



# OnTarget

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## CFFA ANNOUNCES THE LAUNCH OF NEW WEBSITE



The California Fresh Fruit Association is proud to announce the launch of its new website. It is the goal of the Association to showcase the beauty of the 13 commodities the organization represents while also be an additional resource tool for membership.

CFFA President Ian LeMay stated “While 2020 presented many challenges, it also provided opportunities for the Association to reassess how to bring additional value to our members. Leadership and staff determined the CFFA website was an area to focus on. We are proud of the representation of the 13 commodities that is displayed throughout the site.”

CFFA staff appreciates the partnership that was formed with the team at Jeffrey Scott Agency to bring the new website live. For questions or additional information, contact Courtney Razor ([czazor@cafreshfruit.com](mailto:czazor@cafreshfruit.com)).

## LAWSUIT FILED OVER MANDATORY COVID-19 VACCINATION

As COVID-19 vaccinations become increasingly available, more and more employers are contemplating whether to adopt mandatory vaccinations policies for their employees. The federal EEOC has issued a statement that because this is a pandemic, the rules on requiring vaccinations may be different, but employers still have to take into consideration medical and/or religious objections on a case-by-case basis. The only court to issue a decision on this issue so far is the Fifth Circuit Court of Appeals where they upheld a termination when an employee refused to be vaccinated but it is important to note that the Fifth Circuit is nothing like the Ninth Circuit which covers all of the Western states. There may not be a more employer friendly circuit in the country than the Fifth. We also have to take California’s state courts into account, which are notoriously anti-employer.

In January 2020, just before the COVID-19 pandemic picked up in the United States, the Fifth Circuit Court of Appeals decided a case that affirmed employers’ legal authority to require vaccinations as a condition of employment. The case dealt with an employee who objected on religious grounds to his employer’s requirement that all firefighters be vaccinated against tetanus, diphtheria, and whooping cough (TDAP). As a reasonable accommodation, and in response to the employee’s objections, the employer offered the employee to transfer to a code enforcement position that did not require vaccination. The employee refused the accommodation, and the employer fired him. The employee sued and alleged religious discrimination. The court found that the employer acted lawfully because the accommodation was reasonable,

and the law does not require employers to offer employee’s their “preferred” accommodation but merely a “reasonable” one.

Many commentators touted this decision as confirmation that employers have firm legal ground to require employees to get the COVID-19 vaccination. In December 2020, the federal Equal Employment Opportunity Commission (EEOC) issued guidance that reaffirmed the conclusion that employers can mandate COVID-19 vaccinations (subject to some important limitations such as providing reasonable accommodations for employees with disabilities and religious beliefs). Many employers hoped, perhaps over-optimistically, that this would be sufficient to discourage plaintiff’s attorneys from bringing claims against employers for requiring vaccination against COVID-19.

Unfortunately, an opportunistic plaintiff’s attorney has proven us wrong and sued an employer over a mandatory COVID-19 vaccination policy in federal court in New Mexico. The employee alleges that requiring employees to get vaccinated against COVID-19 violates federal law because the vaccinations are in early, clinical stages and have only obtained emergency use authorizations. The employee argues that federal law prohibits employers from forcing an employee to be a “human guinea pig.” This case was just filed, so there is no decision yet, and we presume that any trial court decision will be appealed. New Mexico is not in the Ninth Circuit, but hopefully this case will provide some clarity, in the absence of other pronouncements from a California court or a state agency.

### What This Means for Employers:

Despite the legal precedent upholding mandatory vaccination policies other than COVID-19, employers should not assume that plaintiff’s attorneys will shy away from challenging such policies. Accordingly, employers should work closely with the labor and employment law counsel to carefully consider whether and how to adopt mandatory vaccination policies that are fully compliant with federal and state law.

*The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.*

## CFFA SUPPORTS REINTRODUCTION OF FARM WORKFORCE MODERNIZATION ACT

The California Fresh Fruit Association (CFFA) applauds the reintroduction of H.R. 1537 “Farm Workforce Modernization Act” which will create a workforce solution for the nation’s agriculture industry.

California agriculture represents \$50 billion in production value and is a leader in the nation’s exports. However, securing a reliable workforce in California and across the nation has remained a constant struggle for the industry. With the introduction of H.R. 1537 there is an optimism that these concerns will finally be addressed.

CFFA President Ian LeMay stated, “The ability to have reliable, legal workforce would represent one of most important steps forward our industry has made in over 30 years. H.R. 1537 will address critical needs within agriculture by providing a pathway to legal status for current undocumented employees, along with reform to the current H-2A program. There is no doubt the agricultural industry has waited many years for an immigration reform bill to address the labor concerns amongst the many different commodities produced here domestically so that it can continue to provide the nation and world with safe and reliable food supply long into the future.”

The Farm Workforce Modernization Act that was originally passed out of the House of Representatives in the 116<sup>th</sup> Congress will make significant changes to address the needs of our current agricultural workforce and guestworker program. The Association will continue to engage in the bill negotiations to ensure the California fresh fruit industry’s concerns are addressed. For more information, contact Ian LeMay ([ilemay@cafreshfruit.com](mailto:ilemay@cafreshfruit.com)).

## FEDERAL WATER ALLOCATIONS ANNOUNCED

San Joaquin Valley farmers on the east side will be getting their full allocation of San Joaquin River water, while farmers on the west side will be getting only 5% to start, according to the 2021 initial water supply allocation released on February 23<sup>rd</sup> by the Federal Bureau of Reclamation. San Joaquin River Exchange Contractors will receive 75% of their contractual amount.

Meanwhile, farmers in the Friant Division of the Central Valley Project will receive a 20% allocation of Class 1’s 800,000 acre-feet of water. The initial water allocation for Class 2 water is 0%.

The State Water Project previously announced that its contractors would receive a 10% of their allocations. For more information, contact Adam Borchard ([aborchard@cafreshfruit.com](mailto:aborchard@cafreshfruit.com)).

## TRACTOR SAFETY TRAINING SET FOR MARCH 25<sup>TH</sup>

CFFA has partnered with **Zenith** to present a virtual tractor safety training in English and Spanish on Thursday March 25<sup>th</sup>. The webinar is meant for tractor operators, safety coordinators, managers, and owners to provide information for operation safety and compliance.

The Spanish session will be held from 8:30 to 10 a.m. and the English session will be held from 1:30 to 3 p.m. For more information and to register, please see attached flyer.

For any questions, please contact Jessica Neal at (559) 449-4836 or [jneal@thezenith.com](mailto:jneal@thezenith.com).

## VIRTUAL SPRING AG LABOR FORUM

The California Farm Labor Contractor Association (CFLCA) will host its 7<sup>th</sup> Annual Spring Ag Labor Forum virtually on March 17<sup>th</sup> and 18<sup>th</sup>. The event is designed for farm labor contractors, growers, supervisors, human resource and safety managers, along with agriculture labor industry representatives. The forum will focus on the regulations on COVID-19, new laws coming into effect and remedies for managing complex personnel issues.

The event will be held in English and Spanish presented by industry experts. Registration is \$100 for CFLCA members and \$150 for non-members. Additional information can be found by visiting [www.calfca.org](http://www.calfca.org) or at (916) 389-1246.

## CALIFORNIA WILDFIRES: LESSONS LEARNED WEBINAR SET FOR MARCH 31<sup>ST</sup>

Greenspan Public Adjusters is hosting a webinar panel discussion focusing on California wildfires and what we have learned to be more prepared in the future. The forum will feature a line-up of industry experts to provide insight for when other significant wildfire events threaten areas of the state. As recent years have shown, no area is exempt from fire dangers or from the effects it has on crops and employees.

Panelists include Steve Severaid with **Greenspan Co./Adjusters International**, Craig Gonzales with **Rain and Hail Insurance Services** and Caroline Stevens from **AJ Gallagher**. The forum will be moderated by CFFA President Ian LeMay.

The webinar is set for Wednesday, March 31<sup>st</sup> at 10 a.m. via Zoom. Visit (<http://events.constantcontact.com/register/event?llr=tcpx4zdab&oeidk=a07eho1j8n14bc73ba7>) to register and for additional information.

## ANNUAL MAXIMUM RESIDUE LEVEL HARMONIZATION WORKSHOP SCHEDULED FOR MAY 26<sup>TH</sup> – MAY 27<sup>TH</sup>

The California Specialty Crops Council will hold its 16<sup>th</sup> annual 2021 Maximum Residue Level (MRL) Harmonization Workshop May 26<sup>th</sup> and 27<sup>th</sup>. This year the workshop will be held virtually.

The interactive workshop will address critically important issues for stakeholders with interests in exporting agricultural products. Registrants, growers, packers, shippers, PCAs, regulators, trade experts, and other stakeholders in international trade are strongly encouraged to attend. Presentation topics include international trade trends, global registrations, pesticide residue monitoring, MRL strategies for growers, updates for international residue standards, global MRL challenges, and research reports regarding the impacts of residues.

Elisa Fertig, Agricultural Attaché with USDA- FAS located in Brussels, will kick off the conference discussing, “European Union Pesticide MRL Policies.” Dr. Julian Cudmore, MRL Technical Lead and Consumer Exposure Specialist in the United Kingdom will discuss the “The MRL Processes in the UK for GB and NI.” There will be special reports discussing the MRL situation for specialty crops in Kenya, bananas and cranberries. The program also includes international speakers from South Korea, China, Costa Rica, United Kingdom and Kenya.

On-line pre-registration is required by May 18<sup>th</sup>. For meeting information and a program go to <http://specialtycrops.org/mrlworkshop.html>. The registration fee is \$250 with price discounts for multiple registrations and government employees. For more information, contact Caroline Stringer ([cstringer@cafreshfruit.com](mailto:cstringer@cafreshfruit.com)).

## CFFA BOARD OF DIRECTORS MEETING SET FOR MARCH 16<sup>TH</sup>

The California Fresh Fruit Association’s Board of Directors meeting is scheduled for Tuesday, March 16<sup>th</sup>. The meeting will begin at 9 a.m. and will be held in Fresno. Inquiries & RSVPs regarding the upcoming meeting should be directed to Courtney Razor at [czrazor@cafreshfruit.com](mailto:czrazor@cafreshfruit.com).