



FAQ: When People Work on Your Farm

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DISCLAIMER: This guide does not provide legal advice or establish an attorney-client relationship between the reader and author. Always consult an attorney regarding your specific situation.

Understanding farm employment law will help you build better relationships with the people who work on your farm. Noncompliance carries significant financial risks for the farm, as penalties can be hefty under this area of law. Each farm should carefully consider how employment law affects their operation.



Do I need to pay at least the minimum wage to everyone working on my farm?

The answer is an unqualified yes, if the worker performs any non-agricultural labor. Broadly, agricultural labor is the production and marketing of crops and/or livestock. Other tasks, like processing, packaging, marketing, or hosting farm events, may be considered non-agricultural labor. Non-agricultural laborers must be paid at least the federal minimum wage (and may need to be paid at least the state minimum wage, which may be higher than the federal wage).

What if the farm assigns only agricultural labor to workers? Then the answers get a lot more complicated. Many states do not require farms to pay the minimum wage to agricultural laborers; however, these rules only apply up to a certain size. Once a farm has the equivalent of six or seven full-time workers, minimum wage is required under federal law.

Farms that have less than six or seven full-time workers and assign only agricultural labor will need to do additional research to learn if they need to pay at least the minimum wage. Farm Commons has several state-specific resources and general guides to help farmers learn how employment law affects them.

FOR MORE INFORMATION: *Farm Commons' Farm Employment Law: Know the Basics and Make Them Work for Your Farm* contains information about federal and state minimum wage requirements. *Farm Commons* also has several state-specific guides to these requirements and other farm employment laws. To find out whether your state follows or does not follow federal minimum wage law for farmers, you can also ask a local agricultural attorney, the state agency responsible for enforcing your state's minimum wage laws, your local extension agent, or a local farmers' advocacy organization.



Do I have to purchase workers' compensation for everyone working on my farm?

If the farm assigns any non-agricultural labor to workers, the answer is very likely to be yes. Most states require that businesses provide workers' compensation to all workers. However, if the farm assigns only agricultural labor, it's possible the farm will not be required to purchase workers' compensation. Some states do not require farms to buy workers' compensation for ag laborers. State rules vary widely—some depend on how much workers on a farm are paid, while others depend on the number of employees on the farm, and still others on how many workdays there are in a year. Farmers must verify what laws and exemptions exist in their own states.

Some farmers choose to provide workers' compensation even if they aren't required to do so. Workers' compensation provides robust coverage. For example, if an employee is covered by workers' compensation, that employee cannot sue the farmer regarding the injury. By contrast, farmers who carry only a liability policy for worker injuries are sued by their injured workers (or their health insurance companies) regularly.

FOR MORE INFORMATION: *Read Farm Commons' Farm Employment Law: Know the Basics and Make Them Work for Your Farm*, as well as *Farm Commons' state-specific guides to employment law*. *Farm Commons' podcast "Getting to Work on Your Farm: Employment Law, Part Two"* has an introduction to workers' compensation. Your state's labor agency can tell you whether and which exemptions your state may have to its workers' compensation requirements.



Can I treat some of the people who work on my farm as independent contractors?

Hiring independent contractors can help farmers save on payroll and workers' compensation costs. But, if the worker is legally an employee, you could face penalties, fines, and the responsibility for back pay and back taxes at both the state and federal levels.

To determine whether a worker is an employee or independent contractor, both the states and the federal government use various “factor tests” to assess the situation. Although these tests vary from jurisdiction to jurisdiction, they generally hinge on how much control the worker has over their own work, equipment, and financial situation. The more control a worker has over their own circumstances, the more likely they're an independent contractor.

It may be useful to imagine an independent contractor on your farm as being like the plumber you hire to come and fix the pipes in your home. This person uses their own tools to do repairs, uses their own judgment about how to make the repair, and suffers a profit or loss on the job based on how they manage their plumbing business. The more a worker is like this plumber, the more likely they're an independent contractor.

FOR MORE INFORMATION: Read *Farm Commons'* *Classifying Workers on Farms: Employees, Interns, Volunteers, or Independent Contractors* to help determine what classifications workers will fall under in the eyes of the law. Listen to the *Farm Commons* podcast “*Getting to Work on Your Farm: Employment Law, Part One*” for a discussion of employees versus independent contractors. *Farm Commons* also has several state-specific guides breaking down differences between employees and independent contractors.



I've heard that many farms have interns or apprentices working for them. Is this a good idea? What laws apply?

Internships can be valuable for interns and farmers alike, but employment laws that apply to farm work—like minimum wage, workers' compensation, and tax laws—generally also apply to interns and apprentices.

In very limited circumstances, it is possible to have an intern who is not an employee. In a nutshell, the internship needs to be like a classroom learning experience and the farmer can't gain any economic benefit from it. Generally, if the

productive work of the farm business is being accomplished, the farm is gaining an economic benefit. The experience must be for the benefit of the intern rather than the employer, and the intern must understand what they're getting into. Such internships are sometimes facilitated by local universities or farm extensions. If, instead, you're just agreeing to help teach a beginning farmer the ropes, it's safest to assume that generally applicable employment laws apply to your relationship with that worker.

FOR MORE INFORMATION: *Read Farm Commons' Managing Risks of Interns and Volunteers to better understand and manage the legal risks of having interns and volunteers working on farms. Listen to the Farm Commons podcast episode "Getting to Work on Your Farm: Employment Law, Part Two" for the segment on interns.*



I've heard farms aren't allowed to have volunteer workers. Is that true?

Legally speaking, a for-profit business cannot have a volunteer. The law defines an employee as someone who is permitted to work for the business. A person allowed to work for a farm thus becomes an employee and their employer is subject to employment laws concerning them—including minimum wage, workers' compensation, and payroll tax requirements.

Of course, sometimes people come to the farm and aren't really a part of the farm business. A farm might have CSA members coming out to the farm solely to pick for themselves, like a customer visiting a market. Sometimes farmers allow volunteers to pick surplus fruit and vegetables for redistribution through food banks or other charities. In those situations, the law is unlikely to see those visitors as workers. This is because the farm is not in the business of picking food for charitable organizations, so the work of the business is not being done.

Things get trickier with "worker share" arrangements with CSA members or other community members and friends where labor time is required in exchange for farm products. In that context if workers are picking tomatoes that will go into CSA boxes, that is the work of the business. Those arrangements are likely to be seen as employment relationships, which means that many federal and state employment laws could apply.

FOR MORE INFORMATION: *Read Managing Risks of Interns and Volunteers to better understand and manage the legal risks of having interns and volunteers working on farms. Listen to the Farm Commons podcast episode "Getting to Work on Your Farm: Employment Law, Part Two" for the segment on volunteers.*



I provide housing and/or food to some of the people who work on my farm as part of their wages. Do I need to pay payroll taxes for this? Are there other requirements to follow?

If you pay workers through in-kind payments like meals and housing, you need to follow strict rules including some that dictate how to assign a dollar value to the meal, housing, or other form of payment. Some states also limit the items that qualify as payment. For example, many states will not allow wage payments in the form of groceries, although they do allow prepared meals as payment. And you need to keep detailed records. In-kind arrangements often must be in writing, signed by both the employer and the employee.

In-kind arrangements are taxable just like regular wages, with some exemptions for payroll taxes when noncash wages are paid for agricultural labor. Because of the complexity of claiming this exemption, and because using the exemption carries the risk of an audit by the Internal Revenue Service, we strongly recommend that any farmer choosing to take advantage of the exemption seek the help of an attorney or accountant along the way.

Providing housing may subject you to federal Occupational Safety and Health Act (OSHA) inspections, as well as Migrant and Seasonal Agricultural Worker Protection Act (MSPA) requirements that set specific housing standards.

FOR MORE INFORMATION: *Farm Commons has three guidebooks you'll want to read, available at farmcommons.org: Paying In-Kind Wages: The Federal "Commodity Wage" Exception to Payroll Taxes; Paying In-Kind Wages: Migrant Worker Laws and Providing Housing; and Paying In-Kind Wages: Federal OSHA Impacts when Providing Housing. And you should definitely speak with an attorney about in-kind payments.*

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About Farm Commons

Farm Commons is a nonprofit organization dedicated to empowering sustainable farmers with the legal resources they need. We create practical, user-friendly educational resources. We also support sustainable farmers in proactively implementing legal best practices, collaborating on innovative legal solutions, and encouraging each other as leaders creating the change they seek.



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