



Judge Upholds MDHHS Order Requiring COVID-19 Testing of Migrant Workers

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Foster Swift Agricultural Law News

September 28, 2020

In *Castillo v. Whitmer*, True Blue Berry Management, LLC, Smeltzer Orchards Co., LLC, and a group of farm workers claimed that the state's emergency order requiring testing for COVID-19 when more than twenty employees are on site at a time targeted the Latino community. The emergency order for testing was issued by the Michigan Department of Health and Human Services ("MDHHS") on August 3, 2020.

The emergency order applied to employers of migrant or seasonal workers, and required a one-time testing on all workers, including testing new workers prior to any in-person work. The employers were also required to test all workers whenever more than twenty employees were on site at one time. Employers had until August 24, 2020 to comply with the emergency order. MDHHS Director Robert Gordon found the emergency order was necessary to save lives, support the hard-working employees, and protect against any further outbreaks in food processing plants or migrant worker camps.

The plaintiffs in *Castillo* argued that the order was targeted at the Latino community because no other group in the state is subject to mandatory testing for work besides nursing home employees. The plaintiffs sought a temporary restraining order from the MDHHS order. The judge for U.S. District Court for the Western District of Michigan denied the motion for a temporary restraining order.

The court found that the emergency order contained no racial classification. As a result, the order was examined under the rational basis test and upheld as the court found it serves a legitimate public interest: slowing the spread of COVID-19. On August 14, 2020, the judge for U.S. District Court for the Western District of Michigan denied the motion for a temporary restraining order. As a result, the emergency order for testing remains in place.

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On September 2, 2020, the U.S. Court of Appeals for the Sixth Circuit affirmed the district court's finding that there was no discriminatory conduct and upheld denial of the temporary restraining order. The Court of Appeals denied plaintiff's motion for a preliminary injunction, but granted plaintiff's motion to expedite, which allows the case to move quickly due to exigent circumstances.
