



FARM COMMONS

Farm Employment Law: Know the basics and make them work for your farm

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Introduction

Our shared goal for good working conditions

Whether you own a farm, work on a farm, or advocate for farmers, we can all agree that good working conditions are in everyone's interest. Of course, that goal might be the only thing that's easy to agree upon. Exactly how to achieve a good working environment for everyone is much more difficult. American farm employment law has evolved over many years to reflect a vision of good working environments on farms. We may not all agree on whether current farm employment law is the best way to achieve the goal, but it is the way that we are legally required to follow.

Farm employment law is different

Before delving into exactly what farm employment law requires, let's discuss how farm employment law is different from other areas of law. Many of Farm Commons' materials approach the law with an emphasis on communication. For example when we talk about sales law we reprioritize discussing the parameters of the relationship with the other party and coming to a mutual agreement.

Farm employment law is different for 2 reasons:

1. Farmers and employees can't agree on pay or conditions less than required by law.
2. Employment laws can be enforced by regulators even if farmer and employee are happy with an arrangement that falls outside the law.

Farm employment law doesn't work that way! The farmer's legal obligation is to provide what the law requires. The law does not allow for an employer and employee to come to a mutual agreement that does not meet the requirements of the law. In other words, if the law requires the farm to pay at least the minimum wage, an agreement to work for less than the minimum wage isn't binding in court. If the employee later sues the farmer for receiving less than minimum wage a court will not honor such an agreement. The employee could easily win the case that he or she deserves more wages despite having agreed to work for less than minimum wage. Farm employment law is also different than other areas of law in terms of how it is enforced. Let's go back to our comparison with sales laws. A contract is generally enforced when one person gets upset and sues the other party. Employment law is different. The state or the federal government can choose to enforce employment laws even if both parties are still happy with the arrangement. Some farmers mistakenly assume that keeping employees happy can help them manage the risks of farm employment law. Happy employees are wonderful for many reasons but managing employment law obligations may not be one of them.

“Farmers have exactly the strengths required to make employment law work for them.”

Farmers can provide perks and benefits to employees even when raising their wages isn't possible.

Making farm employment law work for you

We know that farm employment law is not fun. It involves many fussy details that seem meaningless in relation to our overall goal of achieving good working conditions. It forces us to complete piles of detailed paperwork. The risk of a violation induces anxiety in many. But let's take heart. If we focus on the positive attitude and keep our eye on the ball - the shared goal to achieve positive working conditions - this bitter pill may be easier to swallow.

Farmers have exactly the strengths required to make employment law work for them. Despite its rigidity, complying with employment law is an opportunity to explore new markets or leverage one's obligations for a competitive advantage.

Careful attention to employment law can help a farmer retain workers. Employee turnover costs farmers increased time spent on administrative duties and retraining workers and can be bad for morale. Offering competitive pay rates is one strategy for retaining employees. For example, a farmer who is not required by law to pay the minimum wage may still find it cheaper to provide at least that pay anyway to increase employee retention. Other farmers find that increased pay simply isn't possible.

These farmers can still provide perks and benefits to employees. Employment laws relating to education food and lodging as wages and more can inspire farmers to create competitive compensation packages that don't require as much cash.. Adherence to employment laws demonstrates your professionalism as well as making your employees less anxious. Not complying with the law can make some employees uncomfortable.

Employment law can motivate farmers to create a viable business plan from the start. Complying with employment regulations does cost money. But, adhering to the rules is a legal obligation. Farm businesses are more stable if farmers consider the full cost of compliance upfront and assemble a business plan that accommodates those costs. Different farmers will work out different plans even when facing the same obligations. Some farmers may decide not to hire employees at all after they consider the mental and financial costs of employment. Other farmers may choose to scale up slightly larger or faster to accommodate for the cost of compliance.

Going forward

At its finest, complying with employment law helps us create a positive working environment for everyone. The current laws may not be the best possible way to

achieve this goal, but they are the law. In an ideal democracy farmers can communicate their concerns and work towards securing the laws they feel are the most just. But until that happens we simply have to work with the law as it is. We can use it to our advantage by reflecting on strategies such as the ones above to retain workers and create financially viable businesses through compliance.

Independent Contractors

Hiring independent contractors is popular for businesses of all types, farms included. But, this worker classification is not without detailed employment rules. Violating these rules can be very costly and get a farm into trouble with both the state and federal governments.

After reading this section, farmers should be able to:

1. Describe six general criteria for when a worker is an independent contractor as opposed to an employee.
2. Identify the basic risks and consequences of misclassifying an employee as an independent contractor.

The distinction between an independent contractor and an employee

Businesses that pay individuals to do work for them are either hiring employees or hiring independent contractors. The two classifications are distinct and mutually exclusive. Many businesses would prefer to hire only independent contractors because they have heard of the cost savings available. This much is true. Businesses that hire independent contractors often have lower costs relative to those who hire employees. This is because when businesses have an employee, the employer must potentially pay payroll taxes, get a new plan insurance, provide workers' compensation, and comply with other employment laws. A business that hires only independent contractors is subject to far fewer regulations. Because of these potential cost savings, the motivation to hire independent contractors is high.

Many people don't realize that there are detailed rules for when a business,

If you are paying someone to do work for you, that person is classified as either an employee or an independent contractor.

The rules for classifying a worker as an independent contractor are highly detailed and vary by state. Consult an attorney for answers for your specific situation.

including a farm business, can and cannot classify someone as an independent contractor. These rules are highly detailed and vary depending on the state and the specific law being addressed, whether involving minimum wage, workers' compensation, unemployment insurance, or any of the other regulations that apply to employees. Farmers who need detailed answers for their specific situation must contact an attorney or regulator in their own state for more information.

Five general criteria

Some generalizations are still possible. Broadly speaking, a person is an independent contractor if five conditions exist. Farms may not need to have every single condition present. Often, the court will find that a person is an independent contractor if the majority of conditions exist. But, the converse is also true. Some rules and regulations will require that every single criterion be met before a person is an independent contractor. To play it safe, a farm should plan to meet each of these criteria. If a farm does not meet each, the only safe strategy is to classify a worker as an employee. If a farm does meet each of these criteria, the business has passed one hurdle! Next, the business should investigate their individual state's rules and regulations, which may be different or more strict.

Does doing more research into individual state laws and their criteria for classifying folks as independent contractors sound daunting? It can be, even for an experienced attorney. To play it safe simply classify workers as employees.

If each of the following criteria is present, a person may be an independent contractor. Further research is still necessary to be sure. If each of the following criteria is not present, the individual should be treated as an employee and NOT as an independent contractor.

☐ An independent contractor is expected to meet broad objectives only and is able to choose the specific means or tasks through which the person accomplishes the objective.

Hiring an independent contractor is like hiring another businessperson. (For some state laws, the other person must run their own business to be a valid independent contractor!) Let's use an example of a farmer who hires a handy-person to fix an issue with a well pump. When the handy-man or -woman arrives, the farmer tells him or her about the problem and describes an acceptable solution: "The well pump is making an awful noise. Please fix it so it doesn't make that noise." The farmer doesn't then stick around advising the person on which component to examine, reminding them to turn off the electrical connection, and suggesting which tool to use to disassemble the structure. The handy-woman is an example

of an independent contractor. If the farmer had an employee repair the pump, the farmer could be expected to give detailed instructions, monitor progress, and require specific steps or procedures be followed.

“When you give specific instructions about how to achieve an objective, you steer into the territory of an employee.”

Let’s use a more farm-specific example. Say you need your spinach beds weed-free from April to July. You could hire an independent contractor and say, “Keep the spinach beds free of weeds from April to July. I don’t care which tools you use or the techniques you use, just make it happen.” Or you could hire an employee. Then, you might say, “Take out the cultivating tractor and go over the spinach beds when you have a chance by the end of the day.” When you give specific instructions about how to achieve an objective, you steer into the territory of an employee.

□ An independent contractor brings his or her own tools and sets his or her own schedule.

A person’s control over his or her schedule is the second element that distinguishes an employee from an independent contractor. With an employee, the boss may tell the individual when to show up for work. With independent contractor, the person has the autonomy to direct their own schedule. This criterion reflects back on the first; both have to do with the amount of control the boss has over the person. The more control the boss has to direct the method and timing of the work, the more likely the person is an employee.

Where tools are necessary for a job, it is more likely for a worker to be considered an independent contractor if he or she brings their own tools. The reason for this is that, again, independent contractors are supposed to be like independent business people. When a farmer hires a plumber or electrician, the person shows up with her or his own tools, on his or her schedule. It’s the same way for the independent contractor. How does this relate to the farm example of the spinach beds? In reality, most farmers supply tools to workers and have regular work hours. Most farmers hire employees! But, it’s possible that a farmer could contract with an enterprising individual who offered weeding services. That person could be an independent contractor if he or she kept the spinach beds weeded on his or her schedule, using his or her own tools.

□ An independent contractor bears a risk of profit or loss for a job, just like a regular small business owner.

In reality, most farmers hire employees, not independent contractors.

Employees don't have the opportunity to make more money per hour by using better practices. Independent contractors do.

When a farmer contracts with a grocery store to supply spinach between April and May, the farmer bears the risk of profit or loss on that contract. The farmer's practices influence the farm's ability to turn a profit. If the farmer seeds the spinach at the right time, keeps it cultivated, fortifies the soil with abundant organic matter, and has skilled employees for harvesting, he or she has some control over profit potential. This makes the farmer an independent contractor. By contrast, if a farm hires an employee for spinach cultivation, they are likely paid by the hour or a flat rate for a specific time period. That's an employee. An employee doesn't have the opportunity to make more per hour by employing more efficient spinach-growing strategies.

☞ An independent contractor offers the same services to others.

Now that we've reached criterion four it's probably clear that the analogy of an independent contractor to a small business owner is an important one. This criterion takes it even a step further. An electrician or plumber provides those services to many customers. Likewise, a farm independent contractor would likely offer the same weeding, livestock rearing, or milking services, for example, to other farmers in the area. Employees, on the other hand, work for the business that pays them and are unlikely to market their services to other, similar businesses at the same time.

☞ An independent contractor is hired for a project rather than on a permanent basis and provides services that are not the core function of the business hiring the person.

Generally speaking, if a business hires workers for the core functions of its operations, it's hiring employees. If the objective is related but indirect to the core product or service (for example, developing a website to improve outreach or building a facility to expand operations), an independent contractor is more likely to be an appropriate classification.

The position I was planning won't meet these criteria. Now what?

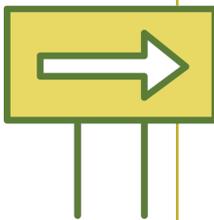
Perhaps you were planning on hiring an independent contractor – someone to feed the livestock on weekends and help out with vegetable harvest on Thursdays and Fridays. Then you read the list above. Yikes! The criteria look difficult to meet. Now what?

Misclassifying an employee as an independent contractor can have serious consequences.

If a farmer classifies an individual as an independent contractor who does not meet the legal criteria, the farmer is taking a risk. Any number of things could happen. The individual could file for unemployment benefits if their position ends. Then, the unemployment agency will contact the farm for more details, which could reveal that the person was misclassified as an independent contractor. The farm might then owe fines, penalties, and the back-taxes that might have been owed for unemployment insurance. Alternatively, the person could become injured and the workers' compensation division might ask the farm for details. Here too, the penalties for misclassifying workers can be high, along with the potentially high costs of the injury itself. Tax rules are a very common way people run into trouble with misclassification. State and federal departments of revenue may inquire at any time as they select businesses for an audit. Failing to file payroll taxes as required could result in penalties and back taxes.

A written agreement between the farmer and the independent contractor is a good strategy to minimize risk.

Farmers who think they may have valid independent contractor positions should double check with an attorney to manage their risk. An attorney will know the rules specific to the farm's state employment laws and should be able to make suggestions for minimizing overall risk. A written agreement outlining the farmer and independent contractor's agreement is highly recommended by attorneys as a risk reduction strategy, for example. Farmers should also ask about paperwork obligations for independent contractors, such as collecting a W-9 form and providing a Form 1099. Accountants are another good source of information for paperwork obligations.



Next Steps:

After examining each of the above criteria, do you meet all of them with regard to your independent contractor?

Yes: Do more research before going forward with an independent contractor classification to make sure these criteria are accurate for your state and your specific situation.

No: Your worker is likely an employee rather than a contractor. You can play it safe and treat him or her like an employee. Work through the other chapters of this guide for an idea of what that means for your farm. Or you can do more research to see if your state offers different and more amenable criteria for an independent contractor classification.

Spotlight On: Uber and Independent Contractors

Many of the legal issues we discuss at Farm Commons have unique consequences for farmers. Some, however, are widespread subjects that all industries grapple with. The problems and lawsuits that arise from these ubiquitous topics are lessons for business owners everywhere.

A relevant case study is the class-action lawsuit against the transportation company Uber. Uber uses a smartphone app and its fleet of drivers to provide a low-cost taxi service in many large cities. Drivers are classified as independent contractors who get paid for each ride they provide. An Uber driver in California filed a lawsuit against Uber claiming that she should be considered an employee under the law.

As we've been discussing with agricultural workers, implications of being an employee versus an independent contractor are many. Uber drivers are asking for reimbursement for expenses such as vehicle maintenance, gas, and tolls. But perhaps more significantly, if the drivers are found to be employees, the decision may cause the IRS to re-evaluate the company and decide that Uber should be paying payroll taxes, contributing to unemployment insurance programs, and providing health insurance. For a company that has achieved much financial success under a business model that relies heavily on reducing labor costs through independent contractors, this could pose serious problems.

The issue of if the drivers are independent contractors or employees is not black and white. Uber employees do fit many of the criteria for being independent contractors. They provide their own cars and have control over their schedules and whom they pick up. However, drivers are expected to maintain certain cleanliness standards and pass routine tests. The more control a company exercises over its workers, the more likely a court will deem it an employer-employee relationship. The California court decided the driver was actually an employee and ordered Uber to pay expenses totaling over \$4000, although the decision will likely be appealed.

Takeaway: The issue of independent contractors defined as employees is a tricky one and not something that is going to go away soon. If anything, scrutiny of potential abuse of the classification is only growing alongside the rise of companies like Uber. Be sure you know what the criteria are for independent contractors and if your agricultural workers fit. If not, you could face lawsuits and steep penalties.

“The more control a company exerts over its workers, the more likely a court will deem it an employer-employee relationship.”

Interns and Apprentices

Farming is a skill that takes an enormous amount of time, patience, trial, and error to master. Experience is the best teacher, and many beginning farmers get their start with hands-on internships and apprentices. These valuable opportunities give folks the skills they need, but they also impose legal obligations on the farmer. Most internships and apprentices are the same, legally speaking, as any other employee and the same employment laws apply.

After reading this section, farmers should be able to:

1. Identify the six criteria the federal Department of Labor uses to distinguish an intern from an employee.
2. Assess whether offering internships that provides less than the minimum wage (if required) may be worth the effort.
3. Understand ways to make following the 6 criteria an advantage for the farm.

Interns are almost always employees

Let's get right to the point: Generally speaking, interns and apprentices that work for for-profit businesses are employees, and employment laws apply. This means that minimum-wage laws apply to farm interns just as they may apply to farm employees. Workers' compensation laws may apply, unemployment insurance laws may apply, and so forth. The point is that interns and apprentices are simply employees. Technically, interns and apprentices are legally distinguished in state and federal law, but the distinction is not relevant to whether or not employment laws apply, by in large. For our purposes, we will consider interns and apprentices to be the same.

If interns and apprentices are just employees, why do so many businesses, both farm and non-farm, have unpaid interns? Unfortunately, just because something is the law doesn't mean that people follow it. The winds are shifting on this issue. Interns in all industries - farming, publishing, movies and films, and many more - are successfully suing their previous employers for back wages and other employment law violations. Farmers can expect that intern lawsuits will increase going forward.

This general rule (and the exemption below) applies to for-profit farms and businesses. Nonprofit farms may have more latitude to pay interns below the minimum wage, however they still do not have complete freedom in that regard. Please see Farm Commons' webinar on farm interns and volunteers for more information.

Except...

Of course, there is an exemption to the general rule that interns and apprentices are simply employees. The federal Department of Labor has issued six criteria that the department uses for determining whether a for-profit business may pay interns less than minimum wage when it is otherwise required. This section and the criteria that follow are specific to whether an intern is an employee for the purposes of minimum wage. These criteria may be applied to other employment laws, but those legal situations are less developed. Because interns are most likely to sue over wage issues rather than workers' compensation or unemployment insurance, for example, we have the most information about when an intern is an employee for the purposes of minimum wage. These criteria are also specific to the federal Department of Labor, which is the department that enforces federal minimum wage law. Farms may also face enforcement from their state's department of labor. States often find the federal government criteria persuasive when enforcing their own minimum wage laws, but variation certainly exists. Let's move on to the six criteria.

If a farm meets each of the following six criteria the farm may not need to pay at least the minimum wage to an intern who would otherwise fall under minimum-wage laws.

☞ The training provided to the intern must be similar to a classroom educational experience.

What is a classroom educational experience? Generally speaking, a classroom experience gives an individual skills that are transferable to multiple employment settings. By contrast, a farm that offers training specific to that farm's unique procedures may not meet this criterion. An internship is more likely to meet this factor if a college or university oversees the internship and offers credit for the experience. Classroom education is also generally marked by learning objectives and monitoring of achievement. That means the farm should test in at specific intervals to measure learning.

☞ The farm receives no immediate advantage from the intern and is more often impeded by the individual.

When explaining this criterion, the federal Department of Labor states that when an intern does the productive work of a business, the business gains an immediate

Please note: Farms may not be required to pay the minimum wage to regular employees. In that case the minimum wage would not be required for interns either, as they are generally the same as employees.

Farms looking to meet this criterion should test interns at specific intervals to measure learning.

advantage from the intern. By contrast, some interns require such close and constant supervision or require regular employees to re-do their work so often that the intern accomplishes nothing of value. If the intern doesn't accomplish any productive work, the intern may meet this criterion.

☞ **The intern does not displace a regular employee.**

Of course, this criterion would be met if a farm actually hired or laid-off employee to hire an intern. But, is not limited to that extreme circumstance. If existing staff would have had to work more hours or an additional person hired if the intern were not present, the intern may have displaced a regular employee.

☞ **The internship may not be a trial period for a future paid position.**

If the farm business is using an internship as a way to screen potential employees for real paid positions, regulators are more likely to find that the intern is actually an employee.

☞ **The internship must be for the benefit of the intern rather than for the benefit of the business.**

This reinforces the criterion above that states that the business may not gain any immediate advantage from the intern. The objective must be to educate the intern and make him or her more qualified for future employment within the industry overall. The objective cannot be to accomplish more work in the business.

☞ **The intern understands that the internship is unpaid.**

This is self-explanatory. If the intern thinks he or she will be paid like a regular employee, the court is more likely to find that the intern should be classified as an employee.

Most farm businesses will decide it's not worthwhile to have an intern if they have to comply with the criteria above. If an intern can't help your business and you need to provide an intense level of education, what is the point? For some farms, educating the next generation is the point. In those cases, internships are great idea. Examples of successful legally compliant farm internships are popping up around the country. Rogue Farm Corps is one such example that farmers could replicate across the country. Many farmers will still return to the idea that many businesses have unpaid interns and are suffering no consequences. This might

Having true interns does require real inputs from the farmer, but many farmers find it worth it.

be true but, as we previously discussed, that tide seems to be shifting. Interns can become disgruntled when they realize they should have been paid at least the minimum wage. But that isn't the only way these laws maybe enforced. The government can decide to enforce minimum wage laws even if farmer and intern are perfectly happy with the arrangement. This is because minimum-wage laws are designed to protect society as a whole rather than individual workers. We will discuss that concept in more detail in the next chapter.

When “Internship” is just the job title

Some farmers like to call their employment positions “internships.” The job title itself might attract the right kind of applicant. Can a farmer call his or her employee an “intern” even if the above criteria are met? The answer is yes because the job title isn't what matters. The discussion of internship criteria is relevant if the farmer is using the title to justify not providing minimum wage and all other required employment benefits. Farmers can choose whatever job titles they see fit. The legal question is whether minimum wage and other employment benefits are owed, regardless of title. If the position (whatever title it has) meets the above 6 criteria, the farmer might be able to avoid paying at least the minimum wage where otherwise required.

The job title isn't what matters. The question is what wage laws and employment benefits apply to the position, regardless of title.

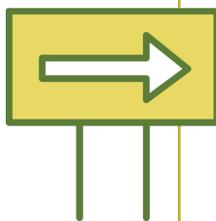
Finding opportunity in the six criteria

The six federal criteria can seem like a crushing disappointment to farmers who depended on internships to get their start and were hoping to pass on the same opportunities to others. It can help to recognize that these criteria were created to help build opportunity for everyone. Critics of unpaid internships point out that when pay isn't provided, the intern has to rely on family or networks for support. As a result, only people of means might be able to enter farming. Individuals with few financial resources won't be able to choose farming if they have to work without pay for a year or more. Farmers recognize that farming is a step into a more self-sufficient lifestyle, and that it should be open to everyone.

“Farmers recognize that farming is a step into a more self-sufficient lifestyle, and that it should be open to everyone.”

Farmers in many parts of the country are looking at increased competition for labor of all types, including the unskilled labor of interns. If a farm can offer a focused, intensive educational program (like one that meets the first criterion) the farm can attract a higher caliber of candidates. By the same token, a farm that pays interns at least the minimum wage may be more attractive than positions that do not. It can be a win-win for the farmer: attract better employees while minimizing worry about the 6 criteria.

Creative farmers will continue to develop ways to train the next generation, and internships have a role to play in that. These strategies are worth consideration as we achieve that objective while avoiding legal trouble.



Next Steps:

After examining each of the above criteria, do you meet all of them with regard to your intern or apprentice?

Yes: Do more research before going forward with paying your intern less than the minimum wage (if it’s required for your employees) to make sure these criteria are accurate to your specific situation, and to determine if you need to follow other employment laws like workers’ compensation.

No: Your intern is likely an employee and minimum wage must be followed. Other employment laws also likely apply. Work through the other chapters of this guide for an idea of what that means for your farm.

Tales From the Field: Creating a Model for Legal On-Farm Internships

Don’t be discouraged – it is possible to create a legally-sound internship program on the farm! Rogue Farm Corps in Oregon is a great case study for how to keep these valuable training programs for aspiring farmers alive.

Rogue Farm Corps (RFC) began in 2003 when a group of family farmers in Southern Oregon came together in a commitment to train and mentor the next generation of farmers within the context of tightening employment regulations

around informal on-farm internship programs. With the help of a federal grant, the farmers began to develop an innovative, structured educational curriculum that included both classroom and field training. That curriculum became the basis for RFC's FarmsNext Program. FarmsNext places interns on farms for a season to receive both hands-on farming experience and ongoing instruction from the farmers.

You may be wondering what makes RFC's FarmsNext different from other internship programs. In addition to the experiential education that interns receive, they are also offered a comprehensive classroom curriculum on topics integral to becoming a successful farmer. These topics include business training, marketing, growing techniques, and more. Interns also tour each of the participating host farms, giving them a wide range of experiences and exposing them to a variety of farming situations, not just the unique circumstances of the individual farm where they are placed. In 2015, there were 18 farms participating in the RFC program. The breadth of experience the interns receive through FarmsNext is much wider than if they spent six to nine months solely on one farm. It also makes the intern's experience more applicable to a variety of employment settings.

RFC is continuing to expand its mission and reach, building collaborative efforts with farmers and advocates all over Oregon. In 2015, RFC is piloting their more advanced FarmsNow program for graduates of the FarmsNext program. The organization is committed to helping the country's ageing farming generation pass down both knowledge and farm property – and doing it the legal way.

Is putting together a comprehensive internship curriculum like RFC's easy? No, definitely not. But, it is possible, and the results are both rewarding and inspiring. For more information about Rogue Farm Corps and the FarmsNext program, visit www.roguefarmcorps.org.

Minimum Wage

Whether a farm must pay employees at least the minimum wage can be a very complicated question. The answer may depend on the farmer's location, the tasks assigned, and the farm's overall scale. Finding an answer is important as these laws can be enforced against farmers even if the workers are happy with pay arrangements.

After reading this section, farmers should be able to:

1. Identify the basis for the minimum wage and how it applies to farms.
2. Understand how to get more information on their state's specific requirements.
3. Describe the federal minimum wage exemption and when it may or may not apply to an individual farm.
4. Name sources of help for moving forward.

“The Supreme Court found that the goal of minimum wage law is to elevate working conditions for all employees as a whole.”

The basis for minimum wage law

The concept of a minimum wage is familiar to just about everyone, but a review of the background is still helpful in understanding how the law is enforced today. The minimum wage was a revolutionary concept when it first emerged in the United States. The states were the first to pass minimum wage laws in the 1920s and 1930s. The laws were contentious enough that they experienced constitutional challenges all the way up to the Supreme Court. After the courts upheld these laws as constitutional, they emerged strong and are recognized as standard elements of our working economy today.

Knowing the goal of minimum wage laws is very important in understanding how these laws are enforced. Because these laws were challenged in court, the highest court in the United States had to define the ultimate goal of minimum wage laws. The Supreme Court of the United States identified that goal as the improvement of working conditions for all workers as a whole. Let's say that the court had identified the goal as individual improvement of economic status. If that were the case, employers and employees might be able to come to a mutual agreement for less than the minimum wage, so long as the individual employee benefited financially. But, the court felt that if one person could agree to work for less than

Employer and employee can not come to their own arrangements - the appropriate minimum wage law must be followed.

the law requires, all other workers would feel the same pressure agree to work for less. This would depress wages for everyone. Instead, the Court found that the goal of a minimum wage law is to elevate working conditions for all employees as a whole. As a result, the state or federal government can choose to enforce minimum wage laws even if both employer and employee are perfectly happy with less.

Do I have to pay at least the minimum wage?

Unfortunately, this answer can be quite complicated if you run a farm. Non-farm businesses don't have nearly the same trouble. Non-farm businesses almost universally must pay at least the minimum wage. All they need to know is what the minimum wage is! For better or worse, farms often have complicated exemptions from the minimum wage. Generally, these exemptions are quite narrow. Only some farms and some activities are exempt from minimum wage laws. Determining if farms are covered under minimum wage law is hard enough. But the job doesn't stop there! Farm employers also need to determine if their specific activities and scale of operation meet the exemption.

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“Each farmer has to balance his or her budget, risk tolerance, and chance of injury.”
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State and federal rules differ

Farms have to contend with the fact that both the state and the federal governments regulate the minimum wage. The federal law does allow some farmers to pay less than the minimum wage. (This exemption is called the 500 man day exemption and is detailed below.) Some states choose to follow the federal exemption. However, those states are in the minority. Most states have a different set of rules for when farmers must pay at least the minimum wage. When the state and federal laws differ, farms (and all other businesses) must adhere to whichever law is most strict. Let's look at two state examples to illustrate how state and federal minimum wage laws work together.

Arkansas follows the federal minimum wage exemption, so farmers in Arkansas only have to learn one rule - the 500 man day exemption detailed below. Arizona, on the other hand, has modified the federal rule. Arizona allows farms to pay less than the minimum wage according to the same 500 man day exemption, but only if the farm meets one additional condition: the farm must gross less than half a million dollars in annual revenue.

If an Arizona farmer makes three-quarters of a million dollars in revenue and

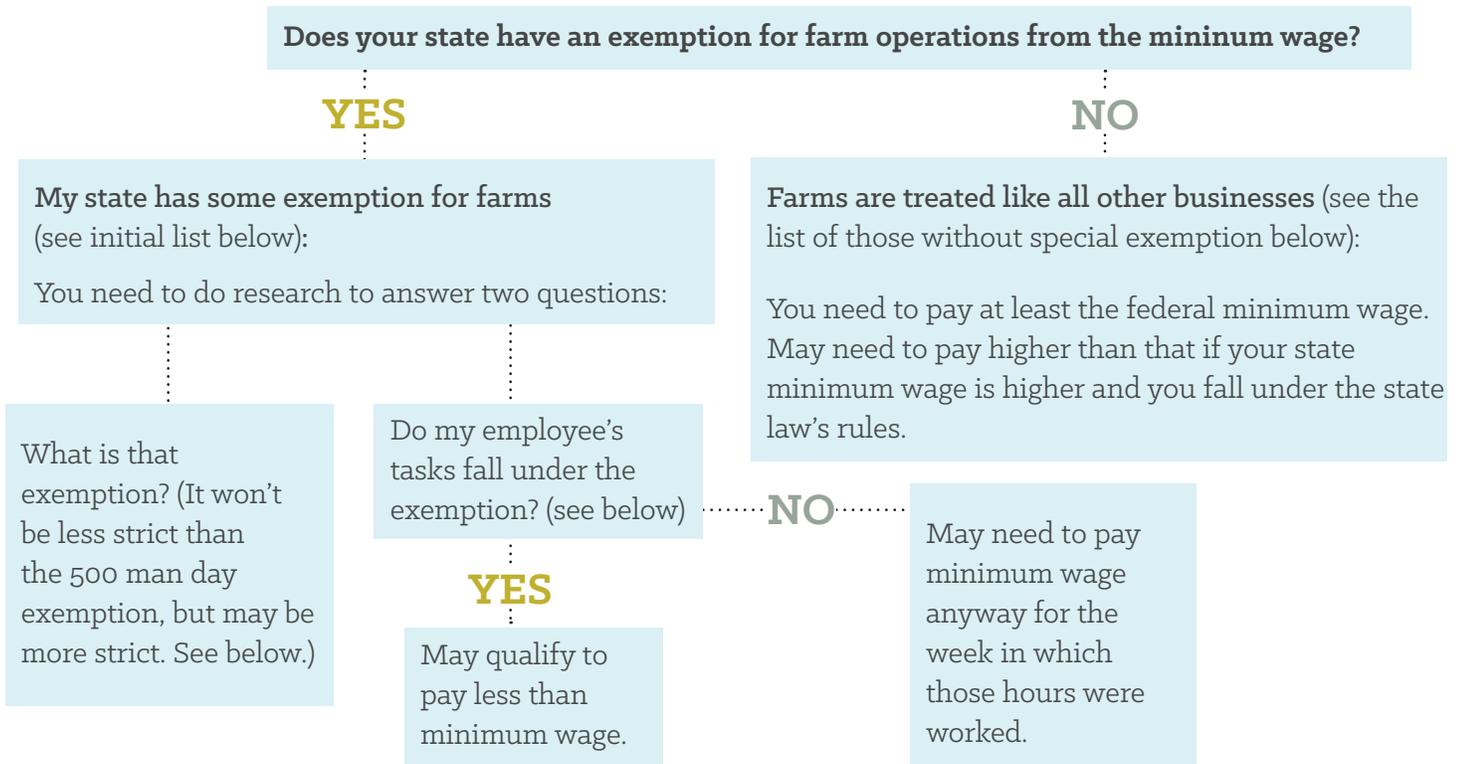
fails to pay at least the minimum wage, the farmer could be in trouble. The farmer might go to court and say, “But federal law doesn’t require me to pay at least the minimum wage!” The judge would then say, “That doesn’t matter. Arizona law does require it. If federal law is less strict, it’s irrelevant for our purposes. We enforce Arizona law.”

State and federal rates differ

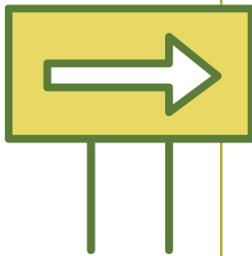
The state and federal government may set a different minimum wage rate in addition to setting different rules for when their respective minimum wages must be paid. For example, the Minnesota minimum wage (until August 2015) is between \$6.50 and \$8.00 per hour depending on the size of the business. Federal law sets a minimum wage of \$7.25 per hour irrespective of the size of the business.

A farm may need to pay at least the Minnesota small business rate of \$6.50 but not have to pay the higher federal \$7.25 rate. When the farm grows, however, it may need to pay the state \$8.00 minimum wage rate, even though the federal rate is now less. In a sentence: Farmers need to provide the highest minimum wage rate that applies to their farm, whether it’s the state or the federal rate.

Let’s break down these factors into a logical progression. The flowchart below illustrates the series of questions farmers must ask to resolve the basic question: Do I need to pay the minimum wage?



exemption need to find out which farms fall under the exemption and for what type of farm work the exemption is offered. It may be very limited or very broad. Farms exempt from state minimum wage law still need to check their federal minimum wage obligations. If a farm does not meet the requirements for the 500 man day exemption below, the farm must pay at least the federal minimum wage, regardless of whether they have to pay the state minimum wage.



Next Steps:

Farmers will need to do more research to learn their exact minimum wage obligations. The following is a list of questions to help farmers to help farmers get full answers one of the sources listed in the next section:

1. Is a farm at my size and scale required to pay at least the state minimum wage?
2. If I am not required to pay at least the minimum wage now, when will I be required to do so if I grow my business?
3. How are my legal obligations affected by diversification from the production of crops and livestock? For example, if I offer agritourism events, do processing, host educational activities, and have other farm-related ventures, do my minimum wage obligations change? How do they change, if so?
4. Is the federal minimum wage higher than the state minimum wage? Am I also required to pay the federal minimum wage?

Where do I go for help understanding minimum wage laws?

1. **An agricultural attorney.** An attorney who specializes in farm law is the best choice for solid and detailed information. Attorneys who practice employment law but do not focus on farms may not be a good source – farm employment law is often quite different than non-farm employment law. This choice is also the most expensive. However, the money invested provides value. Attorneys know the law in great detail, offer confidential guidance, and have perspective on how the law is enforced. Clients may have some recourse against an attorney who provides inaccurate information, which is not true of any other source on this list.

2. **The state regulatory agency personnel.** Farmers can contact the state agency responsible for enforcing state minimum wage laws for more information. Public agencies often have a staff person available to answer questions on a daily basis. These are often the same people responsible for enforcing the law, so they know the law in detail. This information is free but it may not be anonymous or confidential.
3. **Local extension agents or advocacy organizations.** Farm advocates may offer some information on farm employment law. However, organizations strapped for time and cash often don't have the resources to regularly update their materials, so it may be out of date. Farm employment law is extremely complex and staff may not be able to explain the finer points, such as when specific tasks are or are not included in farm exemptions.
4. **Farm Commons.** Farm Commons staff is working hard to develop state-specific resources, with fact sheets for the Midwest to be released in the near future.

Understanding the Federal 500 man-day exemption

Under federal law, a farm that uses fewer than 500 man days in each calendar quarter of the previous year is not required to pay at least the federal minimum wage during the current year. Of course, the next question is →: What is a man day? One man day is when one worker performs at least one hour of labor.

This is easiest to explain by example. Let's say a farm had one person perform one hour of labor yesterday. Yesterday, the farm had one man day. Now, let's say that same farm has two people working for one hour each today. Today, the farm has two man days. Tomorrow, the farm plans to have two people working for four hours each. Tomorrow, the farm will still have two man days. This is because as long as an employee works at least one hour of labor in a day one man day is earned. Even if the worker works for more than one hour, it still counted as one man day.

To calculate man days, a farm needs to track the number of people who worked each day and for how long they worked. The farmer should total all man days in each calendar quarter of the previous year. If the number of man days in any

A man day is defined as when one worker performs at least one hour of labor.

Farmers should total all man days in each calendar quarter of the previous year to determine if they meet the federal exemption.

In general: If labor is not related to the production of crops and livestock, it may not be considered agricultural labor.

State minimum wage law may define agricultural labor differently than the federal law.

The only shortcut is to pay employees at least the state or federal minimum wage - whichever is higher.

quarter exceeded 500, the farm owes at least the federal minimum wage this year.

This federal exemption comes with a huge caveat. The exemption is only available for farm labor. Some people may think that farm labor is any labor done on a farm. This is not the case. Agricultural labor has a detailed and precise definition that is beyond the scope of this resource. Generally speaking, if the labor is not related to the production of crops and livestock, it may not be agricultural labor. To provide just a few examples, employees who perform labor related to agritourism, value-added production, processing of farm products, farmers market sales, educational events, and more may be doing non-farm labor. Non-farm labor is not exempt from federal minimum wage. When an employee performs non-farm labor in a workweek, the federal exemption from minimum wage is lost for the entire week. The farmer would need to pay the employee at least the minimum wage for each hour worked in that week, not just the hours spent on the non-farm labor. For example, if a farm employee spends two hours processing and selling salsa, that may be considered non-farm labor. If the employee worked a total of 42 hours that week with the other 40 spent weeding and planting crops, the employee would need to be paid at least the federal minimum wage for all 42 hours.

This distinction between agricultural and non-agricultural labor generally also applies to state minimum wage law. As if things weren't complicated enough, state minimum wage law may define agricultural labor differently than federal law. Some states may find the federal definitions persuasive but that can't be counted on. As you can see, farms that diversify into areas not traditionally thought of as agricultural are dealing with very complex minimum-wage rules.

Is there a shortcut??

Farmers may be wondering if there's any shortcut to the detailed legal research necessary to determine if and when a farm must pay at least the minimum wage. The good news is that there is a shortcut! The bad news is that the shortcut is simply to pay at least the state or federal minimum wage, whichever is higher. If a farm simply complies with minimum wage law, it doesn't need to figure out if it has to comply with the law. Paying at least the state and federal minimum wage rate may be a smart business decision for a farm, regardless of if it is required or not. Farms offering higher pay will compete more effectively for higher-quality

employees. The cost of employee turnover or poor quality work can quickly eat up any savings from paying a lower wage.

I don't have to pay the minimum wage. Now what?

Farms that meet both a state and federal exemption from the minimum wage may negotiate whatever arrangement they wish with their employees. This isn't to say that the farm is completely exempt from any and all rules regarding pay. If a farm agrees to pay an employee \$4 per hour and after the employee has already put in 20 hours of work pays the employee just \$3 per hour, the farm may be liable for a breach of contract. Basically, a farm exempt from the minimum wage must pay employees whatever the farm has agreed to pay.

Pay rates are just one aspect of minimum wage law and the broader rules regarding paying employees. State and federal law also has detailed regulations for how often farms must pay employees, the records they must keep, the information that must be included on a pay stub, and many more details. This discussion is simply meant to introduce the subject of whether the minimum wage is owed to employees at all. Farms must do additional research to make sure they are meeting the extent of their legal obligations to employees. See the above list of resources for ideas on where to go for additional information.

Workers' Compensation

Worker's compensation is a program that provides coverage for individuals injured at their workplaces. It works much like an insurance policy. The employer pays the premiums and injured workers are eligible to make claims for coverage. Workers' compensation programs are established by state law, and the procedures for purchasing and using workers' compensation are often set by statutes and regulations. These laws require most businesses to purchase workers' compensation for all their employees.

After reading this section, farmers should be able to:

1. Describe the background behind workers' compensation programs and how they are different than regular insurance.

Farms exempt from the minimum wage may negotiate with their employees, as long as they make sure to pay what they agree upon.

2. Recognize the diverse state laws that regulate when and how farmers must carry workers' compensation insurance.
3. Understand why some farmers choose to carry workers' compensation insurance even when it's not required.

Why do we have workers' compensation?

The original purpose of workers' compensation was to protect employers just as much as employees. Prior to the creation of workers' compensation programs, employees who were injured could sue their employers for the unsafe working conditions that caused their injuries. Employers had to spend a lot of money to defend themselves in lawsuits or deal with unpredictable outcomes and jury awards. Workers' compensation solves this problem faced by employers. Now, where workers compensation is available, an injured employee is prohibited from suing his or her employer regardless of the circumstances that caused the injury. In exchange, businesses must provide safe working conditions. These conditions are regulated through the Occupational Safety and Health Act rather than through individual lawsuits, by and large.

When employers think about workers' compensation they think about money. Workers' compensation can be expensive, and especially in hazardous occupations like farming. The premiums are generally set by statute and vary according to the statistical risk of injury in the specific occupation. Farming is a hazardous occupation and the insurance premiums reflect that.

Do you need to purchase workers' compensation?

As with the minimum wage and many other employment laws, farms are treated differently under workers' compensation laws than other businesses. Many states exempt farms from the requirements to purchase workers' compensation. Below find two maps; one identifies the states with no farm exemption from workers' compensation. The other identifies states that have some sort of exemption for farms from workers' compensation. **Farmers must verify the accuracy of this information before taking action as laws change all the time and this resource may not be immediately updated.**

“The original purpose of workers' compensation was to protect employers just as much as employees.”

Farms are treated differently under workers' compensation laws than other businesses.

Make sure to research your farm's requirements and exemptions thoroughly, as laws change frequently.

Is your farm in a state with no exemption from worker's compensation? You should verify that your farm business is required to purchase worker's compensation by talking with your insurance agent or one of the sources listed in our sidebar. Laws change all the time, and it can be a challenge to stay up to date. Is your farm in a state with an exemption from workers compensation? You need to research the exact nature of that exemption to see whether your farm needs to purchase worker's compensation or not. The states vary widely in their exemptions. Here are a couple of examples that illustrate the many ways farms are exempted:

- In Wisconsin, if a farm business hires six or more employees in any 20 days in the calendar year the farm must purchase workers' compensation within 10 days.
- The neighboring state of Iowa has a much more restrictive exception. If an Iowa farm paid \$2500 or more in wages in the previous year, the farm must purchase workers' compensation this year.

The details of the exemptions are very important, and the obligation to purchase workers' compensation could occur in the middle of the summer just when farmers are most busy. Of course, this is also the time when farm accidents may be most likely, leaving a farmer exposed to an uncovered injury.

If employees work on activities not classified as farm labor, the farm may need to provide workers' compensation sooner.

Farmers who rely on exemption from workers' compensation need to be cautious about diversification. Just as with minimum-wage exemptions, farm exemptions from workers' compensation generally only apply when employees are doing farm labor. Agritourism, processing, educational classes, farm festivals, corn mazes, and a range of other activities not directly related to the production of crops or livestock may not be exempt. If employees work on these activities, the farm may need to provide workers' compensation sooner.

If you don't purchase workers' compensation, you still need insurance for employee injuries!

Farms not required to purchase workers' compensation may feel some relief: Whew, an expense saved! Right? Not exactly. Employees can still be injured, and the farm needs insurance coverage for those injuries. Lawsuits are very likely to follow an employee injury. The employee's personal health insurance company

will be looking for ways to recover the cost of treating the individual, and the farm is a great source for reimbursement if the farm is responsible for the injury in any way.

Farm liability policies are unlikely to cover employee injuries.

Finding coverage for employee injuries can be harder than a farmer might think. Most farms carry just a farm liability policy, which may go by the name property and casualty policy general liability or simply a farm policy. Farm liability policies are unlikely to cover employee injuries. Specific endorsements or broader policies may be available to farms in this situation. Some farms also carry a commercial line of insurance, perhaps to cover a consulting business, machine shop, or other enterprise not directly related to farming. Commercial insurance often provides coverage for seasonal and temporary employees not otherwise covered by workers' compensation.

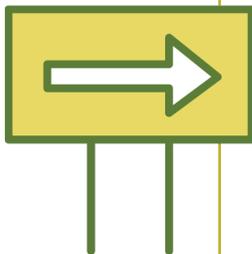
Even if workers' compensation is not required by law, it may be the only option in some cases for farms to cover employee injuries.

Farms with permanent full-time employees may have a difficult time finding insurance for worker injuries. As nearly all non-farm businesses are required to purchase workers' compensation, the demand for employee injury coverage is small. For some farms, workers' compensation will be the only choice to cover employee injuries even if it's not required by law.

Making workers' compensation work for you

Many farms feel that workers' compensation is a good deal, despite the expense. The security of knowing all work-related injuries are covered, no matter how the injury occurred, is worth at least a good night's sleep. Removing the possibility of a negligence lawsuit against the farmer can give even more peace of mind. Farmers also like the broad range of benefits workers' compensation can provide: lost wages, disability benefits, and compensation for travel expenses to doctor visits are just a few. Even when it's not mandatory, some farmers choose to buy workers' compensation as a benefit to their employees and to manage their business risks.

“The security of knowing all work-related injuries are covered, no matter how the injury occurred, is worth at least a good night's sleep.”



Next Steps:

Farmers exploring their workers' compensation obligations should ask these questions of a knowledgeable insurance agent or one of the sources listed under "Where do I go for more information?"

Questions to ask about workers' compensation:

1. Is a farm at my size and scale required to purchase workers' compensation?
2. If I'm not required to purchase it now, when will I be required to do so if I grow my business?
3. How do I purchase workers' compensation?
4. What are the estimated rates for a farm business like mine so I can include the expense in my budget or business plan?
5. If I diversify into potentially non-agricultural production into activities like agritourism or processing, will my workers' compensation obligations change? If so, when or how?

Rachel Responds: Should I have an employee manual?

Hi Rachel,

I'm trying to figure out the best way to handle hiring employees. I want to have a farm manual that they read and sign, and my insurance company wants us to have a safety manual as well. But I also feel that we need to have an "agreement" that states the wage that we are offering them, the dates of the position that they applied for, and our other requirements. Does that create legal complications? What is the difference between an employee manual and an employment contract?

Sincerely,

Now Hiring

Dear Now Hiring,

Great job doing background research on this issue. You are definitely on the right track!

Legally speaking, a manual is quite different than an employment contract. A manual is supposed to lay out the expectations and procedures that an employee needs to know to work effectively. A contract is more like a legal agreement that says, “You will have a job so long as you do these specific things.... but you may be fired if you do these specific things....”

Generally speaking, employers will not choose to have an employment contract. Employers like to protect their ability to release an employee for any legal reason, at any time. If you create the impression that you will only let someone go someone under specific circumstances, you can be sued if you fire someone for a reason not stated. Employers preserve their flexibility if they avoid creating an employment contract at all, and avoid employee manual language that implies that people will be fired only for specific reasons.

It sounds like you want to be clear with folks about their wages, tasks, and so forth. That’s a terrific goal and farmers in that situation should consider asking employees to sign a statement saying that they received and read the job description, which should contain the same information.

I recommend you take a look at our sample farm employee handbook. It has both sample language as well as a list of things to consider during this process. We also cover manuals in our employment law webinar, which included a fantastic guest speaker who shared his top tips for hiring farm employees.

I hope that helps. Best of luck with the new venture!

-Rachel

Visit FarmCommons.org to find our Sample Employee Handbook, Employment Law Webinar, and many other resources on employment law.

Unemployment Insurance

Unemployment insurance is a tax collected by the government from employers through the payroll process. The business is responsible for paying this tax, not the employee. The money collected goes into a fund to compensate workers who have lost their jobs through no fault of their own. Both the federal government and the states run unemployment insurance programs. The amount of tax paid by the business depends on several factors. The current resources of the total fund and the level of unemployment at the time are major factors. An individual employer's history also affects the business' tax rate. Businesses whose former employees utilize the unemployment insurance program pay a higher tax rate.

After reading this section, farmers should be able to:

1. Determine when they may be obligated to pay into the federal unemployment insurance program.
2. Understand the general outlines of state unemployment insurance programs.
3. Move forward in determining their own obligations.

How to determine if you are required to pay unemployment tax

Small farms are exempt from federal unemployment insurance taxes and are often exempt from state programs as well.

Beginning with the federal program, farmers must pay into the unemployment system when, during any calendar quarter of the previous or current calendar year:

4. **The farm paid wages of \$20,000 or more.**

OR

5. **The farm employed 10 or more individuals for some portion of the day during 20 different calendar weeks.**

State unemployment insurance programs often follow the same exemption. However, some provide a lower threshold for wages or the number of individuals employed. As with workers' compensation, farms may cross this line in the middle

“The farmer wins when she or he doesn’t have to train a new worker and go through the hiring process all over again.”

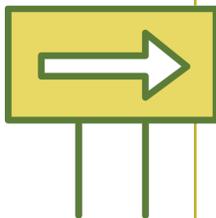
of the summer season. Setting up a new tax account and adding a new payroll processing procedures is the last thing on any farmer’s mind during the height of the season. Working with a payroll provider can help ease this worry, as payroll companies often monitor obligations and set up tax accounts as part of their service.

As with other areas of employment law, diversified farms must pay close attention to details. When employees perform non-agricultural labor, the rules may change. For example, a state may require that the farm pay into the unemployment insurance program for each hour worked in non-farm labor. Other states will require a farm to contribute to unemployment insurance only if non-agricultural labor exceeds half the employee’s time. At that point, the farm may be required to pay unemployment tax on all the employee’s hours worked in that pay period.

Support during the off season can be an opportunity

Generally speaking, farms that are not required to participate in the unemployment insurance program are not allowed to participate voluntarily. Not all farmers feel this is a positive thing. Retaining good employees through seasonal breaks in farm work is difficult. Many farmers create their own programs to provide employees with a limited amount of compensation through the off-season. Farmers may offer a percentage of the employee’s regular compensation as “unemployment pay” if the worker agrees to return when the season begins. These funds can help a laid-off farmworker supplement a different short-term job while waiting for the season to start again. The farmer wins when she or he doesn’t have to train a new worker and go through the hiring process all over again.

Farms that aren’t required to participate in the unemployment insurance program are not allowed to participate voluntarily.



Next Steps:

Get more information on unemployment insurance

Each of our suggested sources of information may be able to provide guidance on unemployment insurance as well. For this subject, farmers have one additional source of information: their payroll service providers. As long as the provider is experienced or knowledgeable in farm businesses, they should be able to help farms determine when unemployment insurance is owed. Of course, if the

provider (or any other source of information) offers inaccurate information, the farmer can still be held responsible for fines and penalties that might follow. Farmers who use attorneys have a bit of extra protection -- attorneys themselves are legally responsible to provide a certain level of competency when giving legal advice. Non-attorneys do not have this legal obligation.

When researching your obligations, ask the following questions:

1. At what size or scale will my farm business have to pay into the unemployment insurance system in my state?
2. Is my farm business at the size and scale required for contributing to the federal unemployment insurance program?
3. How do my obligations change if I have a diversified farm that includes potentially non-farm activities such as agritourism, processing, and educational programs?

Work Crews, Seasonal Workers, and Migrant Workers

The laws affecting farmers who utilize work crews, seasonal workers, and migrant workers are quite diverse and complex. As with other employment laws, both state and federal governments regulate this area, and a farm's obligations change depending on size, scale, and diversification.

After reading this section, farmers should be able to:

1. Recognize just two of the many aspects of migrant and out-of-state worker issues: Farm Labor Contractor certificates and notification requirements.
2. Identify two basic risk management strategies for two aspects of these laws: asking for a certificate and issuing notifications at the time of recruitment.
3. Understand how to move forward in getting more complete answers.

This section discusses just a few of the most commonly experienced issues around the country with the federal Migrant and Seasonal Worker Protection Act: certification and notification requirements.

Notification laws are not just for what farmers typically think of as “migrant workers”! They apply to every farmer who has an employee that travels from out of state to the farm for the job.

Certificate requirements and notification requirement

Beginning with the certification requirements, persons who recruit or arrange workers for farm labor - such as gathering or supplying laborers to serve on a work crew - must be registered as a Farm Labor Contractor. Each Farm Labor Contractor must have a certificate of registration. If the contractor does not have a certificate, he or she is violating federal law. The law also places the onus on farmers to verify that contractors hold the required certificate. Farmers must request the contractor’s certificate or go online to verify registration before working with a contractor. Working with an unregistered Farm Labor Contractor is a violation of federal law.

Farmers must also notify workers who travel from out of state about several aspects of the job. Many people think of these rules as “migrant worker” rules, but they are broad. Notification laws cover every farmer who hires a worker that is travelling from out of state to the farm for the position. For example, a college student in the neighboring state of Minnesota may contact a Wisconsin farm about summer work. If the college student plans to travel to Wisconsin for the position, he or she falls under this law. The student isn’t what farmers typically think of as a “migrant worker,” but the law still applies.

Generally speaking, farmers who hire out-of-state individuals must provide specific information to the person being considered for the job. The safest route is to provide the information at the beginning of the recruitment process. Farmers should not wait until the worker arrives at the farm to provide this information.

The following information is required:

- 1. Place of employment**
- 2. Wage rates to be paid**
- 3. Crops and kind of activities on which the workers may be employed**
- 4. Period of employment**
- 5. Transportation, housing, and any other benefits provided, plus costs to be charged for each of the above provisions**
- 6. Existence of a strike, slowdown, or interruption at the place of employment**

- 7. **Existence of any commission or benefits to the employer from any sales to employees**
- 8. **Whether workers' compensation is provided and if so, information about the policy**

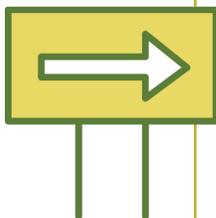
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“Making a practice of providing full information about the tasks and conditions will encourage potential employees to pass up positions that ultimately won't work for them.”
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As stated, this is a complex area of law and this section quickly introduces the basics behind just two obligations farmers may encounter when working with out-of-state employees. These obligations incur even before anyone is hired, so farmers need to be especially cautious in this realm. This section does not explore many other obligations, such as detailed rules and regulations that apply to transporting or housing workers.

The positive side of compliance

Especially for the notification requirements, farmers have a lot to gain from following this law. Content employees make life much easier for a farmer. A worker with false expectations of the job is less likely to be content with the work. Making a practice of providing full information about the tasks and conditions will encourage potential employees to pass up positions that won't ultimately work for them.

Rules regarding Farm Labor Contractor registration are designed to limit exploitation of workers. Reasonable minds can disagree on whether it's the best system for achieving the goal, but we can agree that it does introduce a certain amount of accountability. Working with contractors willing to be held accountable bodes well for business, generally speaking.



Next Steps:

Farmers working with work crews or considering out-of-state and migrant workers must do additional research to verify their responsibilities. Although each of the information sources suggested previously can be useful, government personnel in charge of these laws are very familiar with these specialized rules and frequently

handle citizen questions. Farmers should feel free to contact the office for more information.

Farmers utilizing work crews should explain the details of their arrangement – who contacts the potential workers, who transports them to the worksite, and what is the nature of the work? From Amish or Mennonite crews, to specialized teams for weeding or harvest, to families that regularly work together as a group on one or more farms, these laws may affect each group differently. Regulators will need to know specific details to offer guidance.

Farmers hiring workers from out-of-state will also need to provide details. Where is the worker coming from? Where does the worker consider his or her home? Is he or she travelling for the farm work or for another reason? What is the nature of the work offered? Responses to each of these questions may affect obligations. Farmers need to be thorough and detailed in their research process.

After explaining the basics of the arrangement, farmers should ask:

1. Am I required to ask for a certificate of registration under the state or federal migrant worker laws before working with this crew?
2. Am I obligated to notify my potential workers of the basics on the position, as listed above?
3. When am I obligated to provide this information?
4. Can you explain my other obligations under migrant and seasonal worker laws?

Work Crews in the News

As we've been discussing, it's important to work with a registered Farm Labor Contractor when putting together a work crew for your farm. If a Farm Labor Contractor violates the law, the farmer can pay the consequences.

In recent years, the U.S. Department of Labor has become more vigorous in enforcing Labor Contractor law. A 2014 lawsuit highlights the reality of this risk coming to fruition.

New Jersey-based Medford Nursery relied on a farm labor contractor to source 125 temporary employees to cultivate and harvest nursery stock. The crew, made up of mainly South Asian and Hispanic workers, was technically employed by Heng Heng Agency, Inc.

An investigation into Heng Heng's business practices revealed that the contractor had been paying its employees below minimum wage, as well as failing to keep proper records, obtain the required insurance, provide safe transportation vehicles, and maintain its registration certificate. The U.S. Department of Labor sued the contractor for violations of the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act.

Under the law, the U.S. Department of Labor was able to consider Medford Nursery as a joint employer of the workers. The nursery was ordered to pay \$36,505 in back wages to the underpaid workers.

Takeaway: Know whom you are working with. Outside of the questionable ethical concerns of working with contractors who are not following the law, that type of business relationship can have serious legal implications. Protect your business (and reputation!) by only working with registered and legally responsible Labor Contractors.

Conclusion

Farm employment law is a vast and complex subject! This guide introduces farmers to the framework guiding six areas of regulation often encountered by sustainable farmers. However, it leaves many subjects untouched that are just as important. For example, this resource does not discuss recordkeeping obligations, discrimination issues, payroll taxes, authorization to work in the United States, worker housing, safety regulations and so much more. These issues are still important. Farm Commons continues to generate more resources to guide farmers, and we encourage folks to check our website for new materials on these and other legal subjects.

Managing employee regulations is often a farmer's least favorite part of the job. This guide isn't meant to beleague the already burdened farmer with more paperwork. Instead, we to inspire farmers towards ways their lives might be easier through compliance with the law. Often, the rule holds some kernel of wisdom about fair treatment of workers. Finding that kernel can help a farmer attract and retain the workers that make the farm flourish.

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“We aim to inspire farmers towards ways their lives might be easier through compliance with the law.”
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This resource was developed with the support of the USDA Risk Management Agency.

Do you have questions or thoughts on how to improve this document? Please, click on the link below to fill out our survey online.

<http://farmcommons.org/survey>

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RACHEL
REPONDS

Was this resource not quite what you were looking for? Do you still have more questions? Send your questions to Farm Commons and we will do our best to feature an answer in our blog. Read the most recent questions and answers in our “Rachel Responds” column.