

CODE OF CONDUCT FOR SUSTAINABLE TOMATO SUPPLIERS

Part I. Minimum requirements

Bon Appétit Management Company (“BAMCO”) suppliers are required to abide by all applicable laws, codes and regulations, including, but not limited to, any local, state or federal laws regarding wages and benefits, working hours, equal opportunity, and worker and product safety.

Further, BAMCO suppliers will meet each of the employment and workplace standards listed in this Part:

- Minimum Fair Wage – Growers will pay either:
 - an hourly minimum wage that includes a fair premium over the mandated minimum wage (minimum fair wage) to reflect the uncertainty and unique demands of farm employment, or
 - a picking piece rate for all varieties of tomatoes based on a rate of 75 cents per bucket for round (gas green) tomatoes for the percentage of tomatoes purchased by BAMCO with a guaranteed minimum fair wage, or
 - a day and dime arrangement with the minimum fair wage plus an incentive for buckets picked.

- Growers will keep accurate hours through a time clock system in which employees control the punching of their time cards
- If a piece rate is used, growers will systematically reconcile wages paid to pounds harvested
- Growers will hire farmworkers as employees
- Growers will pay wages and benefits directly to employees
- Growers must develop a system together with the CIW for informing and educating their employees of their rights under these standards
- Growers will provide employees with protective equipment adequate for its intended purpose and provide training on company time on the use of such equipment
- Growers will take all necessary steps to avoid endangering the safety of employees, including but not limited to having an employee-controlled health and safety committee for advising the employer when conditions in the fields are potentially unsafe due to lightning, heat, chemicals, pesticides or other factors.
- If housing is provided, it must comply with the law and payment for such housing cannot reduce the employees’ income below the minimum fair wage
- Growers will verify and provide transparency to their practices by permitting third party monitoring that includes worker participation
- Growers will cooperate with the CIW and BAMCO to establish, implement and enforce a process for employees to pursue complaints without fear of retribution

Complaint process

In the event BAMCO and/or the Coalition of Immokalee Workers (“CIW”) receives a credible complaint¹ from a tomato picker alleging conduct by a Florida tomato grower that violates any applicable laws, codes (including this code) or regulations, BAMCO and CIW will work together to investigate the complaint with no undue delay. If BAMCO and CIW agree that there are reasonable grounds to believe a violation has occurred, BAMCO will take the actions described below or may, in its sole discretion without proceeding as described below, revoke a supplier’s approved status. If BAMCO and CIW disagree as to whether there are reasonable grounds to believe that a violation has occurred, they will jointly refer the complaint to any applicable federal and/or state enforcement agency. If an applicable enforcement agency determines that a violation has occurred, BAMCO and CIW will then proceed as described below. If BAMCO and CIW determine that the violation was serious or systemic², BAMCO will revoke the grower’s approved status until such time that the grower remedies the situation to the satisfaction of BAMCO and CIW; provided that BAMCO shall have a reasonable time to transition purchases from that Vendor to provide for sufficient supply of tomatoes for its business.

Violation taxonomy

For purposes of this Supplemental Policy Statement, violations by a Florida tomato grower shall be divided into two categories – “Zero Tolerance Violations” and “Curable Violations”.

Article I. Zero Tolerance Violations:

1. Use of forced labor of any kind.
2. Illegal child labor as defined Florida law and the federal Fair Labor Standards Act, including but not limited to the employment or use of children under 14 years of age at any time.
3. Use or threat of physical violence against worker(s) by or at the direction of either supervisor(s) directly employed by the supplier or by crew leader(s) unless the offending person(s) are fired and corrective action taken immediately upon discovery of the incident.
4. The use or display of weapons of any kind (including firearms, knives, bats, etc.) at any point for the explicit or implicit purpose of intimidation.
5. Repeated retaliatory firing of worker(s) for defending or asserting legal rights, as evidenced by two or more findings of individual probable cause of race or national origin discrimination by the Department of Labor or any other state or federal agency, or any other evidence that CIW and BAMCO together find sufficient to substantiate such discrimination.

¹ A credible complaint – the complaint, which cannot be anonymous but can protect the identity of the picker(s), should, through a description of the facts, indicate how relevant laws, codes (including this code) or regulations have been violated.

² A serious or systemic violation – Violations listed in Article I of in this Supplemental Policy Statement shall constitute a non-exclusive list of serious or systemic violations.

6. Racial, national origin, religious or sexual preference discrimination on a systematic level, as evidenced by differential treatment (physical or verbal) of workers of a given race, nationality, religion or sexual preference or crew(s) predominantly of a given race nationality, religion or sexual preference.
7. Sexual harassment on systematic level, as evidenced by differential treatment (physical or verbal) of women or crew(s) containing women.
8. Wage violations on a systematic level, as evidenced by incorrect payments in any payroll period affecting: a) at least 5 % of all pickers; or b) at least 20 % of all pickers in any one crew.
9. Failure to pass on or otherwise provide to all covered workers as part of each payroll any "penny per pound" or other agreed upon wage or benefit incentive.

Article II. Consequences of Zero Tolerance Violations:

BAMCO will revoke the Florida tomato grower's approved status until such time as the grower remedies the situation to the satisfaction of BAMCO and CIW; provided that BAMCO shall have a reasonable time, using reasonable best efforts, to transition purchases from that grower to provide for a sufficient supply of tomatoes.

Article III. Curable violations:

1. Repeated racial discrimination on the individual level, as evidenced by two or more findings of individual probable cause of race or national origin discrimination by the EEOC or any similar state or federal agency, or any other evidence that CIW and BAMCO together find sufficient to substantiate such discrimination.
2. Repeated sexual harassment on the individual level, as evidenced by two or more findings of individual probable cause of sex discrimination by the EEOC or any similar state or federal agency, or any other evidence that CIW and BAMCO together find sufficient to substantiate such discrimination.
3. Wage violations that are not on a systematic level, as that term is defined in Article I.
4. Negligent endangerment, which shall include any pesticide poisoning affecting more than two workers as a result of the same incident, two or more equipment failures in one season that harm worker(s), or one or more lightning injuries in a season, unless, the supplier can that demonstrate a) the pesticide poisoning, equipment failures or lightning injuries were not the result of negligent conduct, and b) within the time frame set forth in Article IV, paragraph 1, steps have been taken that will prevent the pesticide poisoning, equipment failures or exposure to lightning from reoccurring.
5. Failure to provide adequate drinking water, field toilets or other hygiene facilities required by any applicable laws or standards.

Article IV. Consequences of Curable Violations:

1. Within seven (7) days of being notified of a curable violation, the Florida tomato grower must present an action plan, which includes a time frame for each corrective action. BAMCO will consult with the CIW before informing the grower whether the action plan is acceptable. If the action plan is not deemed acceptable, the employer shall have the option of adopting amendments to the action plan suggested by BAMCO after consultation with CIW or developing another action plan that will be reviewed in the same manner. If the second corrective plan is also deemed unacceptable by BAMCO after consultation with CIW, then the grower shall implement the first corrective plan with the amendments suggested by BAMCO. BAMCO will set the target re-audit date for the grower, and the time frame for any corrective action or re-audit may be extended at BAMCO's sole discretion, except that final corrective action shall in all cases be accomplished as quickly as feasible and in any event within 4 weeks, unless extended after consultation with CIW.
2. If continuous improvement and eventual full compliance are not achieved within the time frames described in paragraph 1, BAMCO will terminate the Florida tomato grower's approved status until such time as the grower remedies the situation to the satisfaction of BAMCO and CIW; provided that BAMCO shall have a reasonable time, using reasonable best efforts, to transition purchases from that grower to provide for a sufficient supply of tomatoes.
3. Following termination of a Florida tomato grower, BAMCO may, at its sole discretion (after discussion with the CIW), resume doing business with the grower, if an audit satisfactory to BAMCO and the CIW is completed prior to resuming business.

PART II. Progress toward higher standards

In addition, BAMCO strongly encourages Florida growers in the tomato industry to provide working terms and conditions similar to those provided by suppliers outside of the agricultural industry, and will buy to the greatest extent possible from those tomato growers that demonstrate consistent adherence to these higher standards.

Those standards include:

- Payment of overtime for field workers as if they were covered by the Fair Labor Standards Act
 - Provision of other benefits such as sick leave, paid leave, holiday pay, health insurance, and retirement pensions
 - Recognition of workers' right to freedom of association
 - Provision of opportunity for advancement, including the ability for employees to move from the fields to other types of employment with the grower
 - Plans and facilities to insure the timely and adequate treatment of workers in the event of injury or sickness that may occur anywhere on the grower's property
 - Plans and facilities for insuring that workers have sufficient breaks during the day, including an adequate time for lunch.
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