



2022 Industry Conference

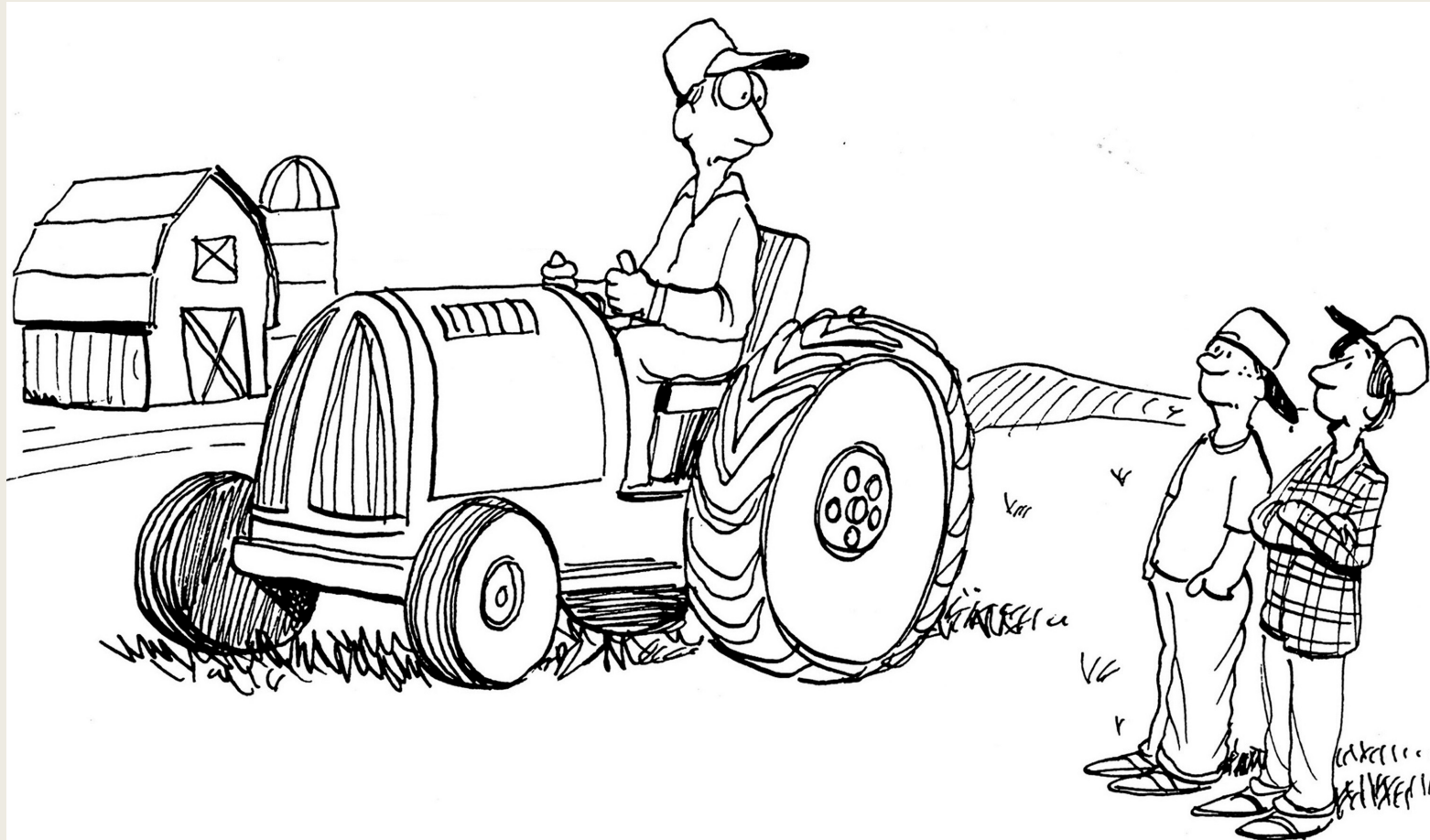
# Contract Labor Considerations

Victoria Dolan

SPHR, PHRca, SHRM-SCP







“Sure, we’ll help around the farm.  
You got Wi-Fi?”

# Agenda

Perception vs. Reality

Joint Employment

Responsibilities

Vetting and Monitoring

Communicating with Labor Providers

Transition to Regular Employment

Parting Thoughts





# Perception vs. Reality

What are the advantages of  
using contract labor, really?





# Reasons for Using Contract Labor

Seasonal  
Fluctuations

Outsourced  
Recruiting

Demand Spikes

Try Before  
You Buy

Cost Control

Avoid  
UI Claims





# Contract Labor



## COMMON 'MIS'-PERCEPTIONS

- Temp/seasonal employees don't impact our employee count
- We can just end the assignment if we are not happy for any reason
- The labor contractor/agency is solely responsible for legal compliance

## REALITY

- Client employers cannot avoid/delegate employment law risk
- Employee counts are generally combined for applicability of employment laws
- Client employers may be ultimately responsible for supplier compliance failures



# Joint Employment

What is it and why does it matter?







# The Joint Employer Relationship

Occurs when two entities are simultaneously considered the employer under the law:

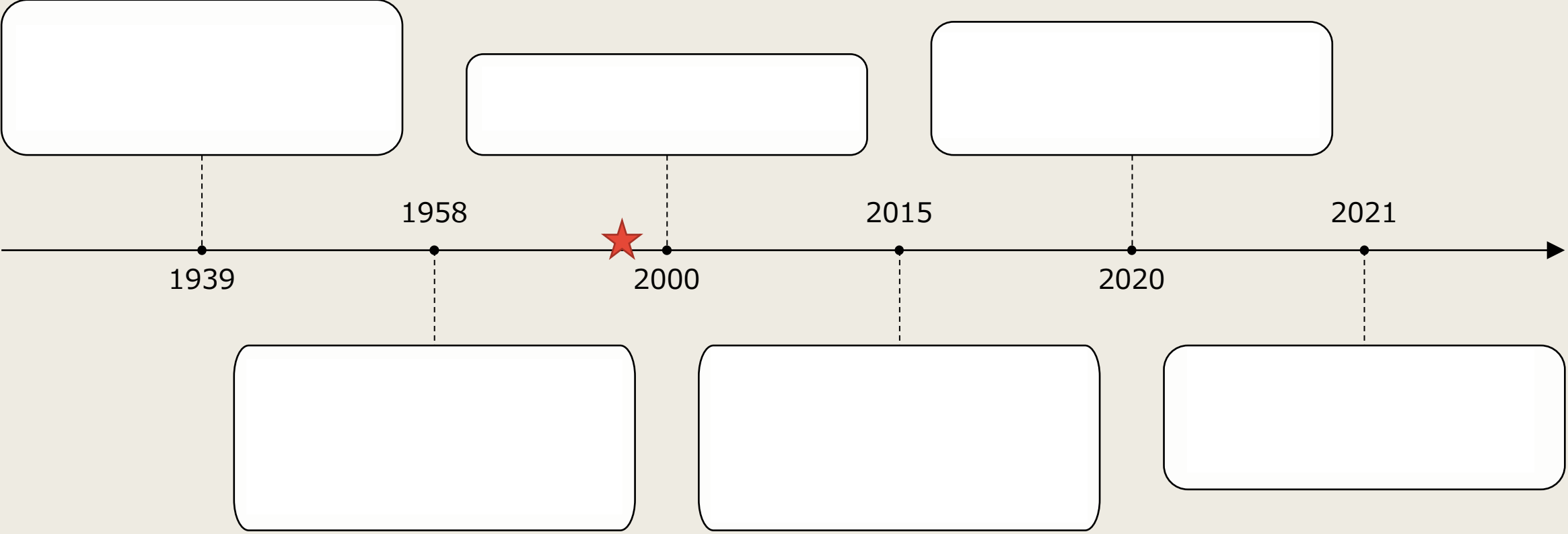
1. the direct/W-2 employer (a.k.a. employer of record), and
2. the client employer who benefits from the labor provided.





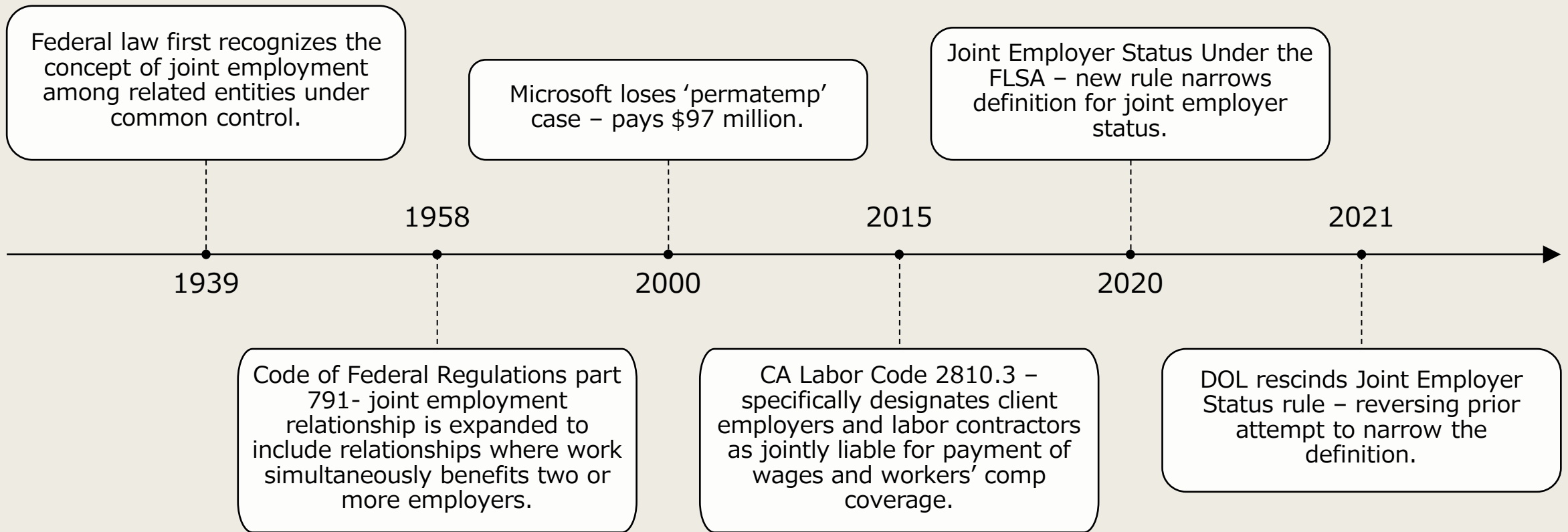


# Timeline





# Timeline





# Responsibilities

What can we delegate/  
outsource?





# Who's Responsible?



## CLIENT EMPLOYER

- Decision to use internal vs. contracted labor
- Vetting suppliers
- Monitoring suppliers
- Site safety/maintenance
- Site-specific safety training

## CONTRACTOR

- Recruiting/sourcing
- Payroll, BUT...
- Unemployment claims
- Workers' compensation, BUT...
- Training
- Communicating policies and notices

## BOTH

- Comply with harassment and discrimination laws
- Investigations
- Provide protected leaves
- Reasonable accommodations/interactive process

# Vetting and Monitoring Providers

What should we be looking for?





# Request and Review Copies

- ☐ State of California FLC License
- ☐ Federal FLC Certificate of Registration
- ☐ Workers' compensation insurance certificate
- ☐ General liability insurance certificate
- ☐ Injury and Illness Prevention Program (IIPP)
- ☐ COVID-19 IIPP Supplement
- ☐ Heat Illness Prevention Program
- ☐ Employee Handbook, including an anti-harassment and discrimination policies
- ☐ A paystub, with confidential information removed

# Evidence of Compliance Training

Sexual  
Harassment  
Prevention

General Workplace  
Safety

Heat Illness  
Prevention

Worker Protection  
Standard

COVID-19 Risk  
Protection

First Aid/CPR (1 of  
20 workers)



# Communicating with Labor Providers

What can we say?



# Requesting Workers



## DO:

- Expect all workers to meet I-9 requirements (eligible to work in the U.S.)
- Be specific in describing the skills needed
- Be transparent about the work environment
- Confirm required training/certifications

## DON'T:

- Make unlawful requests (age, gender, race medical conditions, etc.)
- Generalize or make assumptions based on biases



A photograph of a red barn with a cupola on its roof, situated in a field of tall, dry grass. The sky is a pale blue with some light clouds. A large, dark circular graphic element is positioned on the right side of the image, containing white text.

**We shouldn't  
say...**

*Don't send any illegal aliens.*





# **We can say...**

*We expect you to verify that  
all assigned workers are  
eligible to work in the U.S.*



A photograph of a red wooden barn with a blue roof, situated in a field of tall, dry grass. The barn has a small cupola on top. The sky is a pale blue with some light clouds. A large, dark, semi-circular graphic element is overlaid on the right side of the image, containing white text.

**We shouldn't  
say...**

*The work is very physical, it's  
probably best not to send  
anyone with back problems.*





# We can say...

*Assigned workers must be able to work outdoors on their feet for an 8-hour shift while regularly moving and carrying 25-pound crates.*



A photograph of a red wooden barn with a blue roof, situated in a field of tall, dry grass. The sky is a pale blue with some light clouds. A large, dark circular graphic element is overlaid on the right side of the image, containing white text.

**We shouldn't  
say...**

*We don't want any lazy people.*





# We can say...

*Each worker must produce/process a minimum of '#' of 'widgets' per hour. If they fall short, we will ask for a replacement.*



# Transition to Regular Employment

How do we hire and  
onboard employees sourced  
through labor contractors?



# Hiring and Onboarding

Don't ask about pay rate

Fees

New hire documentation

Background checks

Training





# From Contractor to Regular Employee

Benefits eligibility – time under the labor contractor counts

Paid Sick  
Leave

FMLA/CFRA  
Leave


Other  
Benefits?

# Parting Thoughts

How do we use contract  
labor wisely?





An aerial photograph of a large agricultural field with rows of green crops. A tractor with a long spray boom is positioned in the center of the field, moving away from the viewer. The sun is in the top right corner, creating a bright, hazy glow over the right side of the image. A large, semi-transparent white circle is overlaid on the right side, containing text.

**Use contract labor to  
*supplement*, not *replace*  
a regular workforce.**



# Minimize Your Risks

- ☐ Vet your labor contractors carefully
- ☐ Specify responsibilities in written contracts
- ☐ Require indemnification from your supplier
- ☐ Monitor for compliance
- ☐ Avoid control over contractor's employees
- ☐ Apply anti-discrimination/harassment practices as you would for your internal employees
- ☐ Recognize and honor leave rights



# Additional Resources

FLC registration verification:

[https://permits.dir.ca.gov/FLC\\_External/CreateVerificationSearchForm.do](https://permits.dir.ca.gov/FLC_External/CreateVerificationSearchForm.do)

CA FLC Rules: [https://www.dir.ca.gov/dlse/rules\\_and\\_regulations\\_for\\_flcs.htm](https://www.dir.ca.gov/dlse/rules_and_regulations_for_flcs.htm)

CA labor code Section 2810.3:

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=LAB&sectionNum=2810.3](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=2810.3)

CA DIR Letter re: Harassment Training:

[https://www.dir.ca.gov/DLSE/Letter to FLC SB 1343 vs SB 1087-295 Clarification Eng.pdf](https://www.dir.ca.gov/DLSE/Letter_to_FLC_SB_1343_vs_SB_1087-295_Clarification_Eng.pdf)

Cal/OSHA: [https://www.dir.ca.gov/dosh/dosh\\_publications/Protecting-Temp-Agency-Employees-fs.pdf](https://www.dir.ca.gov/dosh/dosh_publications/Protecting-Temp-Agency-Employees-fs.pdf)

Federal Ag Worker Protections: <https://webapps.dol.gov/elaws/elg/mspa.htm>



# Thank You!

Victoria Dolan, HR Consultant

SPHR, PHRca, SHRM-SCP

[victoria@holdenlawgroup.com](mailto:victoria@holdenlawgroup.com)

