

Human Rights Impact Assessment

Mixed Greens in
California



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Executive Summary

This report presents the findings of a human rights impact assessment of the mixed greens industry in California, conducted by ELEVATE on behalf of The Kroger Co.

As a U.S. food processor and retailer with a global supply network, Kroger recognizes its role and responsibility to respect human rights throughout its supply chain. Respecting human rights is embedded in the company's corporate governance and culture and is a key element of its responsible sourcing and supply chain accountability initiatives. The company manages the topic of human rights within the context of its comprehensive Environmental, Social & Governance (ESG) strategy.

The company's management approach to responsible sourcing and supply chain accountability is outlined in its [2022 ESG Report](#) and supporting documents, including its [Responsible Sourcing Framework](#), [Vendor Code of Conduct](#), [Human Rights Policy](#), and other policies and programs relevant to vendors and suppliers. These and other resources are available at the company's [ESG Hub](#). Primary responsibility for sourcing raw materials, ingredients, and finished food and consumer goods is shared among Kroger's Sourcing and Merchandising teams.

In early 2022, as part of its human rights due diligence (HRDD) work, Kroger enlisted sustainability and supply chain services provider ELEVATE (an LRQA company) to conduct a Human Rights Impact Assessment (HRIA) focused on the production of mixed greens in California. Mixed greens include a range of leafy green vegetables that are sold as components in prepared foods, as individual products, or as packaged salad mixes in Kroger-operated stores.

Kroger has been a leader among U.S. retailers in expanding the reach and affordability of fresh produce over time, including natural and organic options. The company's commitment is further highlighted in its brand promise: Fresh for Everyone™ and ongoing efforts to increase access to fresh, affordable foods to improve food and nutrition security.

The research for this HRIA focused on the most labor-intensive aspects of mixed greens production – harvesting and packaging – and how these activities may have actual or potential impacts on the human rights of various rightsholders and stakeholders in the supply chain. It included interviews with key rightsholders, particularly farmworkers, discussions with Kroger sourcing and category management team members, interviews with civil society organizations¹, and desktop research. Other aspects of the mixed greens supply chain, including seed and fertilizer procurement, transportation, and warehousing were not included in the scope of this HRIA.

This report includes the following sections:

- + HRIA purpose and methodology
- + Industry context and Kroger's sourcing policies
- + Impact assessment findings, informed by site visits, desktop analysis, and stakeholder engagement
- + Roadmap to prevent and mitigate human rights risks in the mixed greens industry

¹ Civil Society Organizations (CSOs) refer to non-governmental organizations (i.e., the United Nations and International Labor Organization) and not-for-profit and community-oriented organizations.

About ELEVATE - an LRQA Company



ELEVATE, is an industry-leading sustainability, human rights, and supply chain services provider with business activity in over 100 countries.¹ The ELEVATE project team brings a combined 30+ years of relevant industry experience to this work and has conducted many engagements related to human rights in agricultural supply chains in the United States and globally. ELEVATE has worked with Kroger for several years to help implement its Social Compliance Program. For this HRIA, ELEVATE teams worked in conjunction with Kroger’s Human Rights Working Group and other subject matter experts to conduct research and site visits and to frame the contents of this report.

About The Kroger Co.



At the Kroger Co., we are dedicated to our Purpose: To Feed the Human Spirit™. We are, across our family of companies nearly half a million associates who serve over 11 million customers daily through a seamless digital shopping experience and retail food stores under a variety of banner names, serving America through food inspiration and uplift, and creating #ZeroHungerZeroWaste communities by 2025. To learn more about us, visit our newsroom and investor relations site.

Acknowledgments

This HRIA builds on several months of preparation, discussion, data discovery, in-person site research, and dozens of rights- and stakeholder interviews. Kroger and ELEVATE would like to graciously thank all parties who contributed to this research and acknowledge the critical role they played in completing this work.

We also want to acknowledge and thank the Kroger suppliers who participated in this impact assessment and enabled third-party access to the farms, farm managers, and workers for site visits and interviews. The specific companies and farms involved remain confidential.

ELEVATE and Kroger would also like to thank the civil society organizations that provided key insights into this industry and the broader human rights landscape.

To foster an environment in which rightsholders and other stakeholders could be encouraged to share their experiences candidly, some parties’ identities remain confidential. We expressed ELEVATE and Kroger’s appreciation to these anonymous contributors during interviews and want to acknowledge their valuable input.

1. Methodology

HRIA Methodology

This HRIA has been informed by guidelines from the United Nations Guiding Principles on Business and Human Rights (UNGPs),² The Danish Institute for Human Rights,³ and Oxfam.⁴ This input helped increase alignment with accepted best practices, thoroughness, and validation of the approach to select geography and commodity of focus, stakeholders, site visit processes, interview practices, and final report development.

The HRIA methodology and process has been designed to reflect a gender-equity lens and consisted of the following steps.



² https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

³ <https://www.humanrights.dk/tools/human-rights-impact-assessment-guidance-toolbox>

⁴ <https://www.oxfamamerica.org/explore/issues/economic-well-being/private-sector-engagement/community-based-human-rights-impact-assessment-initiative/>

Preliminary discussions and preparation began in January 2022 and were completed in early 2023. The HRIA timeline included in-person, third-party site visits in California’s Central Valley, the Salinas Valley, and Imperial Valley during the mixed greens harvest season, which typically runs from April to October and peaks in mid-summer.

Determining the scope of the HRIA

In 2021, Kroger committed to aligning its human rights and social compliance program with the UNGPs. As part of this process, Kroger worked with ELEVATE to identify its most salient human rights risks through a risk assessment and internal and external stakeholder engagement. The salient risks identification process informed selection for two impact assessments: one focused on U.S. produce production and another on the global seafood supply chain.

To further narrow the scope, we completed these general steps:

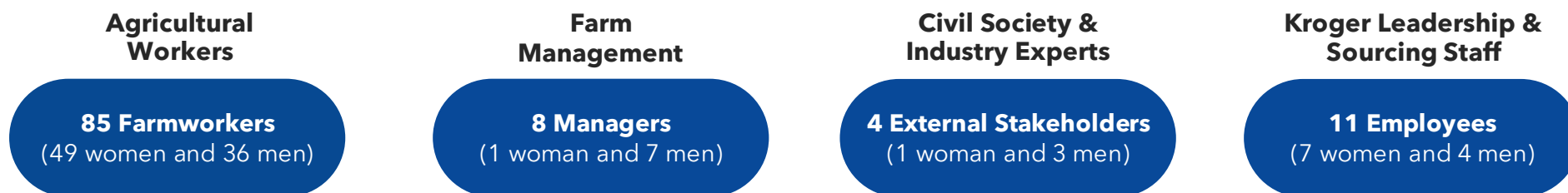
- + Analysed industry supply chain data, stakeholder input, and available data on human rights risks
- + Review of existing human rights impact assessments for food production and relevant research on high-risk products
- + Analysis of Kroger’s sourcing practices, volume, and spend for fresh produce categories to inform the country and site selection

The choice to focus on mixed greens harvested in California was informed by Kroger’s large sourcing and sales volumes in that category, the category’s unique risk profile, the lack of existing HRIAs, and continued stakeholder interest in labor issues in U.S. agricultural production.

Stakeholder engagement

Kroger has a long history of engaging stakeholders on topics related to the supply chain. For this HRIA, ELEVATE engaged several specific stakeholders to provide qualitative insights into the human rights impacts of the mixed greens supply chain in California, in addition to worker interviews conducted during the site visits. Stakeholders were included based on their expertise, proximity to the mixed greens supply chain, or both. These groups included supplier and farm management, relevant civil society and industry experts, and Kroger subject matter experts in merchandising and sourcing.

Stakeholders included:



On-site Visits & Worker Engagement

Site selection

Kroger selected three medium- to large-sized farms producing multiple mixed green crops for in-person site visits and worker interviews as part of this HRIA. Site selection was informed by a review of overall sourcing spend, share of product volume supplied to Kroger, ability to influence suppliers, and representation of sourcing patterns. Kroger sources predominantly from medium to large suppliers due to their ability to service the large volume demand needed to serve customers, although local farms and organizations take priority when and if their product is available for a specific market. Other suppliers may help supplement supply as needed, due to consumer demand, capacity constraints, crop damage, etc.

The selected suppliers provide both national brand items as well as private-label products in Kroger's Our Brands portfolio. All three selected suppliers are vertically integrated businesses, meaning that they have direct control over different stages of the supply chain, either through ownership of other companies or through contracted agreements with other companies in the supply chain. Limitations with respect to the site selection are noted below.

Project Team

ELEVATE's team of human rights and agriculture experts led this project. The project team included an expert in global human rights, senior-level advisers specialized in human rights and agriculture, and consultants with expertise in agriculture and supply chain investigations in the United States. The project team was also supported by ELEVATE experts in human rights in the United States and agriculture. The ELEVATE field researcher, a full-time staff member, was selected based on her 14+ years of experience conducting worker interviews and assessments focused on human rights on farms and in factories in the Americas. The researcher is fluent in Spanish, the primary language spoken by the farmworkers, as well as English. Furthermore, the project team specifically selected a woman field researcher to ensure all women workers felt comfortable participating in the assessment.

Site visit methodology

ELEVATE developed and used a proprietary framework for the site visits based on the HRIA guidance documents⁵, ELEVATE's Responsible Sourcing Assessment for Agriculture (ERSA Ag), local and national laws, International Labor Organization (ILO) conventions, industry standards and input from civil society organizations. The framework is designed to capture all potential human rights risks as defined by the UNGPs, the International Bill of Human Rights and the International Labor Organization (ILO) conventions as well as the various experiences of rightsholders (including agricultural workers).

Before the site visits, ELEVATE led informational and context-setting virtual meetings with each supplier's management team. These meetings aided site selection and provided additional background information about the operations.

⁵ ELEVATE's proprietary framework was developed based on the HRIA guidance provided by the United Nations Guiding Principles for Business and Human Rights, Danish Institute for Human Rights, and Oxfam.

Site visits were conducted from July to August 2022. Every site visit included a tour of the different facilities (including fields, packaging houses, coolers, offices, canteens, and other facilities), management interviews, worker interviews, and a critical review of the human rights and labor environment and experiences of workers.

Interviews

The visits included a total of 85 interviews with rightsholders on the selected farms. ELEVATE undertook efforts to facilitate a safe environment for workers to discuss and disclose information. Workers were given an open forum to raise any human rights issue or concern during the interviews; there were no topic limitations.

The ELEVATE field researcher conducted interviews in English and Spanish and included workers of various ages and immigration statuses (both legal residents and U.S. citizens). Workers performed various job functions including harvesting, grading, packing, cleaning, irrigation, and tractor operations.

While men constitute the majority of workers in the industry overall, the field researcher made an effort to interview more women farmworkers to capture their experiences, which are historically underrepresented in data and research.⁶ This helped provide information on gender equity among agricultural workers in this HRIA. As noted under Safety Measures & Protocols, a woman field researcher was chosen to ensure women farmworkers felt comfortable participating in the HRIA process.

Safety Measures & Protocols

Understanding the human rights environment of workers is critical to the HRIA process. To provide a safe and effective opportunity for workers to share their experiences, the field researcher took several key steps:

- + Securing signed non-retaliation forms from suppliers' leaders before conducting worker interviews.
- + Deploying a woman field researcher to conduct all interviews and group panels.
- + Including a mix of one-on-one interviews and group panels in worker interviews. In each case, the interviews took place without management present and in a place presenting little or no risk of management influence. Examples included employee break rooms or in the field away from management.
- + Taking care not to interrupt workers' productivity or safety while engaging with them on-site.
- + Ensuring worker participation was voluntary, and each worker had the option to decline the interview.
- + Conducting interviews in the workers' preferred language.
- + Securing confidential interview notes and not sharing with management.

⁶ Note: In this report, ELEVATE uses the gender-identifying language used by interviewees, ELEVATE employees, and other engaged parties. We recognize that there is a lack of research across the industry on the specific concerns of non-binary and transgender-identifying individuals. No workers identified as non-binary or transgender during interviews. Therefore, this demographic was not captured in this research.

- + Before the interviews, emphasizing the confidentiality of the interviewees' identities and the purpose of the interviews for use in the final, public report with each participant.
- + After the interviews, providing workers information about grievance mechanisms to report any concerns, including retaliation.

Method of Communication

This HRIA report is intended to be publicly available and accessible to all relevant stakeholders. We believe publishing the report helps illustrate the human rights context for agricultural production systems and encourages transparency in due diligence.

Kroger will publish this report in its online [ESG Hub](#) and include links in its upcoming annual ESG Report and relevant communications. The company will also proactively share the findings with key stakeholders that have expressed specific interest in this topic.

Limitations

We have taken care to ensure the methodology of this HRIA is as robust as possible. However, some limitations should be noted, including:

- + Scope of the assessment & site selection: This analysis focuses specifically on harvest and packing operations in the production of mixed greens in California. Other steps in the supply chain, such as logistics or distribution, have not been included in this analysis. The decision to conduct on-site visits with three large, vertically integrated suppliers was based on a variety of factors, including sourcing patterns, spend, leverage, and relevance to the organization. As a result, this assessment did not include site visits with smaller farms or farms in lower tiers of the supply chain, which may have limited the range of findings from site visits. Vertically-integrated operations are generally considered lower risk because there is greater visibility and control over human rights practices at each step in the production process.
- + Stakeholder Response: ELEVATE attempted to interview additional civil society members and experts who were not available or responsive during the assessment period.
- + Secondary Data Sources: The desktop analysis focused on the most relevant, timely, and representative resources, but gaps in publicly available data exist. Where possible, findings have been complemented by stakeholder inputs and site findings.
- + Representation: There is limited research and data on the experiences and unique risks to non-binary, transgender, and other LGBTQ-identifying persons in farm work. As a result, it is difficult to safely capture the experiences of these individuals in reporting and engagement.

2. Context Analysis

Mixed Greens Production in California

The state of California is the largest grower of lettuce, mixed greens, and spinach in the United States, supplying more than 70% of domestic production as well as exports to various countries, including Canada.⁷

Industry Statistics

- "Mixed greens" includes spinach, various types of lettuce, and other leafy greens.
- Harvest period is from April to October with multiple harvests, and it takes from 40 to 110 days to harvest greens depending on the variety.
- In 2021, lettuce was one of the highest-value commodities for California - estimated at \$2.03 billion ([CFDA, 2022](#)).
- The combined planted area in California for head lettuce, leaf lettuce, and spinach is approximately 166,000 acres ([USDA, 2021](#)).
- Nearly all farming activity in California occurs in three areas: the Central Valley, the Salinas Valley, and Imperial Valley ([CFDA, 2020](#)).
- The Salinas Valley is known as "The Salad Bowl of the World," producing approximately 70% of the U.S. lettuce crops ([USDA, 2017](#)).



Most of the harvesting and packaging is conducted by hand as mixed greens are delicate crops. Typical harvesting activities in the fields include cutting, trimming, rinsing, sorting, and packing the greens in boxes. Boxes are typically transported to a transitory warehouse, where products from multiple farms or fields are aggregated and packed onto refrigerated trucks. Those trucks then transport the product to distribution centers, where the product is separated again and finally delivered to stores for consumer purchase. Most mixed greens products have a harvest-to-shelf time of approximately seven days.

The industry is comprised of a small number of large, vertically integrated, industrial growing operations and many smaller farms, often family-run, that regularly act as subcontracted producers to larger producers. Though fewer farms operate under subcontracting agreements today than in the past, the total value produced under contract has remained somewhat stable, between 33% and 37% from 1996 to 2020, according to the U.S. Department of Agriculture.⁸

ELEVATE's on-site field visits, worker interviews, and discussions with industry experts indicate that the composition of the supply chain can vary, with some suppliers outsourcing all operations to independent growers and others outsourcing only certain tasks and processes, such as planting, harvesting, or irrigating. The use of these additional parties in the supply chain may increase complexity and related risks for traceability, food safety, and quality control, and human rights due diligence. Traceability challenges are especially prominent in bulk agricultural production, where product from multiple growers is aggregated into finished product for transportation.

⁸ <https://www.ers.usda.gov/amber-waves/2022/june/farmers-use-of-contracts-has-declined-over-last-25-years/>

Regulatory Landscape

California

California is a highly regulated state where the government has significant input into business activities. As the largest agriculture-producing state in the country, many of those regulations apply to farming and harvesting activities. Many of these laws serve to protect workers and focus on workplace safety, harassment training, and migrant worker concerns. The state also operates a set of whistleblower and worker grievance hotlines and email addresses for workers to report suspected labor law violations.

Key laws that apply to farmworkers include:

- California Occupational Safety and Health Act (Cal/OSHA), 1973: Cal/OSHA sets safety and health standards for agricultural workplaces to protect workers from hazards and ensure safe working conditions. It requires employers to provide training, protective equipment, and proper safety measures to prevent accidents and injuries.⁹
 - California Heat Illness Prevention Standard: Part of Cal/OSHA, this regulation aims to protect agricultural workers from heat-related illnesses by requiring employers to provide access to shade, water, and rest breaks. It establishes specific procedures for preventing and responding to heat-related emergencies.
- California Agricultural Labor Relations Act, 1975: This act grants agricultural workers the right to self-organization, collective bargaining, and freedom of association. It established the Agricultural Labor Relations Board (ALRB) to enforce these rights and resolve labor disputes in the agricultural sector.¹⁰
- California Labor Code: The California Labor Code is a comprehensive set of laws that covers various aspects of employment, including wage and hour laws, rest and meal breaks, overtime pay, and worker's compensation. It sets standards for fair treatment, payment of wages, and working conditions, which apply to farmworkers as well. In 2017, the code was adjusted so that agricultural workers are entitled to all statutory protections related to the working hours and overtime requirements.¹¹

⁹<https://www.dir.ca.gov/dosh/#:~:text=The%20Division%20of%20Occupational%20Safety%20and%20Health%20%28DOSH%29%2C,through%20the%20following%20activities%3A%20Setting%20and%20enforcing%20standards>

¹⁰ <https://www.alrb.ca.gov/>

¹¹ <https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=LAB&tocTitle=+Labor+Code+-+LAB>

United States

In the United States, various federal and state laws protect farm workers' rights, such as the Fair Labor Standards Act (FLSA)¹² which sets minimum wage and working hour standards. The Migrant and Seasonal Agricultural Worker Protection Act (MSPA)¹³ specifically addresses the unique needs of migrant and seasonal agricultural workers, ensuring fair wages, safe housing, and access to information and the Immigration and Nationality Act (INA)¹⁴ governs immigration laws including the provisions for temporary work visas like the H-2A program which many farmworkers use to work in the agricultural sector of the United States. Additionally, laws like the Occupational Safety and Health Act (OSHA)¹⁵ and the Civil Rights Act¹⁶ provide protection against workplace hazards and discrimination. Finally, the Trafficking Victims Protection Act (TVPA)¹⁷ addresses human trafficking and forced labor, including in the agricultural sector. It establishes criminal penalties for human trafficking offenses and provides support and protections for trafficking victims, including access to services and assistance.

The United States has ratified human rights international treaties such as the International Covenant on Civil and Political Rights, 1966, the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 and multiple International Labor Organization Treaties, including the Abolition of Forced Labour Convention, 1957 (No. 105), the Worst Forms of Child Labour Convention, 1999 (No. 182). The United States has also signed, but not ratified several international treaties related to discrimination against women and the protection of rights for migrant workers and their families.¹⁸

¹²<https://www.dol.gov/agencies/whd/flsa#:~:text=The%20Fair%20Labor%20Standards%20Act%20%28FLSA%29%20establishes%20minimum,than%20%247.25%20per%20hour%20effective%20July%2024%2C%202009.>

¹³<https://www.dol.gov/agencies/whd/agriculture/mspa#:~:text=The%20Migrant%20and%20Seasonal%20Agricultural%20Worker%20Protection%20Act,register%20with%20the%20U.S.%20Department%20of%20Labor%20%28DOL%29.>

¹⁴ <https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act>

¹⁵ <https://www.osha.gov/laws-regs/oshact/completeoshact>

¹⁶ <https://www.archives.gov/milestone-documents/civil-rights-act>

¹⁷ <https://www.justice.gov/humantrafficking/key-legislation>

¹⁸ <https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties>

Kroger's Responsible Sourcing Program

Kroger has a long history of responsible sourcing, including a supply chain social compliance program that expanded in scope in 2019.¹⁹ The company has outlined its management approach to the topic of human rights as part of its ESG Strategy, in its annual ESG report, Vendor Code of Conduct, and Human Rights Policy. The company's senior leadership team and the Public Responsibilities Committee of Kroger's board of directors oversee this work.

Primary responsibility for sourcing raw materials, ingredients, and food and consumer goods ready for sale is shared among Kroger's Sourcing and Merchandising teams. The company's cross-functional Responsible Sourcing Steering Committee and Human Rights Working Group provide additional insight and direction to specific topics and issues, as needed.

Kroger's purchasing practices and contract terms require suppliers to agree to its Vendor Code of Conduct.²⁰ This document, which was recently updated as part of the company's ongoing human rights due diligence, stipulates several vendor requirements regarding expectations for respecting the human rights of workers in the supply chain, including:

- + Requiring vendors to adhere to several worker health, safety, minimum pay, anti-discrimination, and anti-harassment practices, in alignment with ILO and other international standards and frameworks
- + Requiring vendors to submit to social compliance audits at Kroger's request

Kroger also references its Responsible Sourcing Framework and various other policies that outline supplier requirements and expectations, such as its Human Rights Policy²¹ and Social Compliance Audit Procedures.²² Kroger uses third parties to perform semi-announced social compliance audits at facilities in its global supply chain.²³

Kroger is currently in the process of developing a comprehensive Human Rights Due Diligence Framework and three-year implementation plan as well as more detailed guidelines for suppliers. These new resources will more clearly articulate requirements and expectations for all suppliers as a condition of doing business with Kroger.

¹⁹ For additional information on Kroger's program, including the guiding policies and procedures, please see the [ESG Hub](#)

²⁰ <https://www.thekrogerco.com/newsroom/statements-policies>

²¹ Ibid.

²² Ibid.

²³ Ibid.

Kroger's Mixed Greens Sourcing

Mixed greens make up a significant percentage of all of Kroger's produce sales. Kroger sells conventional and organic mixed greens as part of the company's *Our Brands* product portfolio. The product can be divided into two groups:

- + **Packaged mixed greens**, which make up the largest share of sales. This product is sourced from a small number of key suppliers, who will supply from their own (vertically integrated) farms as well as other farms, depending on harvest season, customer demands, etc.
- + **Bulk greens**, which primarily include California bulk lettuce, romaine lettuce, and spinach. These are supplied by approximately 50 vendors, including some major suppliers (some also supply packaged greens).

For its orders, Kroger forecasts volume based on history and trends (often in partnership with its larger suppliers) and generates orders based on predicted store demand. The specific farms from which mixed greens are sourced vary based on the season and product.

The company has long-standing and multi-year business relationships with most of its suppliers and vendors. Sourcing and Produce Merchandising leaders engage with key suppliers on a regular basis in the normal course of doing business. While rare, the company may terminate a supply agreement in cases of supplier non-compliance with responsible sourcing expectations and policies. Kroger does not require producers to conduct regular third-party social audits at this time; however, audits may be initiated by a number of conditions.

Industry Collaboration

During the past five years, Kroger has been working with a coalition of peers and other food companies to improve conditions in the U.S. produce sector through the Ethical Charter on Responsible Labor Practices, led by the International Fresh Product Association (formerly the Produce Marketing Association and United Fresh Produce Association). The Ethical Charter (EC) was established in 2018 with the objective to provide the produce and floral industry with a clear, well-defined framework that outlines standards, practices, and a commitment to treat all workers with dignity and respect as they work to bring fresh produce and flowers to consumers.

After the launch of the EC and a three-year pilot (from 2019 to 2021) with 20 suppliers and 40 growers, the Ethical Charter Implementation Plan (ECIP) was developed with the intent to explore scalable strategies to promote full implementation of EC principles in the produce and floral supply chains. Kroger is among the companies leading this work together with Costco, McDonald's, and Walmart.

Kroger plans to adopt the tools and lessons from the ECIP in its sourcing practices to strengthen labor management systems, increase awareness among growers regarding responsible labor practices, and encourage continuous improvement. The lessons learned from the EC pilot reinforced the company's belief in supplier ownership and accountability for respecting human rights and managing human rights risks in their respective supply chains. Kroger believes building long-term, strategic supplier relationships will help to advance positive impacts and strengthen suppliers' management systems to respect workers' rights.

While Kroger acknowledges its responsibilities as a food retailer, the company believes that its suppliers are ultimately accountable for putting appropriate management systems in place to prevent and mitigate human rights impacts at farm level. The company monitors compliance with its Vendor Code of Conduct and other relevant policies through audits, responsible sourcing practices and human rights due diligence, including HRIAs like this one.

The company also believes in the strength of coalitions to advance positive impacts. The EC is just one example of the type of collaboration and collective action needed to address risks to workers in global supply chains.

Kroger looks forward to conducting HRIAs in the future with peer companies to foster greater information sharing and efforts to respect the rights of workers in our global food system.

3. Impact Assessment Findings

This section presents an overview of the key findings of the impact assessment, based on stakeholder engagement, desktop research, and findings from the site visits. These findings were then collated and analyzed against the human rights risks as defined by the United Nations Guiding Principles (UNGPs) on Business and Human Rights, the International Bill of Human Rights and the International Labor Organization (ILO) conventions. A description of the saliency assessment is provided below.

The three supplier sites included in this research generally demonstrated strong management practices, safe working environments, and a thorough understanding of the importance of social and environmental topics. All three suppliers were transparent regarding practices, policies, and procedures, and all were willing to participate in the HRIA.²⁴ No critical human rights risks were identified during the site visits and worker interviews.

Kroger recognizes that this research provides a snapshot of insights and that regular engagement with rightsholders is recommended to capture under-reported or emerging issues, especially at farms not represented in this review (e.g., smaller, or family-owned growers).

Understanding Rightsholders in the Mixed Greens Supply Chain

The focus of this HRIA was on the specific risks to California farmworkers as rightsholders in the production of mixed greens. Based on the demographic information of the California agricultural supply chain at large, ELEVATE sought to ensure that findings captured concerns of historically “invisible” populations within data collection, including migrant workers, non-English speakers, and women.

Migration and Citizenship Status

According to a 2015-2019 demographic review of California's supply chain conducted by the National Agricultural Workers Survey, half of California farmworkers were authorized to work in the United States (49%): 19% were U.S. citizens, 29% were lawful permanent residents, and 2% had work authorization through other visa programs.²⁵ Many migrant farmworkers are employed through the H2-A program, which “allows agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature.”²⁶

²⁴ Suppliers were given the option to not participate. All suppliers invited to participate in this HRIA choose to do so.

²⁵ <https://www.dol.gov/sites/dolgov/files/ETA/news/pdfs/NAWS%20Research%20Report%202015.pdf>

²⁶ <https://www.dol.gov/agencies/eta/foreign-labor/programs/h-2a>

For this assessment, ELEVATE relied on the information provided by the sites via 1-9 forms²⁷ and, to protect workers, did not ask them about potential undocumented immigration status or falsified documents. According to site visit findings, there were no reported foreign migrant workers at the sites ELEVATE visited, and the site visit findings in this impact assessment reflect the concerns of farmworkers who are predominately U.S. citizens or lawful permanent residents.

Ethnic Composition and Linguistic Preferences

In California, 96% of farmworkers are considered Hispanic (including 65% of U.S.-born workers who identify as Hispanic).²⁸ According to the American Immigration Council, 68% of California farmworkers reported having little or no verbal English skills, and 70% reported having little or no ability to read and write English.²⁹ While Spanish is the most common non-English language among farmworkers in California, indigenous languages such as Mixteco, Zapoteco, or Triqui are also spoken. Translators and documents may not be widely available in these indigenous languages. Workers interviewed for this HRIA spoke either Spanish or English and were interviewed in the language they were most comfortable speaking.

Gender Considerations

As of 2021, 28% of farmworkers in the U.S. were women.³⁰ Women are recruited less frequently for farm work and typically are the minority on farms (industry survey data shows a one-to-three ratio of women to men in farm work).³¹ Desktop research and subject matter experts indicate that women³² face unique concerns including increased risk of sexual and physical violence, different health complications, and potential wage discrimination in farm work. To account for the increased risks in farm work to women, a woman ELEVATE researcher sought to engage workers who identified as women during the interview process.

Saliency and Linkage of Identified Impacts

Assessing Saliency

Every human rights issue identified in this research has been reviewed through the lens of saliency. Salient human rights issues are topics that pose the most severe negative impact through a company's activities and business relationships.³³ Saliency can be determined by identifying the severity and likelihood of each issue:

²⁷ The U.S. Citizenship and Immigration Services (USCIS) requires an I-9 form that verifies legal eligibility to work in the U.S.⁵⁸ and identification documents, such as a current United States passport, certificate of naturalization, resident alien card, and other identification documents. Employers are required to verify this documentation but may have limited capacity or incentive to identify falsified documents.

²⁸ <https://www.dol.gov/sites/dolgov/files/ETA/news/pdfs/NAWS%20Research%20Report%202015.pdf>

²⁹ Ibid.

³⁰ <https://www.ers.usda.gov/topics/farm-economy/farm-labor/#demographic>

³¹ Ibid. This includes farm workers perceived as women who may not identify as such.

³² Including all persons who experience pregnancy or are perceived as women but may not identify as such.

³³ <https://www.ungpreporting.org/resources/salient-human-rights-issues>

Severity of negative human rights impact is determined by one or more of the following characteristics, in alignment with the UNGPs:

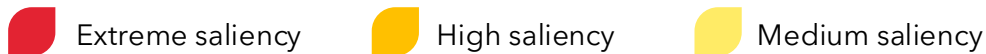
- + Scale of the impact (seriousness to rights)
- + Scope (number of people impacted)
- + Remediability (whether the impact can be reversed and how quickly)

Likelihood looks at the potential likelihood of the risk, determined through:

- + Operating context
- + Business relationships

For this assessment, issues were given a high likelihood score if they were identified in the site visits and corroborated by stakeholders and/or desktop research. Issues that were identified by one source (stakeholder interview or desktop research), and not confirmed by any site visit or worker interviews, were given a lower likelihood rating.

Saliency: A grading scale is used to indicate the level of saliency for each issue in the findings overview. This section only includes impacts that are considered to be adverse or negative (medium to extreme saliency). Positive or insignificant impacts are not listed. Human rights issues listed do not necessarily occur on sites or farms in Kroger's supply chain.



Determining Linkage to the Impact



The level of responsibility or linkage from Kroger to the issue has been defined in the "Linkage to Kroger" column. According to the UNGPs, there are three ways a company can be connected to human rights concerns:

- 1) A company causes an impact through its own activities.
- 2) A company contributes to an impact either directly or through an external entity.
- 3) A company is linked to an impact through its operations, products, or services through its business relationships (or series of relationships).

The degree of connection and the associated leverage has informed this report's recommendations for remediation and the roadmap.

Human Rights Impact Assessment Findings

The table provides an overview of the HRIA findings structured according to where the issue has been identified through the context analysis, i.e., stakeholder engagement and desktop review, or site visits, the degree of saliency, linkage to Kroger, and the opportunities for mitigation or remediation.

| Human Rights | Sub-topic | Context analysis findings | Site visit findings | Saliency | Linkage to Kroger | Opportunities for mitigation or remediation |
|-------------------------------------|--|--|---|---|---|--|
| Right to safety and security | Extreme weather exposure and dangerous tasks | Farmworkers typically spend long hours in hot, sunny conditions, use various types of equipment, and perform repetitive actions and heavy lifting. The State of California requires employers to: provide drinking water free of charge; shade for rest at temperatures above 80° Fahrenheit (F); develop written heat safety plans; train supervisors on heat safety plans; and observe workers for signs of heat illness if temperatures reach or exceed 95° F ³⁴ , although the level of implementation of these requirements varies across farms. ³⁵ | The most common grievance raised by workers during these on-site interviews was heat exposure. Most farms limit working hours to the morning and early afternoon to avoid the hottest parts of the day; however, workers reported exposure to high temperatures when working in the fields during the harvest season, which is also the hottest part of the year. |  | Linked to - issue can occur at all sites (direct and indirect), but Kroger has no direct link to this issue. | Develop statement outlining expectation for suppliers to provide heat protection for workers to mitigate health risks. |
| | | Due to the rural location of agricultural sites, migration status, and affordability, farmworkers may not have access to healthcare services if issues arise. ³⁶ | Workers noted that they believed the most dangerous activities included using tractors and conveyor belts. | | | |
| | Use of chemicals and pesticides | Farmworkers across industries are considered to be at high to extreme risk for injury and fatality. ³⁷ In addition, they may be exposed to herbicides and pesticides used on produce. ³⁸ Workers who do not have effective personal protective equipment (PPE) or who wear it incorrectly face the greatest risk of exposure. ³⁹ There may be an additional risk for women because PPE is often designed for men and may not correctly fit women. ⁴⁰ Pregnant farmworkers who are | Of the three farms visited, two farms outsourced chemical management and application to a third-party company. Workers deployed by chemical management service providers were not present during the site visits and have not been interviewed. On the remaining farm, only certified workers performed the relevant tasks related to chemical management. |  | Linked to - issues are more likely to occur in lower tiers of the supply chain, where Kroger does not have a direct business relationship. | Ask suppliers to assess management practices and policies for chemical management service providers, and ensure they align with the Kroger Vendor Code of Conduct. Request suppliers to develop and maintain chemical management policies and cascade to lower tiers. |
| | | All three farms maintain pesticide exposure policies. Workers confirmed they were provided | | | | |

³⁴ <https://www.dir.ca.gov/DIRNews/2022/2022-46.html>

³⁵ <https://www.cdc.gov/niosh/nioshtic-2/20037227.html>

³⁶ <https://www.cdc.gov/minorityhealth/migrantfarmworkers/index.html>; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3052347>

³⁷ <https://www.osha.gov/agricultural-operations>

³⁸ <https://www.cdpr.ca.gov/docs/whs/psisenglish.htm>

³⁹ <https://www.epa.gov/pesticide-worker-safety>




⁴⁰ <https://www.agrisafe.org/event/webinar-appropriate-ppe-for-women-in-agriculture> Agrisafe produced this research in conjecture with OSHA.

| Human Rights | Sub-topic | Context analysis findings | Site visit findings | Saliency | Linkage to Kroger | Opportunities for mitigation or remediation |
|--|--|--|---|---|---|--|
| | | exposed to pesticides may experience pregnancy and child health complications including miscarriages, birth defects, neurodevelopmental concerns, and long term developmental effects. ⁴¹ | with PPE. There were no pregnant farm workers on site identified during the visits. | | | Ensure suppliers provide reasonable exceptions to pregnant workers, in alignment with applicable legislation. |
| | Mental and physical safety and security | Across industries, farm workers are more likely to report elevated levels of physiological concerns resulting from their work. Migrant farmworkers are likely to face additional stressors regarding employment security. ⁴² | At some farms, older workers noted that they experienced difficulties keeping up with the fast pace of the work; however, they acknowledged their employers made reasonable accommodations, such as creating groups of workers working at different speeds. Workers interviewed did not report mental health concerns. |  | Linked to - issues are more likely to occur in lower tiers of the supply chain, where Kroger does not have a direct business relationship. | Engage suppliers regularly to help ensure adoption of best practices for worker well-being. Ask suppliers to share Kroger's hotline information with workers so they can report issues directly if needed. |
| Right to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment | Migrant workers, recruitment, and predictable employment | Employers often use third-party agencies to recruit and/or arrange employment for migrant farmworkers. ⁴³ In interviews, stakeholders reported concerns about recruitment agencies, including limited transparency around recruiting practices; labor policies and transportation to farms; poor communication between contractors and farms; and the risk of employee-paid recruitment fees. | Of the three suppliers ELEVATE visited, one did not employ any foreign migrant labor and two reported that they employ foreign migrant labor only minimally. Those foreign migrant workers were not present at the sites that ELEVATE visited. The suppliers reported they work exclusively with legal permanent residents (who are foreign-born but on long-term visas, also known as Green Card holders) and citizens. As a result, researchers did not have an opportunity to speak directly with H2-A or other temporary visa holders about their recruitment and working experiences. One supplier uses an E-Verify system to confirm eligibility for work in the United States. All three sites reported experiencing low turnover rates with relatively long tenure among workers. Employee counts varied from 400 to 800 employees per farm. Because work is seasonal, most workers live in California and work on farms with other crops (sometimes owned by the same supplier) during the low seasons for mixed greens. Workers typically learn about employment opportunities through word of mouth, and none of the workers at these three |  | Linked to - issues are more likely to occur in lower tiers of the supply chain, where Kroger does not have a direct business relationship. | Communicate expectations on "Employer Pays Principle" and other fair recruitment practices with all suppliers. Request suppliers conduct spot checks and due diligence to ensure practices in lower tiers align with policies and expectations. |

⁴¹ <https://oehha.ca.gov/media/downloads/pesticides/general-info/pregnancypesticidesinfosheet.pdf>

⁴² <https://www.fao.org/3/cb5477en/cb5477en.pdf>

⁴³ <https://www.gao.gov/products/gao-15-154>

| Human Rights | Sub-topic | Context analysis findings | Site visit findings | Saliency | Linkage to Kroger | Opportunities for mitigation or remediation |
|--|---|--|---|--|---|--|
| | | | suppliers were recruited through employment agencies or recruitment firms. | | | |
| Right to equality before the law, equal protection of the law, non-discrimination | Discrimination, harassment & abuse, and gender-based concerns | According to stakeholders, migrant workers may be at risk of discrimination from farm managers, or other groups of workers due to their region of origin, nationality, ethnicity, immigration status or language. Research shows that female farmworkers face sexual harassment at a rate two to three times higher than other work sectors. ⁴⁴ | Through the worker interviews, workers generally indicated they felt treated with respect and dignity and reported no concerns about discrimination or harassment in their workplaces. Some workers reported that they experienced or witnessed human rights issues in prior jobs, such as sexual harassment, fraudulent timekeeping practices, and poor conditions in dormitories. |  | Linked to - issues are more likely to occur in lower tiers of the supply chain, where Kroger does not have a direct business relationship. | Consider developing a statement that addresses gender-equity issues for workers in agricultural supply chains. Ask suppliers to provide regular training to workers and managers on gender-sensitivity, non-discrimination and harassment, reporting issues, etc. Ask suppliers to share Kroger's hotline information with workers to report issues. |
| Right to enjoy just and favorable conditions of work (including rest and leisure) | Working hours and wages | Due to the short harvest period for produce, stakeholders indicated that issues related to working hours and wages, including excessive overtime, are common among farmworkers across the industry. | All three sites visited were able to demonstrate that hours and shifts aligned with California laws and ILO guidelines. Each farm visited paid workers a base hourly rate plus a piece-rate dependent on the quantity of crop harvested. Workers were paid overtime when they worked more than 40 hours. |   | Linked to - issues are more likely to occur in lower tiers of the supply chain, where Kroger does not have a direct business relationship. Kroger may inadvertently contribute to increased working hours if suppliers are asked to supply products within a short timeframe, due to weather-related supply chain disruptions. | Partner with key suppliers on order forecasting and planning to help reduce pressure and associated risks from last-minute sourcing changes, where possible. Ensure suppliers have a confidential grievance mechanism / hotline in place which is gender-sensitive so that sexual abuse and harassment reports are handled safely and responsibly. Provide workers with information to contact existing grievance mechanisms through industry or government initiatives. |
| | Living conditions | Most farmworkers in California (90%) live off-site in housing not owned or administered by their employer, with just 9% of farmworkers living in | Most workers interviewed live near the farms and travel to the work site using employer-provided transportation, a bus system, or personal vehicles. | | Linked to - issues are more likely to occur in lower tiers of | Recommend suppliers provide workers, particularly migrant farmworkers, with recommendations |

⁴⁴ <https://deohs.washington.edu/pnash/sexual-harassment>

| Human Rights | Sub-topic | Context analysis findings | Site visit findings | Saliency | Linkage to Kroger | Opportunities for mitigation or remediation |
|--------------|-----------|--|---|----------|---|--|
| | | <p>employer-provided housing. Between 2015-2019, 35% of California farm workers lived in housing defined as “crowded.”⁴⁵ Stakeholders indicated concerns about housing shortages and living conditions in areas surrounding sites, especially for foreign migrant workers</p> | <p>Workers did not report issues with respect to housing.</p> | | <p>the supply chain, where Kroger does not have a direct business relationship.</p> | <p>for affordable housing and short-term leases.</p> <p>Share expectations with suppliers that if company-provided transportation is offered, it should serve areas with affordable housing options.</p> <p>Where housing is provided, request that suppliers ensure safe housing for women.</p> |

⁴⁵ <https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS%20Research%20Report%202015.pdf>

Potentially Compounding Issues

The following issues are linked to, or may impact, the human rights issues identified in this research.

Climate Impact and Extreme Weather

The Salinas Valley typically experiences mild summers, but the Imperial Valley and Central Valley have average daily highs in July and August near 100° F (38° C).⁴⁶ During heat waves, all three locations can experience temperatures well above those averages. High temperatures often coincide with the peak of harvest season, which can result in potential exposure to extreme heat during workdays for farmworkers. As temperatures continue to rise globally, it will be important for suppliers to continually manage, adjust practices and mitigate concerns regarding heat risks and ensure alignment with federal and state regulations.⁴⁷

Wildfires may pose further risks to agricultural workers in California.⁴⁸ Inhaling wildfire smoke may lead to eye and respiratory irritation and exacerbate heart and lung conditions.⁴⁹ The season with the greatest likelihood of wildfires overlaps with the harvest season for most crops, including mixed greens.⁵⁰ Interviewed industry experts reported that agricultural workers are often called upon to complete harvest tasks in smoky conditions, which may cause them to inhale the smoke during their work. Workers often continue to work during wildfires using PPE such as N95 masks.

California's OSHA guidance requires employers to take measures to ensure workers are not exposed to situations where the Air Quality Index (AQI) for particulate matter PM2.5 is 151 or greater ("unhealthy"). Potential measures include providing proper respiratory protection equipment and implementing changes to work locations or schedules.⁵¹

Other extreme weather events, such as heavy rain and floodings, can impact farm workers through yield losses or evacuation of communities in affected areas.⁵²

Use of Foreign Migrant Workers

Stakeholder engagement and research indicate that foreign migrant workers may be more vulnerable to additional human rights concerns because they may rely on their employers for continued employment, visas, and sometimes housing and transportation as required under the H2-A program.⁵³

⁴⁶ <https://www.weather.gov/ffc/clisumlst>

⁴⁷ <https://oehha.ca.gov/media/downloads/climate-change/report/2018caindicatorsreportmay2018.pdf>

⁴⁸ <https://www.dir.ca.gov/dosh/wildfire/worker-protection-from-wildfire-smoke.html>

⁴⁹ <https://www.cdc.gov/disasters/wildfires/smoke.html>

⁵⁰ <https://www.fire.ca.gov/incidents/2021/>

⁵¹ <https://www.dir.ca.gov/dosh/wildfire/worker-protection-from-wildfire-smoke.html>

⁵² <https://www.ncei.noaa.gov/access/billions/events/CA/2022-2023>

⁵³ Based on ELEVATE's discussion with industry experts

Smaller farms are more likely to have fewer resources to perform due diligence or address concerns about labor contractors and third parties. Direct suppliers to Kroger and other retailers may not have visibility into the working conditions and demographics at farms lower in the supply chain and could potentially be unaware of their linkage to human rights concerns.

Other issues

We recognize that there are human rights risks associated with agricultural food production that are not mentioned in this section of the report. The issues included in this report have been identified via desktop research, stakeholder interviews, and/or site visits and worker interviews.

4. Action plan

This HRIA has enabled Kroger to develop a better understanding of the potential human rights risks associated with the mixed greens supply chain in California. It affirms the importance of maintaining strong supply chain accountability and a model in which suppliers are encouraged to develop strong management systems, engage farmworkers, and focus on capacity-building and remediation, rather than relying solely on social compliance audits.

ELEVATE also supported Kroger in designing a Human Rights Due Diligence (HRDD) Roadmap in 2022, which Kroger is currently implementing. Kroger is continuing to evolve its Responsible Sourcing program and will use the learnings from this impact assessment to inform its human rights work going forward. In absence of critical direct findings, Kroger will continue to monitor and engage with suppliers in the California mixed greens supply chain in alignment with HRDD practices and procedures. Kroger is also working to enhance transparency in supply chains over time.

The recommendations in the table below forms the foundation for Kroger’s internal action plan based on this HRIA. The action plan addresses the actions that can be taken in the next one to two years to address impacts and recommendations identified in this report. It is aligned with Kroger’s Human Rights Policy and Human Rights Due Diligence framework.

| Focus Area | Target Stakeholders | Action | Timeline |
|--|---|---|---------------|
| Enhance supply chain visibility | Vendors and Suppliers | Conduct responsible sourcing evaluation of select number of key produce suppliers to gain more insight into their supply chain management and sourcing practices and enhance visibility into lower tiers. | 2023 / 2024 |
| Mitigate heat exposure | Vendors and Suppliers Farm Workers (rightsholders) | Develop and communicate statement on heat exposure (either as a standalone document or integrated in other supplier policies) which: <ul style="list-style-type: none"> + Promotes worker safety and well-being as a key priority. + Ensures compliance with all regulatory and legal guidance, such as California’s Heat Illness Prevention Standard. + Aligns with other retailers’ expectations. + Requires suppliers to provide access to water, required breaks, and access to shade at certain temperature levels. + Require suppliers to implement necessary actions to protect workers from heat and smoke conditions, in alignment with applicable legislation and industry guidance. | 2023 roll out |

- + Outlines expectations for suppliers to proactively take measures to address heat exposure concerns, such as training workers, developing, and communicating preparedness plans⁵⁴, posting heat exposure information in common areas, etc.⁵⁵
- + Encourages suppliers in California to join the Heat Illness Prevention Network, a voluntary public / private partnership that provides information to workers and suppliers regarding heat-based illness.
- + Advises suppliers to report number of heat-related illnesses experienced by workers and outcomes to Kroger.

Leverage industry partnerships to enhance supplier capacity

Vendors and Suppliers

Through initiatives like the Ethical Charter Implementation Program, support development of industry-wide grievance mechanisms and / or supplier capacity-building strategies that enable them to establish more effective management systems that prevent and mitigate human rights risks for farmworkers.

Ongoing

Ongoing activities

Where possible, Kroger will support and advise suppliers on how to best conduct due diligence with smaller farms and subcontracted facilities (e.g., spot checks, issue specific investigations, etc.). Kroger will also continue to advocate for greater supply chain transparency and traceability to improve conditions for workers and to improve food and product safety.

In addition to taking targeted action on the three areas above, this HRIA process also reinforced the importance of a robust responsible sourcing program. The process and findings of this HRIA will help the company continue to evolve its responsible sourcing program.

Conducting this HRIA has increased Kroger’s access to and engagement with key stakeholder groups. The company looks forward to future opportunities to collaborate with these and other stakeholders and will revisit this HRIA on a regular basis to reassess the situation and identify new or evolving issues in the mixed greens industry in California.

Disclaimer

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