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Agricultural Labor Laws 101: Understanding Federal Governance

National Agricultural and Food Law Consortium

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Agricultural Labor Laws Relevance

- Why is this important?
- Why should you care?
- What should you take away from this webinar?



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Agricultural Labor Laws

Why is this important?



•Photo courtesy of USDA NRCS



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Why Should You Care?

- The government says employers have legal responsibilities



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Why Should You Care? Legal Responsibility to Employees

• \$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$

- Higher costs
- Fines and Penalties



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Why Should You Care? Farm Labor is Diverse

- Regular Employees
- Independent Contractors
- Interns/Apprentices
- Volunteers
- Family Members/Youth
- Migrant/Seasonal Workers



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What You Should Take Away

What Does the Law Provide

- **Employer Responsibilities**
- **Agricultural Exemptions**



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Fair Labor Standards Act

What Does it Do?

- **Minimum wage**
- **Overtime pay**
- **Child labor**



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Farm Labor Standards Act **Minimum Wage**

- Federal Rate: \$7.25 per hour
- State examples
 - Pennsylvania: \$7.25 per hour
 - California: \$15 per hour by 2023



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Minimum Wage **Limited Federal Rates: Under Age 20**

- Not less than \$4.25 for first 90 consecutive calendar days of employment
- Work cannot displace other workers
- After 90 consecutive days of employment, or when the worker reaches age 20 (whichever comes first), the worker must receive at least the federal minimum wage



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FLSA: Overtime Pay **Maximum Hours**

- Unless exempt, employers must pay time-and-a-half for hours over 40 hours in a week



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FLSA **Child Labor**

- Restrictions on employing children under 16



Fair Labor Standards Act

Who Does it Apply to?

- Requires an employment relationship – not applicable to independent contractors



IRS

Employee or Independent Contractor?

“Generally, a worker who performs services for you is your employee if you have the right to control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.”

Internal Revenue Service's (IRS) Publication 15 (Circular E), Employer's Tax Guide for Use in 2015: Employee Status Under Common Law



Who are Employees? **IRS Control Factors**

- Instruct when/where/how work is performed
- Instruct worker in sequence of tasks
- Set work schedule
- Specify place worker performs work
- Services essential part of operation



Interns/Apprentices **FLSA Employee?**

- Unpaid
- Primary purpose: educational or therapeutic benefit
- Can be either profit and nonprofit



Interns/Apprentices FLSA Employee?

- **Non-profit farms**
 - Generally not FLSA employee

U.S. Department of Labor Fact Sheet #71 *Internship Programs Under the Fair Labor Standards Act*



Interns/Apprentices FLSA Employee?

- **For-profit farms**
 - Generally, FLSA employees **UNLESS** 6 part Unpaid Intern Test is met



Interns/Apprentices **FLSA Employee?**

Unpaid intern test

1. Training is similar to that given in an educational environment
2. Experience for benefit of intern
3. Does not displace regular employee, but works under close supervision of existing staff



Interns/Apprentices **FLSA Employee?**

Unpaid Intern Test (Cont.)

4. Employer derives no immediate advantage from activities of intern—and may be actually impeded
5. Not necessarily entitled to job at conclusion of internship



Interns/Apprentices **FLSA Employee?**

Unpaid Intern Test (Cont.)

- 6. Both intern and employer understand that the intern is not entitled to wages for internship**

U.S. Department of Labor, Fact Sheet #71 *Internship Programs Under the Fair Labor Standards Act*



Interns/Apprentices **Tips for For-Profit Farms**

- Affiliate with school or non-profit**
- Create a curriculum**
- Have a training program**
- Limit amount of rote tasks**



Volunteers **FLSA Employee?**

- Farmers' market
- CSA drop-site staff
- CSA member volunteers



Non-Profit Volunteers **Not FLSA Employee If:**

- For public service, religious or humanitarian objective, or other similar non-profit organizations
- Without compensation
- Typically part-time



Volunteers (Cont.)

Not FLSA Employee If:

- **Does not displace or perform work otherwise performed by regular employees**



Volunteers (Cont.)

Not FLSA Employee If:

- **Generally, may not volunteer in commercial activities run by non-profit**
 - **Example: gift shop**

U.S. Department of Labor, Fact Sheet #14A: Non-Profit Organizations and the Fair Labor Standards Act



Independent Contractors? **Key Consideration**

- **A person or organization performing job without control of employer**
 - **Examples: plumber, custom harvester, crop duster**
- **Remember: Just saying it does not make it true**



Independent Contractors **Forms**

- **Have independent contractor complete W-9 Request for Taxpayer Identification Number and Certification**
- **Keep on file four years**



Employees Agricultural Exemption

- Who qualifies?



Agricultural Employee? Primary Meaning

“... farming and all its branches and among other things including the tillage of soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, furbearing animals, or poultry, and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations.”

•Fair Labor Standards Act of 1938, § 203(f)



Agricultural Employee? **Secondary Meaning**

“An practices, whether or not they are themselves farming practices, which are performed either by a farmer or on a farm as an incident to or in conjunction with a farming operation, which includes forestry or lumber”

Fair Labor Standards Act of 1938, § 203(f)



Agricultural Employees? **Examples**

- **Dairy**
 - Milk cows: yes
 - Make milk into cheese: no
- **Produce**
 - Pick and pack tomatoes: yes
 - Make tomatoes into salsa: no



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FLSA Agricultural Exemptions **Minimum Wage and Overtime**

- Immediate family members
- Primarily engaged in range production of livestock



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FLSA Agricultural Exemptions **Minimum Wage and Overtime**

- Fewer than 500 man-days of agricultural labor during any calendar quarter of preceding calendar year (13 weeks)
 - At least one hour of labor per day
 - 7 workers x 5 days x 13 weeks = 455 man-days
 - 7 workers x 6 days x 13 weeks = 546 man-days



FLSA Agricultural Exemptions **Minimum Wage and Overtime**

- **Seasonal hand-harvest laborers paid on piece-rate basis**
 - **Commute daily**
 - **Employed fewer than 13 weeks in prior calendar year**



FLSA Agricultural Exemptions **Minimum Wage and Overtime**

- **Non-local minors**
 - **16 years of age or under**
 - **Hand-harvests paid on piece rate basis**
 - **Employed on same farm as their parents**
 - **Paid at same rate as those over 16 years of age**



FLSA **Agriculture: Child Labor**

- Employed by parents
 - May work at any time in any farm job
- 16 years of age
 - May work at any time in any farm job
- 14 or 15 years old
 - Outside of school hours in any non-hazardous job



FLSA **Agriculture: Child Labor**

- 12 or 13 years old
 - Outside of school hours, non-hazardous jobs, on farm where parent(s) work OR with written parental consent
- Under 12 years old
 - Outside of school hours, non-hazardous jobs, on small farm exempt from federal minimum wage provisions with written parental consent



Hazardous Occupations **Examples**

- Operate tractor over 20 PTO horsepower
- Driving bus, truck or automobile to transport passengers
- Riding on a tractor as a passenger or helper
- Working inside a manure pit
- Working from a ladder or scaffold at a height of over 20 feet
- Handling or using explosives



Hazardous Occupations **Under 16 Agricultural Exemptions**

- Employed on farms owned or operated by parents
- Student Learners
- 4-H Federal Extension Service training Program
- Vocational Agriculture Training Program



OSHA

Occupational Safety and Health Act

- **Focus: safe and healthful working conditions**
 - Temporary labor camps
 - Field sanitation
 - Hazardous materials
 - Storage and handling of fertilizer
 - Tractor rollover protection
 - Reporting / Notification



OSHA

Agricultural Exemption

- **Immediate family members**
 - Parent
 - Spouse
 - Child
- **Fewer than 11 employees**



FIFRA **Federal Insecticide, Fungicide, and Rodenticide Act**

- Certification program
- Protects workers from pesticide exposure
 - Preparing
 - Applying
 - Entering



FIFRA **What Must You Do?**

- Restrict entry intervals
- Provide protective equipment
- Notify workers
- Provide decontamination supplies
- Provide emergency assistance
- Provide safety training and safety posters



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Migrant and Seasonal Agricultural Protection Act **What Does it Do?**

- Protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping
- Requires farm labor contractors to register with the U.S. Department of Labor



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MSPA **Who Does it Cover?**

- Agricultural employment seasonal/temporary
- Migrant worker
 - required to be absent from permanent place of residence
- Seasonal worker
 - not required to be absent



MSPA **Who Must Comply**

- Agricultural employers
- Agricultural associations
- Farm labor contractors
 - Must register and obtain certificate of registration



MSPA **Requirements**

- Wages
 - Paid when due
- Housing
 - Meets fed/state safety and health standards
- Transportation
 - Properly insured, operated by licensed driver, meets safety and health standards



MSPA **Requirements (Cont.)**

- **Disclosures**
 - inform about work to be performed, wages to be paid, period of employment, and whether workers comp or unemployment insurance is provided
- **Recordkeeping**
 - complete payroll records for all workers



MSPA **Exemptions**

- **Family business exemption (immediate family)**
- **Small businesses (500 man-day test)**
- **Some seed and tobacco operations**
- **Labor unions and their employees**
- **Limited farm labor contractors**
 - **Within 25 miles of permanent residence**
 - **Fewer than 13 weeks per year**



IRCA

Immigration Reform and Control Act of 1986

- Employers may hire/recruit only persons who may legally work in the U.S.
 - i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S.



IRCA

Employment Verification

- The employer must verify the identity and employment eligibility of anyone to be hired
- Failure to verify violates the act, even if the employee hired is not an illegal alien



IRCA **Employer Requirements**

- Obtain copy of individual social security number or authorization number established by INS
- Check employee documents establishing employee's identity and eligibility to work
 - U.S. passport, Resident Alien Card, etc.



IRCA **Employer Requirements**

- Complete I-9 within 3 business days of date of hire (date employee actually starts to work)
- If employee is hired for less than 3 days, I-9 is to be completed at time of hire



IRCA Employer Requirements

- Retain completed I-9
 - At least 3 years after the employee has been hired
 - OR
 - 1 year after employment relationship has been terminated (whichever is longer)
- Present filed I-9 to INS officer upon inspection



IRCA Rehires

- If within 3 years, may use previous I-9 information to verify
- Once verified, update previous I-9 to reflect date of rehire
- If previous I-9 authorization expired, employer must create new I-9



IRCA **Anti-discrimination**

- Prohibits employers from discriminating due to national origin, citizenship, or intended citizenship status
 - In addition to federal anti-discrimination laws
 - Does not apply to employers of 3 or fewer workers



Immigration and Nationality Act **H-2A Agricultural Guest Worker Program**

- Agricultural employers anticipate shortage in available labor
- Must apply 45 days before certification
- Must put out effort to recruit U.S. workers
 - Newspaper
 - TV
 - Radio



H-2A Application

- Employer files application with DOL stating:
 - There are not sufficient workers who are able, willing, qualified, and available, AND
 - Employment of aliens will not adversely affect wages and working conditions of similarly employed U.S. workers



H-2A U.S Workers

- Must hire qualified U.S. workers who apply up until 50% of work period is finished
- Cannot give H-2A workers better employment terms



H-2A **Wage Requirements**

- **Pay highest wage rate in effect at time work is performed**
 - **Adverse Effect Wage Rate**
 - **Prevailing**
 - **Agreed upon collective bargaining rate**
 - **Federal or State minimum wage**
- **May pay hourly or piece rate**



H-2A **Employer Requirements**

- **Guarantee worker at least $\frac{3}{4}$ of hours of workdays specified in job order**
- **Pay or provide for transportation**
- **Provide free housing**
- **Provide 3 meals at DOL specified costs OR provide cooking/kitchen facilities**



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What Else?

Additional Federal Labor Laws

- Family Medical Leave Act
- Title VII (discrimination)
- Americans with Disability Act
- Affordable Care Act
- Taxes



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Further Study

Online Resources

- Department of Labor (DOL)
 - www.dol.gov
- DOL Wage and Hour Division
 - www.dol.gov/WHD/