

workers

## 1. Workers

### 1.1 Reducing Legal Risks Through Online Education



### 1.2 Provided by



## 1.3 Welcome to Farm Employment Law!

### Welcome to Farm Employment Law!

*Video with Ryan and the following script:*

- This is perhaps the most dense legal matter that most farms will deal with in the course of their operations. It can be complicated and nuanced. But at the same time, it can empower you to create a smooth, safe, and fair working environment for your employees.
- We will focus on several topics: worker classification, volunteers, interns, wages and overtime, workers' compensation, and writing employee manuals.
- The field of farm employment law is vast, but these subjects will get farmers started on the path to legal resiliency.

## 1.4 Introduction to Workers

### Introduction to Workers

## 1.5 What type of worker do you have?

### What type of worker do you have?

The first step any farm needs to take when outlining their employment law obligations is to determine what types of workers they have. Now, the good news is that this is quite simple. If you are a for-profit business (meaning you are not a non-profit) you basically have two options:



Notes:

## 1.6 What type of worker do you have?

(Drag and Drop, 0 points, 1 attempt permitted)

### What type of worker do you have?

Before we leave this point, let's make sure we have it down. From the following list, select the two options that nearly all workers on for-profits farm will fall under. Click and drag them to the box.

Apprentices

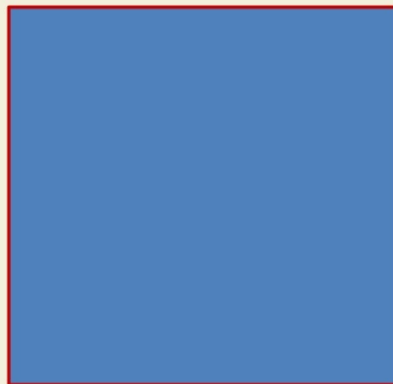
Employees

Folks who work in return for lodging

Independent contractors

Interns

Volunteers



Drag Item	Drop Target
Employees	Drop Target
Independent contractors	Drop Target
Interns	
Volunteers	
Apprentices	
Folks who work in return for lodging	

Drag and drop properties
Return item to start point if dropped outside any drop target
Snap dropped items to drop target (Tile)
Delay item drop states until interaction is submitted

**Notes:**



## 1.7 What type of worker do you have?

### What type of worker do you have?

- You might be thinking to yourself, but wait, I know plenty of farms that have interns and volunteers and some farms use work-for-lodging opportunities as workforce strategy. Why aren't those acceptable options?
- How the law classifies a worker and how farmers themselves classify workers are sometimes two different things. Legally, if someone works on a for profit farm and isn't an independent contractor, then they are an employee. In rare and special circumstances, the worker could possibly be an intern.



## 1.8 What type of worker do you have?

What type of worker do you have?

Let's dig into the details. We'll start with the independent contractor.



## 1.9 Independent Contractor – The Basics

### Independent Contractor – The Basics

Think of a plumber who comes to the farm to fix a stopped up drain in the packing shed. The plumber arrives with his or her own tools, uses his or her own expertise to the job, charges you a fee, and then drives off to go do the same for someone else with a plumbing issue. *That's an independent contractor.*



**1.10 If your worker fits the following list of general criteria, then you may have an independent contractor.**

If your worker fits the following list of general criteria, then you may have an independent contractor.

- Brings their own tools to the job.
- Sets their own working days and times.
- Is free from your control except to dictate the result of the work, not the means or methods.
- Relies on their own expertise to achieve a result.
- Offers their services to the general public.



## 1.11 Independent Contractor

### Independent Contractor

- The set of criteria in the previous section is a starting point, but it's not an ending point. The difficult reality is that state and federal agencies may each have a different precise set of criteria that dictate whether your independent contractor is appropriately classified for the purposes of that law.
- For example, the IRS' criteria (which are captured under the bullet points above) affect whether a person is an independent contractor for the purposes of federal taxes. The states *could* have different criteria that dictate whether a person is an independent contractor for the purposes of state workers' compensation and unemployment insurance, primarily.



## 1.12 Independent Contractor

### Independent Contractor

- We will explore state specific differences in the next section.
- The bottom line is that if the worker is doing farm work, chances are high, the person will not meet the criteria for an independent contractor.
- If the person is doing exclusively plumbing, construction, equipment maintenance or other non-farm tasks and does so through their own small business, they may be an independent contractor.



## 1.13 Independent Contractor – Getting the Details

Independent Contractor – Getting the Details


Choose and click on the state applicable to you:

				
Maine	New Hampshire	Vermont	Maryland	Delaware

## 1.14 Vermont

Vermont

- The Vermont Department of Labor (VT DOL) uses the ABC test to determine whether a worker is an independent contractor versus an employee, as it enforces minimum wage, workers' compensation, and unemployment insurance rules. Independent contractors must meet each of the 3 criteria here:
  1. The worker is free from any control and direction over how the work gets done;
  2. The worker does not perform tasks or services that are core to the farm business;
  3. The worker must be in business for herself/himself
- The penalties for misclassifying workers can be steep, and any farmer who believes he or she meets these criteria should talk with an attorney before moving forward. In the meantime, read through the Classifying Workers on Vermont Farms for more detail on each of the criteria above.



[Return](#)

## 1.15 Maine

### Maine

All the following criteria must be met:

1. The individual has the essential right to control the means and progress of the work except as to final results;
2. The individual is customarily engaged in an independently established trade, occupation, profession or business;
3. The individual has the opportunity for profit and loss as a result of the services being performed for the other individual or entity;
4. The individual hires and pays the individual's assistants, if any, and, to the extent such assistants are employees, supervises the details of the assistants' work; and
5. The individual makes the individual's services available to other clients or customers even if the individual's right to do so is voluntarily not exercised or is temporarily restricted;



AND...

## 1.16 Maine

### Maine

At least three (3) of the following criteria must be met:

1. The individual has a substantive investment in the facilities, tools, instruments, materials, and knowledge used by the individual to complete the work;
2. The individual is not required to work exclusively for the other individual or entity;
3. The individual is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work;
4. The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work;
5. Payment to the individual is based on factors directly related to the work performed and not solely on the amount of time expended by the individual;
6. The work is outside the usual course of the business for which the service is performed; or
7. The individual has been determined to be an independent contractor by the Federal Internal Revenue Service. \*(an SS-8 determination)



## 1.17 Maine Penalties

### Maine Penalties

- The penalties for mis-classifying workers can be steep, and any farmer who believes he or she meets these criteria should talk with an attorney before moving forward.
- In the meantime, read through *Classifying Workers on Farms* for more perspective on the IRS' criteria available in the resource area.



Return

## 1.18 New Hampshire

### New Hampshire

- If the farm can check off all of these criteria as true, then the farm may have an independent contractor according to the New Hampshire Department of Labor, which enforces minimum wage and workers' compensation rules.
  1. The worker controls how the work gets done
  2. The worker controls when the work gets done and sets her own schedule
  3. The worker is free to assign work to others
  4. The worker is in business for herself
  5. The worker takes full responsibility for the completion of the work
  6. The worker makes her services available to the general public





## 1.19 New Hampshire Penalties

### New Hampshire Penalties

- The penalties for misclassifying workers can be steep, and any farmer who believes he or she meets these criteria should talk with an attorney before moving forward. In the meantime, read through the Classifying Workers on New Hampshire Farms for more detail on each of the criteria above.



## 1.20 Maryland

### Maryland

- Maryland Department of Labor, Licensing, and Regulation uses an ABC test to determine if a worker is an independent contractor. If the following criteria are all met, the individual may be an independent contractor:
  1. The individual is free from direction and control including but not limited to setting of when, where, or how to accomplish the work;
  2. The individual is customarily engaged in an independent business of the same nature as that involved in the work; and
  3. The work is outside the usual course of business of the person for whom it is performed OR the work is performed outside any place of business of the person for whom it is performed.



## 1.21 Maryland Penalties

### Maryland Penalties

- The penalties for misclassifying workers can be steep, and any farmer who believes he or she meets these criteria should talk with an attorney before moving forward. In the meantime, read through *Classifying Workers on Farms* for more perspective on the IRS' criteria.



## 1.22 Delaware

### Delaware

- The Delaware Department of Labor uses an ABC test to determine if an individual is an independent contractor for the purposes of enforcing minimum wage, workers' compensation and unemployment insurance. If the following criteria are all met, the person may be an independent contractor:
  1. Performs the work free from the employer's control and direction over the performance of the employee's services; and
  2. Is customarily engaged in an independently established trade, occupation, profession or business; and
  3. Performs work, which is outside of the usual course of business of the employer for whom the work is performed.





## 1.23 Delaware Penalties

### Delaware Penalties

- The penalties for mis-classifying workers can be steep, and any farmer who believes he or she meets these criteria should talk with an attorney before moving forward. In the meantime, read through *Classifying Workers on Farms* for more perspective on the IRS' criteria.



[Return](#)

## 1.24 Independent Contractors:

### Independent Contractors: Why business wants this classification?

- Upon learning what an independent contractor really is, many people start wondering why this classification is so common, if the criteria are so restrictive. What the law requires and what people do doesn't always match. Businesses have a lot of incentive to classify workers as independent contractors because the cost of an independent contractor is less than an employee.
- If a farm thinks it meets the criteria for an independent contractor, the farm should consult with an attorney to be sure. Our summaries above don't necessarily explore exactly what "work outside the usual course of business" really means. For example, is making deliveries to a restaurant or CSA drop site the usual course of business for a farm or not? I'm not sure.



## 1.25 Independent Contractors:

### Independent Contractors: Why business wants this classification?

- But lets say the farm really does have an independent contractor? In that case, getting work done is quite simple- pay the person the price you agreed upon and you each go your way, just like you pay the plumber or the tractor repair service. The farm doesn't need to worry about the many laws that apply to employees including minimum wage and workers' compensation.



## 1.26 Independent Contractors:

### Independent Contractors: Why business wants this classification?

- If a worker doesn't meet the criteria (according to the IRS and state departments of labor), then the farm has an employee. This means the farm needs to follow the many laws that apply to employees, which include:
  - Minimum wage
  - Overtime
  - State and federal payroll taxes
  - Workers' compensation
  - Workplace safety rules
  - Non-discrimination rules
  - And more...
- Later in this chapter, we'll go over the first 4 in detail. But before we get there, let's continue to explore classification of your workers. How about interns? When might a business have an intern and what does that mean in terms of legal compliance? Let's explore.



## 1.27 Interns and Apprentices

### Interns and Apprentices

*Video with the following script:*

- Before we get into details, let's talk about our terminology. We've been talking about classifying your workers. The type of worker you have determines what laws you need to follow. It's important to note that these classifications are mutually exclusive. If you are an independent contractor, you are not an employee, and vice versa.
- The same goes for interns. When we say "interns" we mean interns for whom the farm doesn't follow employment laws. Non-employee interns, for short. This would be the case where the farm doesn't worry about minimum wage and overtime rules, doesn't do timecards and payroll stubs, doesn't worry about whether workers compensation is required. That is an intern that is not treated the same as an employee.
- Also, for the purposes of this material, we are using apprentice and intern interchangeably. Technically, they are different but the distinction does not have an effect on when employment laws need to be followed.
- Some farms use intern or apprentice as a job title. They follow all employment laws, they just call the person an intern to indicate that substantial training is provided. The law doesn't necessarily care about the job title. The law only cares about substance- are you following employment laws? If you are, then you can call them an intern, apprentice or the head of broccoli and that's fine.

## 1.28 Interns and Apprentices continued

### Interns and Apprentices continued

*Video with the following script:*

- If you want an intern for whom you are not following employment laws, you need to be very careful. The law is quite stringent in what qualifies as a non-employee intern. Basically, you need to meet 2 criteria:
- The intern should be enrolled in an educational institution or otherwise working under an established curricula that sets clear learning objectives and measures accomplishment of those objectives.
- The intern's work effort may not benefit your farm more than it impedes your farm.
- Of course, that second criterion is the tough one. And yes, you read that right. The intern may not benefit your farm more than they impede your farm. Put another way, they have to impede your farm. Why? Because if they aren't being treated as employees with all the protections an employee receives, then they shouldn't actually be an employee. Employees are there to help the farm move forward. If a person isn't doing that, they maybe they aren't an employee.
- If by and large, someone is helping the farm move forward, they are an employee. And thus, all employment laws need to be followed.
- This doesn't mean all is lost in terms of flexibility. Some farms will still be able to continue paying employee-interns less than the minimum wage or wages in the form of food and lodging just as they have been doing. But, farms doing that need to confirm what the law requires and make sure they are providing it.
- Please take a close look at the "Interns and Volunteers Guide" for New Hampshire, Vermont, or all the states generally, if you want complete details on interns.

## 1.29 Interns Quiz

### Interns Quiz

Are your workers eligible to be classified as non-employee interns? Check the following boxes if the statement is true.

- Is the worker enrolled in an educational institution or otherwise working under an established curricula that sets clear learning objectives and measures accomplishment of those objectives?
- Does the worker's effort impede your farm as much as it benefits your farm?

If you checked both boxes, your workers may be classified as non-employee interns. If only one or neither of these statements are true for your situation, then your worker is either an employee or an independent contractor. The worker is an independent contractor if they meet the federal and state criteria for an independent contractor, reviewed in the previous section. If the worker doesn't meet the independent contractor criteria, then the worker is an employee and all employment laws must be followed.



## 1.30 Volunteers

Volunteers

## 1.31 Volunteers

### Volunteers

- The law is quite clear on volunteers. Nonprofit organizations and public agencies can have volunteers. Businesses cannot. Generally, the law will treat someone who does the work of a for-profit business as an employee or an independent contractor. Let's talk this out with an example.
- Let's say we have Farmer Jill. Jill has a few committed community members who like to occasionally help out with the farm work. She will often email her community members with an announcement about spring and fall volunteer work days. Folks come out to help her plant seedlings and bring in the harvest. Legally speaking, Jill's volunteers are actually employees. Any time Jill allows people to do the work of her for-profit farm, she is creating an employment situation. Legally speaking, Jill should be following all employment laws. A farm can only have volunteers if it's organized as a nonprofit organization.
- With that said, there are some scenarios that are a bit more complex. Let's take the example where someone is motivated solely by play and leisure and the farm benefits in no way from their efforts. For example, let's say a mother and her young child come to Amanda's farm to pick raspberries simply for the joy of it. They take home all the proceeds of their efforts—baskets of raspberries they picked themselves. Even if they get carried away and accidentally pick a couple extra baskets, the farm only benefits indirectly. This person is not doing the work of the farm—they are recreating. This person isn't an employee. They also aren't a volunteer, as they are just having fun.

## 1.32 Volunteers

### Volunteers

Opportunities exist to bring volunteers out to the farm for the community benefits that mutual work provides. Let's take gleaning as an example. Gleaning doesn't directly benefit the farm because that product goes to a food shelf. This would be a great solution for a farm that wants the engagement of volunteers without the risk of creating an employment position.

Like we mentioned in the interns section, please take a close look at the "Interns and Volunteers Guide" for New Hampshire, Vermont, or all the states generally, if you want complete details on farm volunteers.



## 1.33 Worker Classification – Interactive in Articulate

(Drag and Drop, 0 points, 1 attempt permitted)



## Worker Classification

Match the following worker classifications with the summary statement that best matches them. Drag the arrow and drop on the appropriate definition.

Follows a specified educational curriculum and the worker hinders the farm as much as the worker benefits the farm.

Runs a separate business providing his or her services to the general public.

Works for a nonprofit or government agency operation, only.

Independent Contractor

Volunteers

Interns/Apprentices

If a worker doesn't fit the classifications above, the person is an employee.

Drag Item	Drop Target
Independent Contractor	Independent drop HS
Volunteers	Volunteer drop HS
Interns/Apprentices	Intern drop HS

Drag and drop properties
Return item to start point if dropped outside any drop target
Snap dropped items to drop target (Snap to center)
Delay item drop states until interaction is submitted

## 1.34 Employment Laws Overview

### Employment Laws Overview

Now that we know the vast majority of workers on a for-profit farm are going to be classified as employees, it's time to explore what that means. If you have an employee, you need to follow employment laws.

For the rest of this chapter, we are going to be exploring select employment law obligations and how to fulfill them:

- Minimum wage and overtime
- Workers' compensation
- Payroll taxes
- Employee manuals

This is a selection of employment law and there are many more, such as anti-discrimination rules, child and youth employment regulations, health and safety issues, recordkeeping obligations and more. You will find additional resources that address many of these issues in the resources section, although we will not explore them here.



## 1.35 Minimum Wage

### Minimum Wage

## 1.36 Minimum Wage

### Minimum Wage

Click on your state to see the state rules that apply to minimum wage:



Maine



New Hampshire



Vermont



Maryland



Delaware

## 1.37 New Hampshire – Minimum Wage

### New Hampshire – Minimum Wage

- The New Hampshire minimum wage is \$7.25 per hour as of 2018.
- Most farm businesses find that they need to offer at least the minimum wage to attract a qualified work force. Will your farm potentially be paying less than the minimum wage to workers? If yes, work through the flowchart on pages 10-13 of "Hiring a Farm Employee in NH," which will outline whether the farm is eligible to pay less than the minimum wage.



[Return](#)



## 1.38 Vermont – Minimum Wage

### Vermont – Minimum Wage

- The Vermont minimum wage is \$10.50 per hour as of 2018; increases are expected annually thereafter.
- Most farm businesses find that they need to offer at least the minimum wage to attract a qualified work force. Will your farm potentially be paying less than the minimum wage to workers? If yes, work through the flowchart on pages 5-10 of "Hiring a Farm Employee in Vermont."



[Return](#)

## 1.39 Maine – Minimum Wage

### Maine – Minimum Wage

- The Maine minimum wage is \$10.00 per hour as of January 1, 2018; increases are expected annually thereafter.
- Most farm businesses find that they need to offer at least the minimum wage to attract a qualified work force. Will your farm potentially be paying less than the minimum wage to workers? If yes, work through the flowchart to learn if the farm is legally allowed to pay less than the minimum wage.



[Return](#)

## 1.40 Maryland – Minimum Wage

### Maryland – Minimum Wage

- The Maryland minimum wage is \$10.10 per hour at the time of writing.
- Most farm businesses find that they need to offer at least the minimum wage to attract a qualified work force. Will your farm potentially be paying less than the minimum wage to workers? If yes, work through the flowchart.



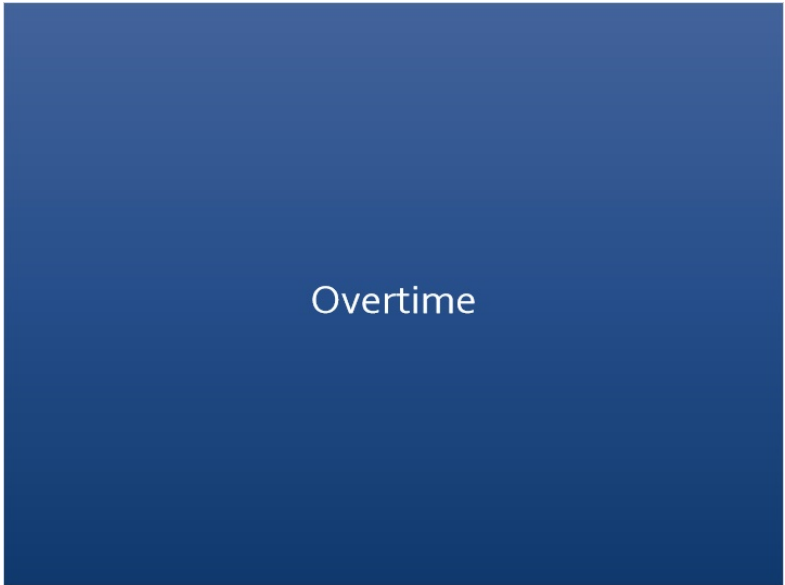
## 1.41 Delaware – Minimum Wage

### Delaware – Minimum Wage

- The Delaware minimum wage is \$8.25 per hour as of June 1, 2015.
- Most farm businesses find that they need to offer at least the minimum wage to attract a qualified work force. Will your farm potentially be paying less than the minimum wage to workers? If yes, work through the flowchart, to learn if the farm is legally allowed to pay less than the minimum wage.




## 1.42 Overtime



## 1.43 Overtime

Overtime

Agricultural workers are not entitled to receive overtime pay for hours worked over 40 in a week. However, the farm should note that this allowance only applies to agricultural labor. If the farm assigns tasks that are not agricultural labor such as meal preparation, agritourism, or educational ventures, then overtime is required for all hours worked over 40 in the week.



## 1.44 So, the big question is:

So, the big question is:  
What is agricultural labor?

The exact answer to this question spans multiple pages of statutory and regulatory text, combined with many lawsuit-driven clarifications on specific nuances.

To boil all that down to a single statement, *agricultural labor is work occurring on a farm and in service of the production of crops or livestock*. It may be more helpful to explore things that are not agricultural labor.



## 1.45 Broadly speaking, these types

Broadly speaking, these types  
of activities are not agricultural  
labor:

- Educational classes
- Processing raw agricultural products
- Festivals and celebrations
- Marketing or retailing products not produced on the farm
- Transporting products not produced on the farm
- Food service



## 1.46 Some activities are hard to classify as agricultural labor or

### Some activities are hard to classify as agricultural labor or non-agricultural labor

*Including the following:*

- Marketing activities such as making sales calls, timber harvesting, construction, trucking, and equipment repair.
- Where these activities occur on the farm and are directly related to the production of a crop or livestock, they are more likely to be agricultural labor.
- For example, construction of a guest restroom or commercial kitchen is less likely to be agricultural labor as the purpose of the construction is not to produce crops or livestock.
- Construction of a new hog barn is more likely to be agricultural labor as it is directly related to raising hogs.
- Activities that occur off the farm can get complicated. For example, some regulatory agencies feel that farmers market sales are non-agricultural labor because they occur off the farm.
- Farmers playing it safe will assume that off-farm activities are not agricultural labor.



## 1.47 What does a person do when

### What does a person do when they are unsure if an activity is agricultural labor or not?

The only safe thing to do is assume the activity is non-agricultural labor.

Alternatively, Farmers might consider assigning non-agricultural tasks only to themselves or other owners, for whom overtime is not owed.



## 1.48 Explore the concept of non-agricultural labor by choosing whether the following activities are agricultural or not.

*(Drag and Drop, 10 points, 1 attempt permitted)*



Explore the concept of non-agricultural labor by choosing whether the following activities are agricultural or not.

Drag and drop each item into the appropriate box.

Drag Item	Drop Target
canning-drag	Non Ag drop
festival drag	Non Ag drop
CSA drag	Non Ag drop
pizza drag	Non Ag drop
poultry drag	AG drop
seedling drag	AG drop
plant seed drag	AG drop
farm stand drag	AG drop
pick rasp drag	AG drop
jam drag	Non Ag drop

Drag and drop properties

Return item to start point if dropped outside any drop target

Snap dropped items to drop target (Tile)

Delay item drop states until interaction is submitted

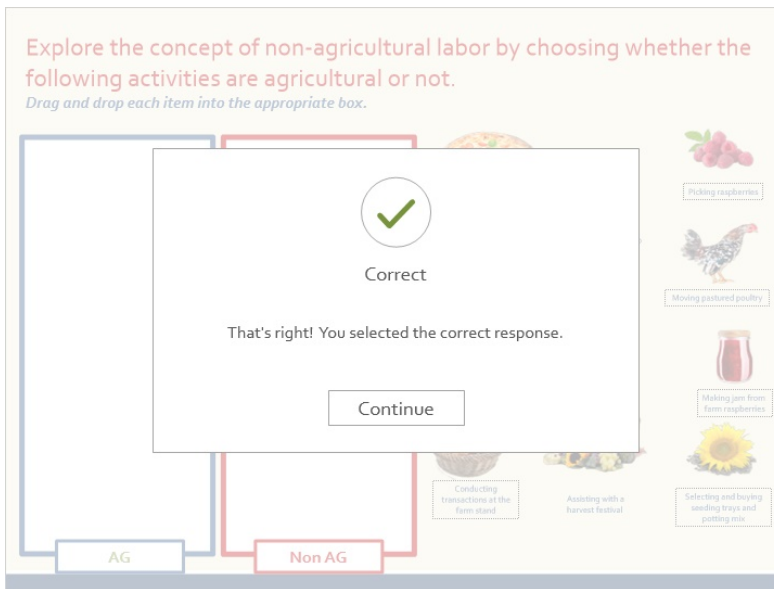
**Feedback when correct:**

That's right! You selected the correct response.

**Feedback when incorrect:**

You did not select the correct response.

**Correct (Slide Layer)**



## Incorrect (Slide Layer)

Explore the concept of non-agricultural labor by choosing whether the following activities are agricultural or not.  
*Drag and drop each item into the appropriate box.*

AG Non AG

Picking raspberries

Moving pastured poultry

Making jam from farm raspberries

Conducting transactions at the farm stand

Assisting with a harvest festival

Selecting and buying seedling trays and potting mix

## 1.49 Workers Compensation





## 1.50 Introduction to Workers Compensation

### Introduction to Workers Compensation

Agricultural workers are not entitled to receive overtime pay for hours worked over 40 in a week. However, the farm should note that this allowance only applies to agricultural labor. If the farm assigns tasks that are not agricultural labor such as meal preparation, agritourism, or educational ventures, then overtime is required for all hours worked over 40 in the week.



## 1.51 Workers Compensation

### Workers Compensation

- Workers' compensation is a state-run insurance program that provides benefits to individuals who are injured while at their jobs.
- Depending on the state and the specific farm, some farms are not required to purchase workers' compensation while other farms are obligated to do so.
- Even where a farm is not required to purchase workers' compensation, it may be a wise investment. Workers' compensation protects a farm from lawsuits regarding employee injuries.
- If a farm does not purchase workers' compensation, it should still purchase liability insurance that addresses the risk of injury to workers as a risk management strategy.
- Without workers compensation or liability insurance, the farm risks serious financial loss if held liable for injuries to employees.



## 1.52 Workers Compensation

### Workers Compensation

- Workers' compensation is purchased through private insurance companies.
- The cost of the policy is determined by a number of factors including the classification of the labor performed, the frequency of injuries by workers performing that labor, and the total dollar value of the business' payroll, among other factors.
- For farm businesses that use only traditional employees and pay cash (not in-kind) wages, a quote is easy to come by.
- Farm businesses that pay wages in the form of food and lodging may have a harder time determining the value of their payroll and will need to work more closely with their insurance agents.
- Likewise, farms seeking coverage for interns, volunteers, and other non-traditional employees may need to work closely with their insurance agent to ensure coverage is secured for all individuals performing work for the farm.



## 1.53 Workers Compensation

### Workers Compensation

- Workers' compensation goes beyond just paying your premium.
- If an employee is injured, there are specific tasks and timelines that need to be followed both for the employee and the farm's protection.
- Make sure you know these procedures; your insurance agent should be your first source for information as the company may have particular rules.
- The insurance company should also provide copies of any necessary notices for the farm's employees.



## 1.54 Workers Compensation

### Workers Compensation

- Farmers follow up by making sure workers have seen and understand the required procedures.
- Include them within the farm's employee manual so workers have something written to consult.
- Likewise, if a farm doesn't provide workers' compensation, the farmer should still work closely with the insurance agent to understand any necessary procedures and forms that may be required.



## 1.55 Workers Compensation – Details by State

### Workers Compensation – Details by State



Maine



New Hampshire



Vermont



Maryland



Delaware

## 1.56 New Hampshire – Workers Compensation

### New Hampshire – Workers Compensation

- New Hampshire requires that every business, including farm businesses, provide a workers' compensation insurance policy that covers each employee from the first day of work. This rule applies to part-time workers and employees of non-profits.
- The workers' compensation rule also applies to family members who are employed by the farm business. Farm business owners do not have to cover themselves if the farm is a sole proprietorship or partnership.
- If the farm is organized as an LLC or corporation, the LLC members or corporate officers are required to cover themselves when the operation reaches or exceeds four (4) members or officers.
- If the farm has fewer than 4 members or officers, workers' compensation is not required for those members or officers. (Note, farm LLC's and corporations must still provide coverage for all employees immediately upon hire. The exception for members or officers only applies to members or officers.)



[Return](#)

## 1.57 Vermont – Workers Compensation

### Vermont – Workers Compensation

- Vermont provides an exemption for workers' compensation for small farms. So long as the farm has less than a total of \$10,000 in payroll in a calendar year, they are not required to carry workers' compensation for employees engaged in agricultural labor. If the farm provides housing or meals to its employees as an in-kind wage, this amount must be included when calculating the gross payroll.
- Like the minimum wage exemption, this exemption only applies to agricultural labor. This means that even if the farm falls below the \$10,000 payroll threshold, it must carry workers' compensation for any employee that engages in non-agricultural labor.
- For farms with a payroll of \$10,000 or more, they must carry workers' compensation for *all* employees. This includes family members and part-time workers. Farm business owners do not have to cover themselves if the farm is a sole proprietorship or partnership. If the farm is organized as an LLC or corporation, the LLC members or corporate officers may choose to be excluded; however, they first have to obtain approval from the Vermont Department of Labor.





## 1.58 Vermont – Workers Comp Quiz

### Vermont – Workers Comp Quiz

- Does your farm assign non-agricultural labor including sales, marketing, and delivery of product? If yes, check with your insurance agent as you may need to purchase workers compensation. If no, go on to the next question
- Does your farm expect payroll to exceed \$10,000 in a calendar year? If yes, check with your insurance agent as you may need to purchase workers compensation. If no, then you may not need to purchase workers' compensation, but check with an insurance agent to be sure.



Return

## 1.59 Maine – Workers Compensation

### Maine – Workers Compensation

Check whether the following statements are true or false:

- ✓ Your farm maintains at least \$25,000 in employer liability insurance with at least \$5,000 in medical payments coverage AND has only seasonal or casual employees in agriculture or aquaculture.
- ✓ Your farm employs six or fewer agricultural or aquacultural laborers AND the farm maintains employers' liability insurance of at least \$100,000 multiplied by the number of full time equivalent employees, with at least \$5,000 in medical payments coverage.

If you checked "true" for either of the above boxes, your farm is not required to carry workers' compensation. If both of the above statements are false, you are required to carry workers' compensation.



Return



## 1.60 Maryland – Workers Compensation

**Maryland – Workers Compensation**

Check whether the following statements are true or false:

- ✓ Your farm has at least 3 full time employees.
- ✓ Your farm has an annual payroll of at least \$15,000 (including the cost of lodging, meals and other benefits) for full time employees.


If you checked "true" for either of the above boxes, your farm is required to carry workers' compensation.




## 1.61 Delaware – Workers Compensation

**Delaware – Workers Compensation**

- In Delaware, farm businesses are **not required** to carry workers' compensation.



DECEMBER 7, 1787



## 1.62 Workers Compensation: What if you aren't required to carry it?

Workers Compensation: What if you aren't required to carry it?



- The risk of an employee getting injured is always present, and farms should make sure they are covered for that risk in some way or another, and two general options are available:
  1. Purchase workers' compensation anyway
  2. Purchase a liability policy that covers employees
- Farms that do not carry workers' compensation can be sued by employees who are injured. For this reason alone, some farms choose to carry workers' compensation even if it's not required!

## 1.63 Workers Compensation: What if you aren't required to carry it?

Workers Compensation: What if you aren't required to carry it?

- Employees cannot sue their employers for injuries if workers' compensation is available to them. The ease and assurance of workers' compensation outweighs the cost, to some people.
- Other farmers prefer option 2: to purchase a liability policy that covers employees. Most basic, standard farm liability policies do not cover employees at all, or cover only seasonal and temporary employees. A farmer generally has to ask the insurance agent or underwriter specifically for employee coverage. Occasionally, a farm may need to purchase a commercial policy to secure coverage for employees. Talk with your agent about your needs and options.

## 1.64 Employee Manuals

# Employee Manuals

## 1.65 Why Create an Employee Manual?

### Why Create an Employee Manual?



- Occasionally, farm employment law isn't about following detailed rules and regulations. Sometimes, it's about proactively creating a positive experience for your workers so that problems never occur. And, as they inevitably do occur, create clear pathways to resolution so everyone can quickly move on. One of the best ways to make this happen for your farm is to create an employee manual.
- You might be saying, employee manuals are so corporate. Or I'm never going to be big enough to justify a manual. Well, I would recommend to you that even the smallest operation can benefit from clear, written procedures that give everyone something to refer to as questions arise. Setting clear expectations also helps create a smooth work experience for both farmer and employee.



## 1.66 Why Create an Employee Manual?

### Why Create an Employee Manual?



- However, a farm employee manual is only useful if it is thorough and accurate. Farmers wishing to use a manual should take the time both to think through the many issues, and come up with procedures that work for them.
- For example, have you thought through your expectations in the event of a inclement weather? Do you expect folks to work through the rain, as long as there's no thunderstorm warning? Perhaps you expect them to work unless lightning is seen? Or, do you anticipate working through all weather conditions? Or, maybe you expect workers to take on indoor tasks during bad weather. If you don't communicate your expectations to your workers, you can't expect them to fulfill your expectations.
- In the next activity, let's think through a couple of issues just like these. Consider your expectations for your workers puts us halfway there to an employee manual. The other half of the work is writing it down.

## 1.67 Employee Manual Activity:

(Text Entry, 0 points, 1 attempt permitted)

### Employee Manual Activity:

- Think through the following scenarios on your farm. Articulate your expectations for these hypothetical employees in the box to the right:
  - Say you have an employee, Bert. Bert's sister's wedding is scheduled for the day after Thanksgiving. Is that a holiday on your farm? What do you expect of Bert in terms of notifying you and getting time off for it?
  - Your employee, Sarah, twisted her ankle a bit jumping off the bed of the farm's pickup truck today. She is still able to work the rest of the day. What do you expect of Sarah, going forward? Do you want an injury report? To whom should she communicate this injury?
  - Your employee, Pat, feels like his supervisor is saying inappropriate things on the job and it's making Pat angry. What do you expect Pat to do about the issue? What do you expect to do yourself if such an issue arises?
  - These scenarios may seem like an exercise in borrowing trouble. Yet, sometimes thinking through troublesome scenarios is the single best way to prevent them.

type your text here

Submit

## 1.68 Employee Manuals: Legal Caution

### Employee Manuals: Legal Caution

*When drafting an employee manual, there are a few legal issues to bear in mind:*

- Don't create any procedure you don't intend to follow. Creating a manual that is inconsistently followed can be worse than no manual at all. Hold yourself accountable – because that's much easier than when others do it for you.
- Unless you intend to create an employment contract with your workers, do not use language that will inadvertently create an employment contract in your manual. Broadly speaking, if language in your employee manual appears to commit to retaining an employee, absent specific circumstances, then the manual risks creating a contract. If you've created a contract with your employee, then they may not be at-will anymore. When an employee is at-will, you can terminate them for any legal reason. Most farmers do not want to limit their ability to let employees go, so most farmers do not want to create a contract.
- **The bottom line is this:** Creating an employee manual can be hazardous if not done correctly. If the farm doesn't have the time to read up on how to create an employee manual, the farm may be better off not creating one at all.

## 1.69 Employee Manuals: Legal Caution

### Employee Manuals: Legal Caution

- Farms should also be cautious about putting procedures into a manual that they aren't committed to following, especially when it comes to benefits, expectations, or disciplinary procedures. Being inconsistent is bad, legally speaking, because it can open the farm up to discrimination lawsuits, among others. If a farm can't be consistent, it may be better not to state a procedure at all.
- All those caveats aside, the farm has a huge amount to gain from writing a clear employee manual and following it consistently. Most folks want to excel at their jobs and a good manual can help them do that. It's also legally important to relay information about reporting injuries and the like.
- Farmers can create strong employee manuals that do not create risk. The best way to learn how is to browse the sample employee manual for farms in the resources.



## 1.70 Employee Law

Employee Law  
Wrap Up

## 1.71 Employee Law Wrap Up

### Employee Law Wrap Up

- This chapter is designed to get farmers up to speed on some of the most popular subjects in farm employment law. That being said, the field of farm employment law is vast. There are many other farm employment law subjects that individual farms may need to reckon with.
- If the farm uses workers who come from out of state and are seasonal or temporary, the farm should explore their obligations under federal and state migrant worker laws. These laws affect recruitment, payment, and dismissal of seasonal and temporary workers from out of state. Learn more about the federal issues in the guide "Farm Employment Law: Know the basics and make them work for your farm." Learn more about your state issues by calling your state's department of labor agency.
- Although federal Occupational Health and Safety or OSHA rules are not enforceable on most small farms, that's not always the case. Farms need to follow federal OSHA rules when workers live on the farm. Some states have health and safety rules that will be enforceable on the farm. Contact your state's workplace health and safety administration office for more **information**.



## 1.72 Employee Law Wrap Up Continued

### Employee Law Wrap Up Continued

- Federal and state anti-discrimination laws generally apply to farm businesses the same as for all other businesses. Despite generally good intentions, farm businesses occasionally violate these rules. Make sure you know them and don't let discrimination sneak into your hiring practices.
- Firing and disciplinary actions- there are legal implications. Know your state's hiring paperwork before you begin- ask the local Small Business Administration office for a checklist or resource on hiring and firing.
- Thinking the H2A program may be right for your needs? Few accessible resources exist to help farmers navigate their options. Look for a farmer near you who has experience and can lend advice or contacts. The federal Department of Labor has basic information at [this link](#), which can also be found in the reference section of this presentation.
- Managing employees is a long journey for many farms. Get off on the right foot and you will be well on your way.



## 1.73 Untitled Slide

Congratulations!  
You've completed  
the Workers  
Module!

Please proceed to  
the next module:

**Business  
Structures**

