

Protecting Your Farm or Ranch Assets

Developing Direct Market Agricultural Enterprises
and Understanding Legal Liability in the Inland Northwest

Chapter 3: Employment and Labor



Farm Workers

-
- Employment & Labor 46-50
 - Farm Labor Contractor Licensing 51-53
 - Minimum wage for farm workers 54
 - In the news 55

Risk Management Activities: Employment and Labor

Introduction

The subject of Employment and Labor on your small farm operation is an area of great interest and concern. As your farm grows and changes, you may realize that you need to expand beyond a family operation. At this point you have several options for assistance with the labor. For example, you may choose to use contract workers or to hire employees. No matter how you decide to fill your labor requirements, it is your responsibility to ensure safety on the jobsite and provide insurance for possible injuries. The follow section provides an overview of how you can rest easy as a farm owner, with the help of the Washington Department of Labor and Industries and your private insurance company.

Employment Basics

Determining whether or not the person working on your farm is an employee will help you understand your obligations for safety and liability. Here is a quick definition of an employee:

- They are on your farm at your request to perform tasks you identify. You usually provide the tools and equipment.
- You instruct them in their work, evaluate and terminate their employment if necessary.
- They are working in exchange for being paid a wage or other financial compensation.
- They are hired with the understanding that they are your employees.

You can minimize your liability as an employer by adopting these practices:

- Train your employees for the tasks they are hired to do, providing safety equipment and a safe working environment.
- Follow wage and hour standards required by the State of Washington, and the withholding of federally required taxes (Income tax, Social Security, Medicare.)
- Provide employee financial protection through state and federal unemployment insurance and worker's compensation through the Department of Labor and Industries.
- Obtain additional liability through your insurance company to ensure the very highest standard of care for the employee.

It only takes a couple of hours of your time to set your business up to handle employees. You may wish to ask your accountant to assist you or your first employee may be a certified bookkeeper. You will need to obtain a federal tax employer number and register your employees. In addition, you will need to register as an employer with the State of Washington for purposes of unemployment insurance and worker's compensation. Then you can hire employees, making sure to comply with the minimum wage and hour requirements. It is a good idea to set up a standardized system of record keeping for your employees, making sure they fill out the tax forms you need to keep on file and timecards to record their hours worked. Before long, you will receive tax forms in the mail to remind you to file quarterly reports. Most reporting can now be done in a fraction of the time over the internet.

Employees and Liability Insurance

As your direct farm operation grows and you feel the need to hire employees, your insurance agent will most likely encourage you to change your policy from a homeowner's policy to a farm or commercial policy. This is for your protection as an owner, to ensure that you have adequate liability coverage.

The laws of the State of Washington require the enrollment of your employees in their Labor and Industries system. This process is done on an individual basis. You will call their employment representatives and they will assign your workers a classification based on the work they do for you and the risks involved. This will protect you from personally being liable to pay damages if they are injured on the job. The premium is split between the employer and the employee and is based on the quantity of hours worked.

Helpful Hint: When you call L & I to set up your farm for employees, get the name and direct line phone number of your representative. This is a huge agency and it streamlines your phone sessions if you always talk with the same person. For additional information see the following website for Agricultural Labor and Industries information: <http://www.lni.wa.gov/Forms/pdf/700127a0.pdf>

You may wonder why you need additional liability coverage for your employees from a private insurer if you have worker's compensation in place. The answer is that there could arise circumstances involving employees on your premises that the Department of Labor and Industries will not pay damages for.

If an employee accidentally injures a visitor to your farm, this is covered by the employer's liability policy without an additional endorsement.

A Washington Stop Gap Endorsement is needed for other circumstances. This is an endorsement you must request. Here are two examples:

- An employee is injured on the farm after hours or on their day off.
- At the fair, the employer's horse injures an employee who is just visiting, not working.

If you are in full compliance with the Department of Labor and Industries, Washington Stop Gap Endorsement will most likely pay for this type of employee damage. If you are not enrolled with the Department of Labor and Industries, you are in big trouble. This is a good way to lose the farm.

The Employee Dishonesty Endorsement covers theft of your property or product by your employee. Request this endorsement as a part of your property coverage. However, if your employee steals from clients on your property or while doing deliveries off of your property, an additional endorsement on top of the Dishonesty Endorsement is needed to cover this type of theft. It might be worth it, if you have a rapid turnover of employees and deliveries are common.

Be smart, follow the employment laws of your state and talk to your insurance agent about complete liability coverage. Remember, it is your duty to care for the people who visit your farm, including your employees.

Other Types of Labor on the Farm

Contract Labor

Small producers often use contract labor prior to entering an employment situation. The legal limit that you can pay for casual labor before needing to provide them with tax form 1099 and reporting your payment to the IRS is \$600 annually. All payments to contractors will show up somewhere in your expenses and need to be accounted for when you do your taxes. It is vitally important that you protect yourself when using contractors on the farm. You should have an official “contract” with them, stating the parameters of the work they are providing for you. They should supply you with proof of their own liability insurance. If they damage your property or injure a visitor to your farm, they will be liable. Whether or not they have insurance may determine whether or not you enter into a contract with them.

For information about Contract Labor regulations consult this website:

Know the Rules for Hiring Contract Labor

http://www.score.org/bp_contract_labor.html

Students

If individuals pay you to be educated on your farm, you are considered a school, which is a business enterprise. Your commercial liability insurance and not the Department of Labor and Industries cover the students at your school.

Interns

Hands-on experience on your farm is called an internship. You enter into an agreement with the student/intern to work on your farm for a certain period of time. In exchange you will provide training and experience in the aspects of their

interest. If you provide room and board or a stipend, the intern is considered an employee, even though you are not paying them minimum wage. In that case you must enroll them with the Department of Labor and Industries for coverage.

If your intern does not receive room and board or a stipend and the arrangement is less formal or they may only receive a few boxes of vegetables in season, they may be considered volunteers.

If you are interested in providing internships on your farm, speak to your representative at Labor and Industries and your insurance agent. Unique to this situation is whether or not education is considered tangible compensation for labor on your farm. Even if you do not consider the intern to be an employee, in the case of an injury or death, the state and the courts may impose liability to you. For this reason, it is best for you to provide the same level of care for the intern as you do for your employees.

For information on setting up an internship program, download the following handbook from the Northeast Organic Farming Association-New York. It was designed for New York State, however it is very informative and useful.

“Internships in Sustainable Farming: A Handbook for Farmers” by Doug Jones
<http://nofany.org/images/publications/internshiphandbook.pdf>

Volunteers

Volunteers come with a wide range of circumstances. If a neighbor weeds your beets and takes home enough to can, they are considered a visitor on your farm and the liability in your farm policy should cover them. If you enter into an agreement with a volunteer to regularly work on your place in exchange for produce, they you should enroll them with the Department of Labor and Industries. This involves paying a very reasonable rate per hour that they spend on your farm and filing quarterly forms. Currently the rate for volunteer labor is 6 to 7 cents per hour, substantially less than all other farm classifications. In case of injury, they will completely pay the medical costs.

CSAs

Community Supported Agriculture farms provide produce for their members or subscribers. Labor issues arise if members spend time on the farm as a part of the membership requirements or in exchange for membership. A CSA can reduce the need for involving the Department of Labor and Industries if they are explicit in their membership agreements that no time on the farm is required but that members can “visit” the farm any time they wish. In this way, members will not resemble employees and need enrollment in the system.

Since there is no standardized CSA membership agreement, it is best to consult your Labor and Industries representative and insurance agent when setting up your

business. Correct wording is very important and may save you a lot of money in premiums or lawsuits.

For a history of Community Supported Agriculture and survey of recent research, consult this website, a product of the National Sustainable Agriculture Information Service: <http://attra.ncat.org/attra-pub/PDF/csa.pdf>

Remember, these two facts of life.

“First, insurance companies are not charities. If they think someone else is responsible for coverage they will take that position, regardless of what the policy holder wants.

Second, if someone is injured on your property, you may ultimately be responsible even if the other person has insurance.”

*“The Legal Guide for Direct Farm Marketing”
Neil D. Hamilton*

Take the time to thoroughly research how to protect every type of visitor on your farm.

Supporting resources:

[Washington Department of Labor and Industries Forms](http://www.lni.wa.gov/Forms/pdf/700127a0.pdf)

[<http://www.lni.wa.gov/Forms/pdf/700127a0.pdf>]

L & I Agricultural Website and Telephone Resources (pg. 8 of pdf)

Summary of Agricultural Employment Regulations and Farm Labor Contractor Requirements (pg. 4-5 of pdf) summarizes laws employer’s need to know to ensure they are in compliance with state employment laws. It also notes where there are differences between state and federal employment laws.

Agricultural Employer Worksheet (pg. 6-7 of pdf) was designed to help agricultural employers know whether they are correctly following the agricultural minimum wage and employment standard regulations.

Date: 9/7/2006

Information Contact 1: Bob Fick : (208) 332-3570 ext. 3628 :

Information Contact 2: Craig Soelberg : (208) 332-3570 ext. 3237 :

FARM LABOR CONTRACTOR

FACT SHEET

FARM LABOR CONTRACTOR LICENSING

State law requires farm labor contractors in Idaho to be licensed.



As a licensed farm labor contractor, you should see an increase in business opportunities by creating an incentive for farmers to engage your services and by reducing unfair competition from unlicensed contractors.

Under the law, all persons performing farm labor contractor activities on behalf of migrant and seasonal farm workers in Idaho must:

- Be licensed by the state and pay an annual licensing fee.
- Post a surety bond to cover unpaid wages.
- Carry auto insurance for all vehicles used in the farm labor contracting business.
- Carry worker's compensation coverage for all employees.
- Provide all employees at the time of hiring full disclosure of the conditions of employment.

FOR MORE INFORMATION, CONTACT:

Southern Idaho
Idaho Commerce & Labor
 127 W. Fifth St. N.
 Burley, Idaho 83318-3457
 (208) 678-5518
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 Linda.Castaneda@cli.idaho.gov

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 Pocatello, Idaho 83205-5458
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 (208) 769-1558
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 Dawn McLees, ext. 3922
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For more information, visit our Web site: cli.idaho.gov

* Photo courtesy of USDA Natural Resources Conservation Service.

FARM LABOR CONTRACTOR LICENSING GUIDELINES

WHO MUST APPLY?

Any person who is paid or is promised to be paid, for recruiting, soliciting, hiring, employing, furnishing or transporting any migrant or seasonal agricultural worker.

EXEMPTIONS FROM LICENSING REQUIREMENT

1. Agricultural associations engaged in farm labor contracting activities exclusively for members of their association.
2. Individuals engaged in farm labor contracting for an agricultural operation owned or operated exclusively by such individual or a member of such individual's immediate family, if such activities are performed only for such operation and exclusively by such individual, but without regard to whether such individual has incorporated or otherwise organized for business purposes.
3. Agricultural employers exchanging agricultural labor or services with each other, provided the work is performed on land owned or leased by the agricultural employers.
4. Any common carrier that would be a farm labor contractor solely because it is engaged in transporting any migrant or seasonal agricultural worker. For purposes of this section, a common carrier is one that holds itself out to the general public to engage in transportation of passengers for hire, whether over regular or irregular routes, and holds a valid certificate or authorization for such purpose from an appropriate local, state or federal agency.
5. Nonprofit charitable organizations and public entities or private nonprofit educational institutions.
6. The employees of persons described above when performing farm labor contracting activities exclusively for such employer, unless the employee receives a commission or fee based upon the number of workers recruited.

LICENSE FEE - \$250.00 annually

WHAT YOU NEED WHEN APPLYING FOR LICENSE

1. The license fee.
2. Completed application.
3. Two recent passport-sized color photographs.
4. Vehicle information sheet, if applicable.
5. Certificate of insurance issued by your auto insurance carrier that lists Idaho Commerce & Labor as the certificate holder and provides a 30-day cancellation notice

for all vehicle(s) used in the operation of the business and used to transport workers. **This certificate must include a list of all vehicles used and their Vehicle Identification Numbers.***

6. Certificate of insurance issued by your worker's compensation carrier that lists Idaho Commerce & Labor as the certificate holder **and provides a 30-day cancellation notice.***
7. Proof of financial responsibility.*
8. For employee applicants, a sponsorship statement.

**If applying for an employee license as an employee of a licensed farm labor contractor, you do not need to submit proof of financial responsibility or certificates of insurance for vehicles or workers' compensation.*

ALL assumed business names and corporations **MUST** be registered with the secretary of state **PRIOR** to a license being issued. Please contact:

SECRETARY OF STATE
PO Box 83720
Boise, ID 83720-0080
(208) 334-2301

PROOF OF FINANCIAL RESPONSIBILITY

Proof of financial responsibility is a corporate surety bond of a company licensed to do business in Idaho, or cash or other security acceptable to the Director of Commerce & Labor. **All financial responsibility documents are to be submitted on forms that are provided by the department.** Proof of financial responsibility shall be in the following amounts:

- \$10,000 if no more than 20 employees are employed.
- \$30,000 if 21 or more employees are employed.

The Director of Idaho Commerce & Labor may accept other forms of financial security in lieu of the security bond.

LICENSE RENEWAL

The license shall be good for one licensing year. All licenses will expire at the end of each licensing year. Renewal applications are sent to all licensed contractors prior to the expiration of the current license. The license renewal fee is \$250.

NO JOINT EMPLOYMENT

A farmer who uses a licensed farm labor contractor will not be a joint employer of the contractor's employees. The licensed farm labor contractor will remain their sole employer and be solely responsible for the payment of their wages.

For more information, visit our Web site: cl.idaho.gov

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 COMMERCE & LABOR

FARM LABOR CONTRACTOR LICENSING

A farm labor contractor is any individual or business entity that for money or other compensation recruits, solicits, hires, employs, furnishes or transports migrant or seasonal farm workers.

Farm labor contractors must: (1) be licensed by the Idaho Department of Commerce & Labor and pay an annual licensing fee; (2) post a surety bond to cover unpaid wages; (3) carry auto insurance for all vehicles used in the farm labor contracting business; (4) carry workers' compensation coverage for all employees; and (5) provide all employees at the time of hiring full disclosure about the conditions of employment, including the rate of pay, the benefits to be furnished by the farm labor contractor, and all expenses that may be deducted from the farm worker's wages.

Some farm labor contractors are exempt from the requirements of Idaho's Farm Labor Contractor Licensing Law. Because exemptions are narrowly defined, a farm labor contractor should carefully review the exemptions contained in Idaho Code §44-1602.

Farmers who use an Idaho Department of Commerce & Labor licensed farm labor contractor will not be jointly liable under Idaho law for any wages left unpaid by a farm labor contractor. The licensed farm labor contractor will remain the farm workers' employer and will be solely responsible for the payment of their wages.



State Minimum Wage Coverage for Farm Workers

TIMING

- ▶ The law became effective January 1, 2002.

COVERAGE

- ▶ The law guarantees farm workers the state minimum wage of \$5.15 an hour on all farms **except** for the following employees:
 - ▶ The employer's immediate family members;
 - ▶ Seasonal hand harvest workers paid on a piece rate basis where the employee commutes daily from a permanent residence and works less than 13 weeks a year;
 - ▶ Children 16 or younger employed in hand harvest labor on the same farm as their parents; and
 - ▶ Employees engaged in range production of livestock (cattle and sheep).
- ▶ The law does not require farm workers to be paid overtime.
- ▶ This law does not require farm workers to be paid only on an hourly basis. They can work and be paid on a piece rate basis. However, when working on a piece rate basis, it is necessary for employers to keep records to document that the amount earned by piece rate is not less than \$5.15 an hour, the minimum hourly wage.

RECORD KEEPING

- ▶ Records should include:
 1. Employee's name, home address, occupation, sex, and birth date (if under 19 years of age);
 2. Hour and day when workweek begins;
 3. Total hours worked each workday and workweek;
 4. Total daily or weekly straight time earnings;
 5. Regular hourly pay rate;
 6. Deductions from wages;
 7. Total wages paid each pay period; and
 8. Date of wage payment and pay period covered.
- ▶ Records do not have to be kept in any particular form and time clocks need not be used.
- ▶ Records must be kept for a minimum of three years.
- ▶ Employees must be paid for all hours worked in a workweek. In general, hours worked includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work.

ENFORCEMENT

- ▶ When wage complaints are filed, the department will enforce the state farm worker minimum wage law through its wage claim process.

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IN THE NEWS - Third Farm Labor Contractor Convicted for Operating Without a License

A third south central Idaho farm labor contractor has been convicted of operating without the required state license.

Jose Flores of Twin Falls, also known as Cruz Flores, was fined \$300 plus court costs and placed on two years probation during a hearing in Twin Falls County Magistrate Court on Sept. 5. A 30-day jail sentence was suspended and could be imposed if Flores fails to successfully complete the probationary term.

The maximum penalty for violating the Farm Labor Contractor Licensing Law is a \$1,000 fine and 60 days in jail.

Flores pleaded guilty earlier this week to operating a crew of farm workers without a license on June 8 in Twin Falls County. Information provided to Idaho Commerce & Labor led to the successful prosecution.

"The law is designed to protect workers from non-payment of wages and risks and protect farmers from the liabilities associated with working for or with uninsured contractors," said Craig Soelberg, supervisor of the Wage and Hour Division at Idaho Commerce & Labor. "Unlicensed contractors pose a huge financial risk to farmers, who bring in seasonal labor to plant and harvest crops."

The law requires farm labor contractors to pay a \$250 licensing fee, obtain a bond to ensure payment of workers, and have proof of workers' compensation coverage for crews and insurance for vehicles used to transport crews. Farmers using unlicensed contractors become liable for unpaid wages and workers' compensation claims.

Earlier this year, Jose Luis Garza of Rupert was fined \$500 and placed on a year's probation for violating the law. A second case is still pending against Garza.

Following that conviction, Rafael Escobedo, also of Rupert, was fined \$150 plus court costs after admitting to operating a farm crew without a license. No probation was imposed.

To find out how to obtain a farm labor contractor license or to see if a farm labor contractor is licensed, contact Idaho Commerce & Labor's Wage and Hour Division at (800) 843-3193 or visit cl.idaho.gov/wh.