

# COLORADO COUNCIL OF RURAL EMPLOYERS

## Guidance on Complying with the Colorado Agricultural Labor Rights & Responsibilities Act:

### Key Service Provider Access Requirements

---

*In June 2021, the Colorado legislature adopted Senate Bill 21-087, referred to as the Colorado “Agricultural Labor Rights & Responsibilities Act (the “ALRRA”). The Council has developed the following guidance to help you understand what this new law requires and to suggest policies and practices you may want to consider adopting in order to comply with it.*

*The guidance presented here is intended to address general questions and is **not** legal advice. Please consult with your attorney regarding your specific questions and concerns.*

---

#### **Q: What are the ALRRA’s Key Service Provider Access Requirements?**

**A:** The ALRRA requires all agricultural employers to permit non-medical “Key Service Providers” access to their farms, ranches, fields, orchards, or other properties in order to meet with employees during breaks or at any other time they are not working. Health care providers may come onto the property at any time to meet with an employee, regardless of whether the employee is working.

#### **Q: Who is a “Key Service Provider”?**

**A:** Although the ALRRA provides some examples – such as health care providers, attorneys, and religious ministers – the term includes any service provider with whom an employee wants to meet.

#### **Q: Can an employer make any rules regarding where a Key Service Provider can go on farm or ranch property?**

**A:** **Yes**, but only for limited purposes and only if the rules generally apply to every non-employee who visits the farm. The ALRRA provides that “protocols” can be put in place to:

- Manage Biohazards & Risks of Contamination;
- Promote Food Safety; and
- Reduce the Risk of Injuries to or from Livestock.

**Q: *Can an employer provide employees telephone or internet access to Key Service Providers instead of permitting them to come onto farm or ranch property?***

**A: No;** an employer must do both. In addition to permitting Key Service Providers to come onto their property, employers must provide employees a private space where they can make phone calls or access the internet to communicate with Key Service Providers during breaks from work. If phone or internet access is not available, the employer must permit employees to leave the farm or ranch on breaks and go to a place where access can be obtained. If an employee lives in employer-provided housing and is without their own transportation, the employer must transport the employee, on 24 hours' notice, to a place where access is available.

**Q: *Other than during 30-minute meal breaks and 10-minute rest breaks, are there other times an employee is entitled to invite a Key Service Provider onto the farm or ranch during work hours?***

**A: Yes.** Employers must provide additional breaks to employees, during which they can invite Service Providers onto the property, based upon how many hours they work in a week:

- In weeks when employees work more than 40 hours, they are each entitled to extend one 30-minute, unpaid meal break to one hour. Employees who work on-site are required to give 24 hours' notice of the day they want to take a 60-minute unpaid break during work. Range workers must provide 72 hours' notice.

- In weeks when employees work more than 60 hours, they are each entitled to an additional 60-minute paid break. Employers may permit employees to take their additional paid break in the following week. Employees are required to give 24 hours' notice of the day they want to take a 60-minute paid break during work. This additional break requirement does not apply to range workers.

- In weeks when employees work more than 70 hours, they are each entitled to a second, additional 60-minute paid break. Employers may permit the additional break in the following week. Employees are required to give 24 hours' notice of the day they want to take a second, additional 60-minute break during work. This additional break requirement does not apply to range workers.

- Although these additional breaks are intended to provide employees time to meet with service providers, employers cannot require that employees document or otherwise explain how they use their additional breaks.

**Q: *Should I keep records of when employees take additional breaks?***

**A: Yes;** most definitely. It is very important that you be able to prove that you permitted each employee to take paid or unpaid breaks in the circumstances described above. It is easy to imagine a disgruntled former employee claiming that he was never permitted to take a paid break even though he routinely worked six ten-hour shifts in a week. Without documentation

proving otherwise, an employer could then become subject to an administrative action, or a lawsuit, resulting in monetary penalties and payment of the employee's attorney fees.

**Q: *Aren't the ALRRA Key Service Provider Access Requirements unconstitutional and unenforceable?***

**A:** The Key Service Provider Access Requirements may well be unconstitutional under a recent U.S. Supreme Court decision called *Cedar Point Nursery v. Hassid*. However, until the Requirements are repealed by the legislature, or a court issues an order declaring that they cannot be enforced **all agricultural employers must comply with them**.

**Q: *What steps should employers take to prepare for Key Service Providers to come onto their property?***

**A:** Employers should:

- Consider adopting a Key Service Provider Access policy that is something like the template attached to this guidance.
- Post signs at all driveways and other entrances to the property stating that all visitors must check in at the farm or ranch office if there is one.
- Maintain a dated record of all visitors to the farm or ranch that includes the visitor's name and the name of their service organization or business, if there is one, and that documents the times the visitor arrived and departed. This record will assist the employer in overcoming an allegation that a Key Service Provider was denied access to the farm or ranch to meet with an employee.
- Identify areas on the farm or ranch where a visitor could be injured by livestock, could come into contact with hazardous substances, or could contaminate clean equipment and post them as off limits to non-employees who are not accompanied by a member of farm management.
- Identify a room or office that can be made available for employees to meet comfortably and privately with service providers, either in person or by phone or internet, and notify employees that they may use it for that purpose.
- Contact local law enforcement authorities for assistance with a trespasser should a service provider become involved in an altercation, refuse to follow farm rules when asked to do so, attempt to contact employees while they are working, or otherwise interfere with farm operations.
- Contact legal counsel for assistance if faced with a request for access that the employer is uncertain falls within the Access Requirements.

**Employers should not:**

- Prohibit someone identified as a service provider from coming onto farm or ranch property to meet with employees.
- Require a form of identification from a service provider an employee indicates is an invited visitor.
- Attempt to attend or monitor, by any means, an employee’s meeting with a service provider, or request that an employee disclose the content of such a meeting.
- Discourage employees from inviting service providers onto the employer’s property.
- Refuse invited service providers access to parking areas available to other farm or ranch visitors.
- Impose a limit on the number of service providers who can visit with employees at one time – during a lunch break, for example – unless their number threatens to actually interfere with farm operations. In that case, request that the service providers limit their number within reason and contact legal counsel or local law enforcement if they refuse to do so.
- Attempt to physically confront or remove a service provider invited onto the property by an employee. Instead, contact local law enforcement authorities for assistance.

**Q:** *Are the rules different if an employer provides housing for employees?*

**A:** Yes, in very important ways. The ALRRA is the first statute of its kind that specifically addresses agricultural-employer-provided housing separately from the rest of the employer’s property.

The ALRRA states that employers are prohibited from interfering with an agricultural employee’s “reasonable access to visitors” at the employee’s employer-provided housing at any time the employee is present.

It further states that “no person,” other than an agricultural employee, may prohibit, bar, or interfere with entrance to or exit from that agricultural employee’s residence by any person.

In short, the ALRRA guarantees that employees can invite visitors to their employer-provided housing except in circumstances that are unreasonable.

As a consequence, employers should ***not*** attempt to enforce policies that prohibit employees from inviting people to visit them in their employer-provided residences, and ***should*** consult legal counsel regarding employer-provided housing policies intended to protect employees from harm.

**Q:** *Is an employer subject to penalties for violating the Key Service Provider Access Requirements?*

**A:** **Yes.** Failing to comply with the Requirements can result in an investigation by the Colorado Department of Labor and Employment, as well as an administrative complaint or a lawsuit filed by an employee, a whistleblower, or a Key Service Provider that could subject an employer to a \$10,000 penalty and an obligation to pay the complaining party's attorney fees.

