general studies of the agricultural labor market indicate that, as concentration in the agricultural sector has increased, wage theft violations could be exacerbated. At the same time, studies of the overall labor market also indicate that the sector’s dependence on low-wage labor continues to increase (US Department of Labor 2001). In general, there are few direct studies of wage theft violations for agricultural workers in areas outside of California or Florida. I could not find any studies of wage theft violations in Minnesota’s agricultural sector.

**Vulnerability of Contingent Workers**

One of the most frequent themes in the literature on wage theft is the increasing prevalence of contingent labor arrangements. While the agricultural sector has become more concentrated, with fewer and larger firms determining the pay of low-wage workers, there is
increasing distance between firms and the low-wage workers performing essential work (Weil 2009). In general, the standards for labor enforcement are insufficient to keep up with the changing structure of the agricultural industry (Glynn 2011).

Gleason notes that contingent workers have a less permanent and established relationship with their workplace, are paid less and receive less benefits than traditional workers, especially in regard to health care benefits (Gleason 2006). Employers often don’t provide benefits such as health insurance because the contingent worker is not, under the company’s rules, eligible, because the farm worker is exempted from labor legislation that would otherwise require it, or because the courts haven’t clearly decided about whether a law applies to farm workers (Befort 2002, Gleason 2006). Contingent workers provide labor in a range of sectors through a spectrum of work arrangements.

The contingent workforce is particularly vulnerable to wage theft practices because protections against wage theft violations in federal and state labor statutes require that the workers be considered employees. As Befort notes:

Current tax, labor, and employment law gives employers and employees incentives to create contingent relationships not for the sake of flexibility or efficiency but in order to evade their legal obligations….the most significant legal problem posed by the rise in nonstandard employment arrangements is the fact that many of thee workers fall outside of the regulatory safety net construed for the employment relationship (Befort 2002).

Thus, while the increasing prevalence of contingent workers in the U.S. labor force allows greater flexibility for the market generally, and firms in particular, existing labor legislation is particularly deficient in providing reasonable protections against wage theft violations for these workers. The standard for an “employee” varies across major labor legislation (Befort 2002, Gleason 2006). The Fair Labor Standards Act, the legislation perhaps most relevant for Minnesota farmworkers, employs a standard that is comparatively effective in providing protections for independent contractors, part-time employees, and other contingent workers. The FLSA uses an “economic realities” test to consider a number of factors to determine “whether the putative employee is economically dependent upon the
principal or instead is in business for himself. Thus, for the purposes of the FLSA, the legal definition of an employee does not depend on whether a farmworker is an independent farmworker, a traditional wage earner, or any other arrangement, but whether the worker is economically dependent on the employer (Befort 2002).

3. Methodology

The findings in this study are based on a comparative literature review and informational interviews conducted in the fall of 2011. This paper does not attempt to measure the extent of wage theft violations in Minnesota. Instead, my purpose is to characterize the existing legal framework for protecting agricultural workers from wage theft violations, and identify useful model statutes and court cases that might strengthen Minnesota’s protections.

The primary hypothesis for this study is that wage theft violations in Minnesota’s farm labor workforce exist, and that there may be state or federal level changes to labor law, or of the enforcement of existing laws, that could minimize these violations.

This study relies on a comparative literature review of statutes and court cases, as well as informational interviews, to investigate the research question. After conducting a background literature review on the issue of wage theft in the United States generally, I worked with a labor law librarian at the University of Minnesota Law School to search relevant Minnesota and U.S. statutes. I used Lexis Nexis Academic, Hein Online, and Google Scholar to search for Minnesota statutes and court cases that affect wage theft for U.S. farmworkers, as well as similar literature reviews of analogous statute in other states. I also used the same databases to search for those federal statutes that affect agricultural workers in Minnesota.
While completing the comparative literature review, I also conducted several informational interviews with experts who have experience in Minnesota wage theft issues. These informal interviews served to check whether the literature review was producing credible information, and to guide further document searches. I identified professors and researchers at the University of Minnesota whose work was either related or directly focused on the theft of wages. I also contacted attorneys who litigate wage theft cases in the Twin Cities or greater Minnesota area and advocates for agricultural workers in the state. In total, I conducted five informational interviews. Questions concerned relevant statues or court cases related to wage theft in Minnesota, as well as other individuals that the interviewee recommended that might have interest or expertise in the area.

4. Comparative review of wage theft statutes

A. The Fair Labor Standards Act of 1938

The federal Fair Labor Standards Act of 1938 (FLSA) defines the relationship and responsibilities of employers and employees through specifying minimum wage, overtime, recordkeeping and other standards. Many states subsequently passed analogous statutes for the same purpose, including Minnesota’s Fair Labor Standards Act. The eligibility standards, as well as the exceptions for agricultural labor, differ in important ways between the federal and Minnesota FLSA.

The federal FLSA applies only above a threshold size of enterprise. Businesses that have at least two employees and whose annual dollar volume of sales or business done exceeds $500,000 are subject to the FLSA (Dept of Labor). This requirement is notable for farmworkers because many small to medium sized farms don’t have annual sales above a half million dollars, and so the federal Act does not apply.
Even if an enterprise does not qualify for coverage based on its annual gross sales, if the enterprise engages in interstate commerce through sales, purchases, or is otherwise “engaged in commerce or in the production of goods for commerce,” then because of the nature of the enterprise for which they are employed, employees are protected by the federal FLSA (29 USCS § 207). Many experts note that farmers often assume their business doesn’t apply under the FLSA due to either or both of these requirements. However, the annual dollar volume of sales is a gross threshold, and does not refer to net income. It’s likely then that the FLSA does apply to many mid-sized farms in Minnesota (Delehanty, Torres, personal communication).

This tendency to assume that the FLSA does not apply to mid-size enterprises is particularly important because it can lead to inadequate payment of overtime. The federal FLSA has a lower minimum hour requirement for overtime than the MFLSA—an employee who works more than forty hours a week is entitled to overtime pay for those additional hours, versus 48 hours per week under the MFLSA (See Table 1). Any farm that is engaged in interstate commerce is subject to the federal statute. According to experts I consulted, many farm businesses do engage in interstate commerce, and are therefore subject to the more stringent federal overtime requirements (29 USCS § 207, Delehanty, personal correspondence).

**Minimum pay requirement**

Currently, under the FLSA, the minimum wage hourly pay requirement is ______. The minimum overtime hourly pay requirement is ______ (See Table 2).
Table 1. Requirements for employers under relevant labor legislation requirements

<table>
<thead>
<tr>
<th>Federal FLSA</th>
<th>MN FLSA</th>
<th>MSAWPA</th>
<th>NLRA</th>
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</thead>
<tbody>
<tr>
<td>Minimum wage</td>
<td>For employers</td>
<td>All enterprises, no matter the scale</td>
<td>None</td>
</tr>
<tr>
<td>Overtime minimum rate</td>
<td>40 hrs/week</td>
<td>Rate depends upon annual gross sales</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Flat minimum rate</td>
<td>40 hrs/week</td>
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<tr>
<td>Key Provisions</td>
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<tr>
<td>Exceptions for farmworkers</td>
<td></td>
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</tr>
<tr>
<td>1) Small farm: less than 500</td>
<td>All enterprises with gross sales over $500K, and/or</td>
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<tr>
<td>2) All enterprises that engage in interstate commerce</td>
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<tr>
<td>3) Children age 12-13 with parental consent, age 14+ without parental consent</td>
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<tr>
<td>4) Piece-rate farmworkers working for enterprises that harvest beets</td>
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<td></td>
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<tr>
<td>3) Children under age 18</td>
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<tr>
<td>2) Piece-rate laborers</td>
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<td></td>
<td></td>
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<tr>
<td>1) Two or less farmworkers paid on salary</td>
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<tr>
<td>2) Workers with salaries exceeding a statutory limit</td>
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<tr>
<td>Family members working on a migrant/seasonal basis</td>
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<tr>
<td>Small farm: less than 500</td>
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<tr>
<td>“Man days” of agricultural labor</td>
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<tr>
<td>“Man days” of agricultural labor</td>
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Many farmworkers are not eligible for coverage under the federal FLSA due to several major exemptions within the law. The first exemption is the small farm exemption, which allows farmers using less than five hundred “man days” of agricultural labor per year to be exempt from the FLSA\(^1\) (29 USCS § 213(a)(6)(A)). As noted earlier, since 90% of farms in the U.S. are classified as small farms, it’s quite likely that these farm employers could employ farmworkers for less than 500 man days per year, and that these farmworkers subsequently would not qualify under the FLSA. The second is for piece-rate laborers, in which farmworkers who are engaged in work usually paid on a piece rate basis are not covered by the FLSA’s protections (29 USCS § 213(a)(6)(B)).\(^2\) Since piece rate payment is common for many kinds of agricultural labor, the consequence of this exemption is that many employers are not subject to the minimum wage and maximum hour requirements set by the federal FLSA. An additional and particularly concerning class of exemptions under the FLSA are those concerning child workers. Webster explains that, “…children younger than twelve can work on their parents’ farm, children twelve to thirteen years old can work with parental consent, and children aged fourteen and older can work without consent” (Webster). Finally, the FLSA exempts agricultural workers from the anti-retaliation provision of the law, which prohibits reprisals from employers and makes it possible for employees to exercise all other portions of the law (Webster).

\(^1\) § 213(a)(6)(A) (“The provisions ... shall not apply with respect to ... any employee employed in agriculture if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor.”)

\(^2\) § 213(a)(6)(B) (“The provisions ... shall not apply with respect to ... any employee...employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment.”)
B. The Minnesota Fair Labor Standards Act

In addition to Minnesota’s general employment statutes, the Minnesota Fair Labor Standards Act (MFLSA) is the primary state-level statute to define minimum responsibilities of employers to employees. The statute states that the MFLSA’s purpose is:

To establish minimum wage and overtime compensation standards that maintain workers’ health, efficiency, and general well-being; (2) to safeguard existing minimum wage and overtime compensation standards that maintain workers’ health, efficiency, and general well-being against the unfair competition of wage and hour standards that do not; and (3) to sustain purchasing power and increase employment opportunities.

Under the MFLSA, an “employer” is any entity, individual, or group of individuals that controls the worker’s job-related activities, either directly or indirectly. It’s notable that an “employer” is not determined by the legal definition of a worker’s relationship to an employee (i.e., an independent contractor, subcontractor, etc.) but whether the employer controls the work (Minn. Stat. § 177.23; Befort, personal correspondence, 2011).

The definition of employee under the MFLSA includes most agricultural workers that aren’t classified as “migrant workers” and those whose wages exceed a threshold defined by the statute. Enterprises employing two or fewer individuals are not required to comply. In addition, employees who are paid on a salary (versus hourly) basis are also not protected by the statute when their salary exceeds a limit defined by the statute (See Appendix B, Minn. Stat. § 177.23). This salary exemption seems designed to exempt middle managers from the MFLSA protections. This threshold is currently $452.03 per week for large employers, and $385.88 per week for small employers. The MFLSA includes a more general exemption for child farmworkers than the federal FLSA: employees do not include workers under age 18 whose parents or custodians are also field workers. Agricultural

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3 Per week salary = MN minimum wage (48 hrs) + MN minimum wage (17 hrs) (overtime factor). For large employer: $6.15/hr (48 hrs) + $6.15/hr (17 hrs) (1.5) = $452.03. Per week salary for small employer: $5.25/hr (48 hrs) + $5.25/hr (17 hrs) (1.5) = $385.88.
employees are explicitly limited to protections under the MFLSA, then, by restrictions which are similar in nature to the federal FLSA (see Table 1) (Minn. Stat. § 177.23 (2010)). In contrast to the federal FLSA, the MFLSA does protect workers earning piece-rate wages, with the notable exception of the state’s sugar beet farmworkers.

**Minimum Wage**

Payment of minimum wage is set by the MFLSA, and the minimum wage depends on the annual gross volume of sales of the enterprise (See Appendix B, Payment of Minimum Wages).

1. "Large employer" means an enterprise whose annual gross volume of sales made or business done is not less than $625,000 (exclusive of excise taxes at the retail level that are separately stated) and covered by the Minnesota Fair Labor Standards Act, sections 177.21 to 177.35.

2. "Small employer" means an enterprise whose annual gross volume of sales made or business done is less than $625,000 (exclusive of excise taxes at the retail level that are separately stated) and covered by the Minnesota Fair Labor Standards Act, sections 177.21 to 177.35 Minn. Stat. § 177.24 (2010)

This distinction between large or small businesses could easily lead to confusion for many farm employers about whether they are responsible for the law’s provisions. The $625,000 threshold is based upon whether a farm’s gross volume of sales or business done, and not net income. Therefore, it’s likely that many mid-size farm operations qualify as large employers under the MFLSA.

Currently, under the MFLSA, the minimum wage hourly pay requirement is $6.15 an hour for large employers, and $5.25 an hour for small employers. An exception to these minimum pay requirements is for employers with workers under 20 years of age—during their first 90 consecutive days of employment, the minimum hourly pay requirement is $4.90 an hour (Minn. Stat. § 177.24 (2010)).
Overtime wage

The Minnesota FLSA requires payment of overtime wages (at 1-1/2 times the regular wage rate) for any hours worked in excess of 48 hours per week. Exceptions include farmworkers in the classes described above and in Table 1 (Minn. Stat. § 177.25 (2010)). The minimum overtime hourly pay requirement for the FLSA is currently $9.23 for large employers, and $7.88 for small employers (See Table 2) (Minn. Stat. § 177.24 (2010)).

Table 2. Current minimum hourly pay requirements for the Fair Labor Standards Act

<table>
<thead>
<tr>
<th></th>
<th>Federal FLSA</th>
<th>Minnesota FLSA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Minimum pay</strong></td>
<td>All employers</td>
<td>Large Employers</td>
</tr>
<tr>
<td>$7.25 (or $2.30???)</td>
<td>$6.15</td>
<td>$5.25</td>
</tr>
<tr>
<td>For employees less than 20 years of age in their first 90 consecutive days of employment, minimum hourly wage is $4.25 an hour</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Overtime pay</strong></td>
<td>(1.5 times min)</td>
<td>$9.23</td>
</tr>
</tbody>
</table>

Deductions from wages

Under the MFLSA, generally an employee cannot deduct from an employee’s wages due to damage or loss of equipment. Subd. 4 of Minn. Stat. § 177.24. Deductions cannot be made for uniforms, purchased or rented equipment (not including equipment that could be used outside employment such as tools and vehicles), consumable supplies, and travel expenses. If the deduction brings the employee’s wage below the minimum wage, these deductions are prohibited. According to subdivision 5, when a worker’s employment is terminated, the employer must reimburse the employee for these deductions in full (See Appendix A, Minn. Stat. § 177.24 Subd. 4-5).
The MFLSA does allow employers to make deductions from employees paychecks if the deduction is based on a post-loss written authorization. After a loss has occurred due to loss, theft, or damage of equipment, or after a debt has been incurred from the employee to the employer, the employee may in writing voluntarily authorize the employer to make a deduction (See Appendix A, Minn. Stat. § 181.79 Subd. 1(a)).

These requirements raise several questions for wage theft, including whether employers make net deductions that bring employees’ wages below the minimum wage, whether employers consistently reimburse employees for the deductions specified above upon their termination, and whether employers’ keep consistent records of these deductions.

Record Keeping

Employers who are subject to the MFLSA, which as noted above does not include all employers of farmworkers, must keep employee records that include contact information, rate of pay and amount of pay per week, and hours worked per day and per week (Appendix A, Minn. Stat. § 177.30 (2010)).

Posting of FLSA Statute and Rules

All employers under the MFLSA are required to have a summary of the FLSA sections and rules. They are also required to post these summaries in an area where there workers can reasonably access them, as well as to provide copies of the statute and rules to their employees (Appendix A, Minn. Stat. § 177.31 (2010)).

However, advocates note that summaries of the MFLSA, along with other relevant statutes (e.g., the federal FLSA, OSHA protections), are often not posted by farm employers. These advocates note that most employers don’t know that the laws must be posted, and
aren’t aware that it’s relatively easy to purchase posters and obtain copies summaries of the statute in order to be in compliance with this requirement (Delehanty, personal correspondence, Nov 18, 2011); Torres, personal correspondence, Nov 17, 2011).

C. National Labor Relations Act

The National Labor Relations Act was created to ensure the right of collective bargaining among workers, that workers are able to exercise this right as needed, to guarantee workers’ right to organize, and to establish workers’ right to appoint representatives in bargaining in order to negotiate terms of employment. However, farmworkers were expressly excluded from the protections of this act, and it is not applicable today for farmworkers4. As a result, some states—notably California—have passed subsequent legislation to guarantee farmworkers’ right to collective bargaining. Minnesota currently has no state-level provisions to guarantee farmworker collective bargaining.

D. Occupational Health and Safety Act

When farmers employ non-family workers, they are bound by the responsibilities outlined under OSHA. However, several experts noted that, in the gradual transition from a primarily family-based labor force to more non-family hiring of employees over the past decade, many farmers are unaware that their operation is subject to OSHA. This lack of understanding has implications for worker safety. Farming remains one of the most dangerous occupations in the U.S. (Ebinger 2008), and employers must take particular

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4 (USCS § 152 (3)) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer…but shall not include any individual employed as an agricultural laborer…” It’s also worth noting that the NLRB does apply to some workers within the agricultural sector more generally, namely certain classes of workers in the food processing industry.
measures that they may not be used to taking with themselves in order to reduce risk of injury and illness for their employees.

OSHA has many requirements that are relevant to farmworkers and the conditions in which they work. The Act includes occupational safety and health standards, inspection procedures, and powerful penalties for violations, most of which are relevant to farm employers (29 USCS § 654). However, as several critics note, while the legislation offers sufficient protections, it does not sufficiently protect workers from safety and health violations because it is under-enforced (Ebinger 2008). Thus, farmers may not be aware of their requirements and responsibilities under OSHA, and if they are aware, it is unlikely that impactful consequences would result from a violation (Delehanty, Mark. Personal Interview, Nov 18, 2011).

In addition, if a farm enterprise is subject to OSHA, they must pay worker’s compensation insurance. Worker’s compensation insurance rates rise with increasing claims under OSHA. Therefore, when employees are educated and empowered to file claims for OSHA violations, and these violations are enforced, OSHA provides an effective feedback between employer’s safety and health practices and labor costs. One expert noted that insurance rates can serve as an economic incentive by avoiding the effective sanction of increased rates through improving on-farm safety (Delehanty, Mark. Personal Interview, Nov 18, 2011). Thus, when there is insufficient enforcement and education about OSHA standards, an opportunity is missed to improve worker safety by providing fair and impactful economic incentives to farm employers.

For the same reasons, it’s also possible that some farmers are not paying worker’s compensation insurance at all. This issue is enforced by the MN Department of Labor through the Worker’s Compensation Act.
E. Minnesota Employment Statutes

Payment of wages

The general Minnesota employment statute requires that wages have to be paid in full for all hours worked after an employee’s hire date (Minn. Stat. ß 181.66 (2010)). Several experts commented that farm workers sometimes don’t get paid a full wage during their initial period of training, but that this is illegal—it is the employer’s responsibility to train employees, and they must be paid a full wage during the training period.

Minnesota’s employment statute prohibits employees making deductions from wages due to possible loss, damage, poor workmanship, or theft of items. The statute also provides a means for employees to recover illegal deductions. However, this prohibition does not cover independent contractors—it appears that an employer of independent contractors can indeed make deductions for damage, loss, etc. As the agricultural sector comes to rely increasingly on contingent labor arrangements, this lack of protection could be a problem for an increasing number of farmworkers. The statute therefore provides incomplete protection (Minn. Stat. ß 181.79).

Communication about wages and hours

After hiring a new employee, employers are required to give a written statement to the employee that clearly states the rate of pay and unit of pay (by commission, or by unit of time). In addition, this statement should detail the number of hours required for a regular day’s work and, if applicable, additional overtime hours the employee will be required to work and the rate of overtime pay. Finally, this statement can also indicate if there are reasons why a pay deduction might arise if the employee fails to undertake a particular task properly. It should be noted, however, that many pay deductions are forbidden by law (Minn. Stat. ß 181.55).
Rights of Collective Bargaining

The MFLSA does not limit the right to collective bargaining, but also does not ensure it. Agricultural workers were exempted from the National Labor Relations Act (NRLA) which established the right to collective bargaining for many other U.S. workers (29 USCS § 151). While other states, including California, passed legislation to grant agricultural workers the right to collective bargaining, Minnesota has no such provision. As a result, collective bargaining barely exists, if at all, among Minnesota farm workers (Torres, Delehanty, Befort personal interviews).

Unemployment Benefits

Under Minnesota statute, if an employee is laid off (and not fired) they are eligible for unemployment benefits. However, collection of unemployment benefits is rare for Minnesota agricultural workers because a large proportion of workers are undocumented. If an employee is working under a fake social security number, they of course won’t be able to collect unemployment claims. However, experts that we consulted also noted that occasionally workers with legitimate documentation are unaware that they can collect unemployment benefits, and so do not file a claim (Torres, Delehanty, personal correspondence).

Independent Contractors

In general, the Minnesota employment statute which outlines independent contractor certification and protections does not apply to farm laborers who are working as independent contractors. The statute is limited to “…individuals performing public or private
sector commercial or residential building construction or improvement services.” It is possible that a farm worker, employed as an independent contractor, would be subject to the responsibilities and protection of this statute if the work is primarily for construction or improvement of structures on a farm (Minn. Stat. ß 181.55). However, since employees are not defined by their legal status of employment—whether independent contractor or a direct wage-earning employee—but by whether an employer controls and employee’s work day, the MFLSA still applies.

**Child agricultural workers**

With the permission of their parents, minors who are age twelve or over and employed in agricultural operations (including, but not at all exclusive to, corn detasseling) are exempt from the Minnesota restrictions on child labor (181A.04, subdivision 4). This statute expands the pool of available farm labor significantly for farm operations, but as children workers are generally paid a very low wage, and parents may not always be in a position to advocate for their child, it also introduces a more vulnerable labor pool for farm labor (Minn. Stat. ß 181A.07, Minn. Stat. ß 181A.11)

**Employer responsibility for health insurance**

Employers who hire five or more “recruited migrant laborers” must provide health insurance for these workers. However, this requirement doesn’t apply if the workers are performing “exclusively agricultural labor”. Therefore, the law applies only for recruited migrant laborers who perform other tasks in addition to only agricultural labor—this could include farm managers, marketing or accounting employees, etc. (Minn. Stat. ß 181.73).
F. Migrant and Seasonal Agricultural Worker Protection Act

The federal Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA) was created to fill major gaps in prior labor legislation concerning protections for farmworkers who are not settled, and not engaged with an employer on a permanent basis. Many states, including Minnesota, passed subsequent legislation with similar protections on the state level. The federal MSAWPA requires farm labor contractor registration, provides protections for migrant and seasonal farmworkers, and specifies penalties for violations of these protections (29 USCS § 180). The MSAWPA defines a migrant and seasonal worker as “an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence,” and a seasonal worker similarly as a worker employed in a seasonal or other temporary nature (29 USCS § 1802) (See Appendix A). It’s important to note that, for many sectors of Minnesota agricultural workers, this legislation does not apply, as farm employers tend to rely on permanently settled workers. The federal and state FLSA, despite its large exemptions, is most relevant for settled farmworkers. However, according to interviewees and to national surveys, migrant and seasonal workers are commonly employed by farms producing vegetables, fruit, or nuts. Since these products are commonly grown on smaller-scale farms in Minnesota, the federal MSAWPA could potentially be most relevant to small to mid-size farm employers (Torres, Delehanty personal correspondence; Kandel).

The federal MSAWPA also includes several major exemptions, most of which are particularly relevant to small farm employers. The first exemption generally removes farm owners and family members from the law’s jurisdiction: this family business exemption stipulates that any individual or immediate family member of an individual working on a seasonal or migrant basis is not subject to the responsibilities and protections of MSAWPA.
Second, the small business exemption stipulates that any farmworker employed by an enterprise that uses less than 500 “man days” of agricultural labor per year is not covered by the MSAWPA.\(^5\) It’s possible that many small farms would use less than 500 man days per year, as migrant and seasonal labor is by its nature needed for small periods of time when an enterprise has a peak need.

In addition to these exemptions, critics note several other shortcomings of the protections afforded migrant and seasonal workers. Webster notes that MSAWPA’s working arrangements section does not clearly indicate health regulations for migrant and seasonal workers. The law also does not provide for inspections, enforcements of its provisions, or adjudication of disputes, and the penalties currently set by MSAWPA are likely not a sufficient incentive to shape employee behavior\(^6\) (Webster). In addition, MSAWPA’s protections do not extend to labor organizations of migrant or seasonal workers (29 USCS § 1803). While this exemption is undoubtedly a deterrent for workers to vocalize their needs, it’s important to note that, given the very large proportion of migrant and seasonal workers without documentation, some advocates assert that few workers would feel able to participate in labor organizations, even if they did have this right (Torres, personal communication).

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\(^5\) 29 USCS § 1803(a)(2) “Small business exemption. Any person, other than a farm labor contractor, for whom the man-days exemption for agricultural labor provided under section 13(a)(6)(A) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(6)(A)) is applicable.”

\(^6\) See Webster, “Currently, under MSAWPA's enforcement mechanism, a willful and knowing violation can result in a $1000 maximum fine, a one-year prison sentence, or both; subsequent violations increase the penalty to a $10,000 maximum fine, a three-year prison term, or both…. Repeated violations of a single provision of the Act count as only one violation in computing statutory damages, which are capped at the amount of actual damages or $500 per plaintiff per violation.”
G. Minnesota Migrant and Seasonal Agricultural Worker Protection Act

The Minnesota Migrant and Seasonal Agricultural Worker Protection Act (MN MSAWPA) specifies the additional protections (beyond protections received in other law) for migrant and seasonal workers through setting a standard payment system, terms for payment, a mechanism for civil action, and other remedies.

According to experts that I consulted, this act is generally not relevant to Minnesota farm workers because most agricultural workers in the state are not migrant, but reside in the state year-round. However, one attorney felt that a migrant labor force is more common among small farms, since smaller-scale farms tend to have more labor intensive needs (Delehanty, personal correspondence).

5. Wage theft protection models for Minnesota

California Agricultural Labor Relations Act of 1975

Since no prior federal labor legislation provided the right for farmworkers to bargain collectively about the terms and conditions of their employment, the State of California passed the California Agricultural Labor Relations Act (CA ALRA) after advocacy from Cesar Chavez and other farmworker advocates. The ALRA provides protections to most California agricultural employees regarding freedom of association, ability to self organize, and negotiations with employers (Cal Lab Code § 1140.2 (2010)). Importantly, the law also requires overtime pay for farmworkers and strong standards for field sanitation and access to water (Webster).

Again, however, at least some experts question how useful such a provision would be, given that a large proportion of farmworkers are undocumented and, feeling that their positions are vulnerable, would be unlikely to participate in collective bargaining over terms of employment (Torres, personal interview).
6. Recommendations for policy and administrative action in Minnesota

The following recommendations are listed in order of the scale on which they can be applied (e.g., at the University Extension level, state rules and legislation, federal rules and legislation, etc.). However, the order does not imply priority among recommendations.

**Revise labor law training for farm employers:** A combination of insufficient education about and enforcement of existing laws offering protections to farmworkers makes it likely that many farm employers are uninformed or misinformed about their obligations. Work with the University of Minnesota Extension to improve the training strategy for educating farmers with farmworker employees about their obligations and responsibilities to these employees. Ensure that this strategy is implemented in a manner that is accessible and affordable to farmers—the University of Minnesota Extension would be the natural organization for this training.

**Increase posting of labor laws and regulations in places of employment:** As described above, the federal and Minnesota FLSA, as well as the federal and Minnesota MSAWPA require employers to hang posters summarizing the primary protections and responsibilities required by the law. Work with the University Extension and farmer organizations to educate farm employers about these obligations, and to make these posters easily accessible to farm employers.

**Educate small farmers about MSAWPA responsibilities:** In Minnesota, small farmers, in particular those growing vegetables, fruit, and nuts, are particularly likely to require non-
family seasonal or migrant labor. However, there is evidence that farm employers have insufficient education about the state and federal MSAWPA, even though as employers they could be subject to this law.

**Allow collective bargaining for agricultural workers in MN:** The longstanding exemption of farmworkers from the the NLRA has increased the gap between the average U.S. wage and farmworker wages for which there is no moral justification. Minnesota should pass legislation granting farmworkers the right to collective bargaining, following the model of California’s ALRA. It should be noted, however, that since a large portion of U.S. farmworkers are undocumented, this option is no panacea—it’s likely that undocumented workers would be unwilling to enter associations to organize for wages and working conditions. Nonetheless, the lack of the right for collective bargaining remains a major barrier.

**Extend the definition of employee across federal labor, employment, and tax statutes:** Following the Dunlop Commission’s recommendation to ensure broader protections for contingent workers, apply the FLSA’s “economic realities” test to other statutes including the NLRA and OSHA (Befort 2002). This would ensure existing protections against wage theft violations are extended more regularly to the contingent workforce.

**Increase inspections and enforcement under the FLSA, MSAWPA, AND OSHA:** the current regime of protections for farmworkers has the potential for improving wage theft
violations for Minnesota farmworkers, but is unlikely to improve without more regular inspection and enforcement.

**Increase education about OSHA health and safety standards:** one of the most effective potential incentives for improving wage theft around workers compensation benefits is through educating employees about the impact of OSHA violations on workers compensation premiums. Increased employer compliance would of course have the co-benefit of improving safety and health conditions for farmworkers.

7. Limitations and future research

This review has focused on providing a profile of existing statute impacting forms of wage theft for Minnesota’s farmworkers. There are several related analyses that are important for understanding wage theft practices that are beyond the scope of this report. First, while this author is unaware of another state that has particularly effective laws to prevent wage theft practices, an inventory of state statute is necessary to detect promising models that Minnesota and other states could emulate. In addition, there is very little information in the scholarly literature about the prevalence and scope of wage theft practices in the U.S. agricultural sector, and virtually no studies of the problem in Minnesota’s agricultural sector. Rigorous surveys, ideally using mixed quantitative and qualitative methods, could provide specificity and credibility to what amount currently to anecdotal accounts from farmworkers, worker advocates, attorneys, and others about the nature and extent of wage theft issues in Minnesota.
Finally, an evolving climate for particular statute will likely influence the policy implications of this article. In particular, legal challenges to the Patient Protection and Affordable Care Act (2010) make it difficult to predict the responsibilities farmworker employers will have for providing general health insurance in the coming years. Given the very low rate of health insurance coverage in the U.S. farmworker population currently, the new Act could have a considerable impact.

8. Conclusion

Wage theft refers to a spectrum of practices that result in workers being unpaid or, more often, underpaid for their work. There are relatively few studies of the prevalence and character of wage violations in the U.S.. There are even fewer studies in Minnesota, but conversations with advocates, as well as policy and legal experts, indicate that wage theft violations are common in Minnesota.

Federal and Minnesota statute provide many responsibilities for employers to ensure fair and consistent compensation to their employees, but especially for the most vulnerable of farmworkers, these statutes often include exceptions that leave farmworkers without fundamental protections. This article reviews the federal and Minnesota statute that provide protection for farmworkers.

Do the statutes provide consistent protection for farmworkers in Minnesota? One way to understand the extent of current wage theft protections is to examine the kinds of exemptions each statute allows.

Non-migrant (settled farmworkers) are not covered by the federal FLSA if they work for small enterprises that don’t engage in interstate commerce. In addition, the federal FLSA
does not apply to farm employers who use less than 500 man days of agricultural labor per year. The federal as well as the Minnesota FLSA also only applies for farm employers who hire two or more farmworkers. Since about ninety percent of farm employers have small-scale farm enterprises, the FLSA critically does not apply for farmworkers employed in many small-scale operations.

Additionally, the Minnesota FLSA does not apply for workers whose wages are relatively high. The MFLSA excludes wage theft protections for workers paid a wage above a threshold set by the statute.

The existing suite of wage theft protections is also inconsistent according to the basis on which workers are paid. The federal FLSA only applies to farmworkers paid an hourly wage or salary, and excludes all workers paid on a piece-rate basis. The Minnesota FLSA does not protect workers paid on a piece-rate basis and employed for enterprises that harvest beets. In addition, the minimum overtime wage is inconsistent across the federal and Minnesota FLSA. The state minimum overtime wage is higher—48 hours per week—compared to the federal minimum wage of 40 hours per week.

Finally, the existing statute reviewed in this article that do provide for wage theft protections fail in providing key provisions to translate employer responsibilities under the law into meaningful incentives. None of the statute reviewed in this article provide for collective bargaining for farmworkers, protection to workers from retaliatory measures by employers, inspections, enforcement, or adjudication. In the case of OSHA, which has the potential to provide indirect but meaningful incentives to farm employers, and does include provisions for inspection and enforcement of its standards, a lack of enforcement means the Act has little effect in deterring workers compensation violations for farmworkers.
This analysis has several important policy implications, and recommendations for policy change should be directed at the primary drivers for incomplete statutory protection for farmworkers. These drivers include a lack of education of farm employers about their responsibilities, a lack of enforcement of existing protections, and systematic exemptions for farmworkers, a class of employees that include some of the most vulnerable workers in the U.S.
Appendix A: Excerpts from the federal Fair Labor Standards Act

29 USCS § 207 Maximum hours
(a) Employees engaged in interstate commerce; additional applicability to employees pursuant to subsequent amendatory provisions.
   (1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

29 USCS § 213 Exemptions
(a) Minimum wage and maximum hour requirements. The provisions of sections 6 (except section 6(d) in the case of paragraph (1) of this subsection) and 7 [29 USCS §§ 206, 207] shall not apply with respect to—
   […]

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agriculture labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or
Appendix B: Excerpts from the Minnesota Fair Labor Standards Act

LABOR, INDUSTRY
CHAPTER 177 LABOR STANDARDS AND WAGES
FAIR LABOR STANDARDS ACT

Minn. Stat. § 177.23 (2010) 177.23 DEFINITIONS

Subd. 4. Wage.

"Wage" means compensation due to an employee by reason of employment, payable in:

(1) legal tender of the United States;

(2) check on banks convertible into cash on demand at full face value;

(3) except for instances of written objection to the employer by the employee, direct deposit to the employee's choice of demand deposit account; or

(4) an electronic fund transfer to a payroll card account that meets all of the requirements of section 177.255, subject to allowances permitted by rules of the department under section 177.28.

Subd. 5. Employ. "Employ" means to permit to work.

Subd. 6. Employer. "Employer" means any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

Subd. 7. Employee.

"Employee" means any individual employed by an employer but does not include:

(1) two or fewer specified individuals employed at any given time in agriculture on a farming unit or operation who are paid a salary;

(2) any individual employed in agriculture on a farming unit or operation who is paid a salary greater than the individual would be paid if the individual worked 48 hours at the state minimum wage plus 17 hours at 1-1/2 times the state minimum wage per week;

(3) an individual under 18 who is employed in agriculture on a farm to perform services other than corn detasseling or hand field work when one or both of that minor hand field worker's parents or physical custodians are also hand field workers;

(4) for purposes of section 177.24, an individual under 18 who is employed as a corn detasseler;
Minn. Stat. § 177.24 (2010) 177.24 PAYMENT OF MINIMUM WAGES

Subdivision 1. Amount.

(a) For purposes of this subdivision, the terms defined in this paragraph have the meanings given them.

(1) "Large employer" means an enterprise whose annual gross volume of sales made or business done is not less than $625,000 (exclusive of excise taxes at the retail level that are separately stated) and covered by the Minnesota Fair Labor Standards Act, sections 177.21 to 177.35.

(2) "Small employer" means an enterprise whose annual gross volume of sales made or business done is less than $625,000 (exclusive of excise taxes at the retail level that are separately stated) and covered by the Minnesota Fair Labor Standards Act, sections 177.21 to 177.35.

(b) Except as otherwise provided in sections 177.21 to 177.35, every large employer must pay each employee wages at a rate of at least $5.15 an hour beginning September 1, 1997, and at a rate of at least $6.15 an hour beginning August 1, 2005. Every small employer must pay each employee at a rate of at least $4.90 an hour beginning January 1, 1998, and at a rate of at least $5.25 an hour beginning August 1, 2005.

(c) Notwithstanding paragraph (b), during the first 90 consecutive days of employment, an employer may pay an employee under the age of 20 years a wage of $4.90 an hour. No employer may take any action to displace any employee, including a partial displacement through a reduction in hours, wages, or employment benefits, in order to hire an employee at the wage authorized in this paragraph.

[...]

Subd. 4. Unreimbursed expenses deducted.

Deductions, direct or indirect, from wages or gratuities not authorized by this subdivision may only be taken as authorized by sections 177.28, subdivision 3, 181.06, and 181.79. Deductions, direct or indirect, for up to the full cost of the uniform or equipment as listed below, may not exceed $50 or, if a motor vehicle dealer licensed under section 168.27 furnishes uniforms or clothing described in clause (1) on an ongoing basis, may not exceed the lesser of 50 percent of the dealer's reasonable expense or $25 per month, including nonhome maintenance. No deductions, direct or indirect, may be made for the items listed below which when subtracted from wages would reduce the wages below the minimum wage:

(1) purchased or rented uniforms or specially designed clothing required by the employer, by the nature of the employment, or by statute as a condition of employment, which is not generally appropriate for use except in that employment;
(2) purchased or rented equipment used in employment, except tools of a trade, a motor vehicle, or any other equipment which may be used outside the employment;

(3) consumable supplies required in the course of that employment;

(4) travel expenses in the course of employment except those incurred in traveling to and from the employee's residence and place of employment.

Subd. 5. Expense reimbursement.

An employer, at the termination of an employee's employment, must reimburse the full amount deducted, directly or indirectly, for any of the items listed in subdivision 4, except for a motor vehicle dealer's rental and maintenance deduction for uniforms or clothing. When reimbursement is made, the employer may require the employee to surrender any existing items for which the employer provided reimbursement.

**Minn. Stat. § 177.25 (2010) 177.25 OVERTIME**

Subdivision 1. Compensation required.

No employer may employ an employee for a workweek longer than 48 hours, unless the employee receives compensation for employment in excess of 48 hours in a workweek at a rate of at least 1-1/2 times the regular rate at which the employee is employed. The state of Minnesota or a political subdivision may grant time off at the rate of 1-1/2 hours for each hour worked in excess of 48 hours in a week in lieu of monetary compensation. An employer does not violate the overtime pay provisions of this section by employing any employees for a workweek in excess of 48 hours without paying the compensation for overtime employment prescribed (1) if the employee is employed under an agreement meeting the requirement of section 7(b)(2) of the Fair Labor Standards Act of 1938, as amended, or (2) if the employee is employed as a sugar beet hand laborer on a piece rate basis, provided that the regular rate of pay received per hour of work exceeds the applicable wage provided in section 177.24, subdivision 1 by at least 40 cents.

[...]

**Minn. Stat. § 177.253 (2010) 177.253 MANDATORY WORK BREAKS**
**Minn. Stat. § 177.254 (2010) 177.254 MANDATORY MEAL BREAK**

Mandatory rest breaks and meal breaks are specified by the MFLSA, and payment of employees is not required during meal breaks. The meal break is not directly specified, instead the MFLSA states that “An employer must permit each employee who is working for eight or more consecutive hours sufficient time to eat a meal.”

**Minn. Stat. § 177.255 (2010) 177.255 PAYROLL CARD ACCOUNTS**
While I could find little evidence of whether or not farm workers in Minnesota are commonly paid with a payroll card, the MFLSA does specify how an employer may pay employees using a payroll card. In general, use of the card must ensure the same access to paid wages as a paycheck in a deposit account, and an employer requires written disclosure and consent from employees before using payroll cards. If the card is offered to an employee in a language other than English, then the disclosure and consent must also be offered in that language. Finally, the employee must offer a transaction history for the employee’s account on a monthly basis, and the card cannot be linked to a credit account. The fees for such cards are also limited: “An employer may not charge an employee initiation, participation, loading, or other fees to receive wages payable in an electronic fund transfer to a payroll card account” (Minn. Stat. § 177.255 (2010)).

Minn. Stat. § 177.30 (2010) 177.30 KEEPING RECORDS; PENALTY
(a) Every employer subject to sections 177.21 to 177.44 must make and keep a record of:

(1) the name, address, and occupation of each employee;

(2) the rate of pay, and the amount paid each pay period to each employee;

(3) the hours worked each day and each workweek by the employee;

(4) for each employer subject to sections 177.41 to 177.44, and while performing work on public works projects funded in whole or in part with state funds, the employer shall furnish under oath signed by an owner or officer of an employer to the contracting authority and the project owner every two weeks, a certified payroll report […]

Minn. Stat. § 177.31 (2010) 177.31 POSTING OF LAW AND RULES; PENALTY

Every employer subject to sections 177.21 to 177.44 must obtain and keep a summary of those sections, approved by the department, and copies of any applicable rules adopted under those sections, or a summary of the rules. The employer must post the summaries in a conspicuous and accessible place in or about the premises in which any person covered by sections 177.21 to 177.44 is employed. The department shall furnish copies of the summaries and rules to employers without charge.

The commissioner may fine an employer up to $200 for each failure to comply with this section. This penalty is in addition to any penalties provided by section 177.32, subdivision 1.

Minn. Stat. § 177.32 (2010) 177.32 PENALTIES

Subdivision 1. Misdemeanors.

An employer who does any of the following is guilty of a misdemeanor:
(1) hinders or delays the commissioner in the performance of duties required under sections 177.21 to 177.435;
(2) refuses to admit the commissioner to the place of business or employment of the employer, as required by section 177.27, subdivision 1;
(3) repeatedly fails to make, keep, and preserve records as required by section 177.30;
(4) falsifies any record;
(5) refuses to make any record available, or to furnish a sworn statement of the record or any other information as required by section 177.27;
(6) repeatedly fails to post a summary of sections 177.21 to 177.44 or a copy or summary of the applicable rules as required by section 177.31;
(7) pays or agrees to pay wages at a rate less than the rate required under sections 177.21 to 177.44;
(8) refuses to allow adequate time from work as required by section 177.253; or
(9) otherwise violates any provision of sections 177.21 to 177.44.

Subd. 2. Fine.

An employer shall be fined not less than $700 nor more than $3,000 if convicted of discharging or otherwise discriminating against any employee because:

(1) the employee has complained to the employer or to the department that wages have not been paid in accordance with sections 177.21 to 177.435;
(2) the employee has instituted or will institute a proceeding under or related to sections 177.21 to 177.435; or
(3) the employee has testified or will testify in any proceeding.

Minn. Stat. § 177.35 (2010) 177.35 RIGHT OF COLLECTIVE BARGAINING

Nothing in sections 177.21 to 177.35 limits the right of employees to bargain collectively with their employers through representatives of their own choosing to establish wages or other conditions of work more favorable to the employees than those required by sections 177.21 to 177.35.
Appendix C: Excerpts from Minnesota’s general employment statute

Minn. Stat. § 181.85 (2010) MIGRANT LABOR; DEFINITIONS

Agricultural labor.

"Agricultural labor" means field labor associated with the cultivation and harvest of fruits and vegetables and work performed in processing fruits and vegetables for market.

Subd. 3. Migrant worker.

"Migrant worker" means an individual at least 17 years of age who travels more than 100 miles to Minnesota from some other state to perform seasonal agricultural labor in Minnesota.

Subd. 4. Employer.

"Employer" means a processor of fruits or vegetables that employs, either directly or indirectly through a recruiter, more than 30 migrant workers per day for more than seven days in any calendar year.

Subd. 5. Recruit.

"Recruit" means to induce an individual, directly or indirectly through an agent or recruiter, to travel to Minnesota to perform agricultural labor by an offer of employment or of the possibility of employment.

Subd. 6. Recruiter.

"Recruiter" means an individual or person other than an employer that for a fee, either for itself or for another individual or person, solicits, hires, or furnishes migrant workers, excluding members of an individual recruiter's immediate family, for agricultural labor to be performed for an employer in this state. "Recruiter" does not include a public agency providing employment services.
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Minn. Stat. § 177.25 (2010) 177.25 OVERTIME

Minn. Stat. § 177.30 (2010) 177.30 KEEPING RECORDS; PENALTY

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Minn. Stat. § 177.32 (2010) 177.32 PENALTIES

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181.723 INDEPENDENT CONTRACTORS Minn. Stat. § 181.73 (2010)

181.73 MIGRANT LABOR; HEALTH INSURANCE

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