



FAQ: Agritourism 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.

Educational or recreational activities on your farm, u-pick operations, wedding facilities, and other events can be wonderful ways to deepen the connection between farmers, customers, and community. Agritourism ventures can build buyer loyalty, increase sales, and increase peoples' understanding of where their food comes from—all while helping the public understand why sustainable farming is important!

Like all other farm enterprise activities, agritourism ventures have risks. Good risk management can help maximize the value of farm events while minimizing any legal risks of the venture. The questions below are an excellent place to start in striking that balance.



My farm operation is allowed under my local zoning ordinance. Does that mean an agritourism venture is allowed as well?

The short answer is no. Even where a farm operation is allowed, zoning ordinances can prohibit agritourism ventures. This is because agritourism is often classified as an entertainment, educational, or other commercial, non-agricultural use of the property. These other uses may not be allowed in agricultural, residential, or urban zones. More likely, agritourism ventures will require an event permit, conditional use permit, or even a variance before they are allowed. Securing event or conditional use permits is generally fairly easy, so long as the farmer allows enough time for the process.

Farmers will need to do more research to learn their specific zoning obligations. One option is to call the local zoning authority (which may be a city, town, county, or other unit of government), explain the proposed venture, and ask if it's allowed. Other farmers may prefer to research the zoning code themselves. Many local entities have their zoning codes online. Start by discovering in which code the property falls, and then read up on which activities are allowed or disallowed in that zone. Other options include talking with a local attorney or asking a reference librarian for assistance.

FOR MORE INFORMATION: *Farm Commons has a short guide, Hosting Safer, More Legally Secure On-Farm Events, with information on zoning codes on pages 5–7. Farm Commons also has a helpful video tutorial, “Hosting Safe, Legally Secure Farm Events.” For help interpreting zoning language, zoning office staff and attorneys are excellent resources.*



Does agritourism change my legal obligations regarding employee wages and workers' compensation?

Yes, agritourism can change the farm's employment law obligations. If they don't already, most farmers will need to pay at least the minimum wage and provide workers' compensation once they start an agritourism venture.

In some states, farmers take advantage of exceptions that allow them to pay less than the minimum wage or go without workers' compensation. Farmers need to know that these agricultural exemptions to minimum wage and workers' compensation requirements may not apply once they begin agritourism events. Agritourism is typically considered a commercial activity, not an agricultural activity. This area of law can be complex and farmers should consult our additional resources for more detail.

Where legal research is a barrier, there is a risk management strategy available: pay workers at least the minimum wage and provide workers' compensation. Failure to do so if it's required by law can result in heavy fines and obligations for back wages, and there is no penalty for doing so if it turns out not to be required.

FOR MORE INFORMATION: *Farm Commons has several guides on farm employment law. Many explain how employment law changes for agritourism. We have state-specific guides as well as general guides such as Farm Employment Law: Know the Basics and Make Them Work for Your Farm and Tax and Paperwork Checklist for Hiring an Ag Employee. It's also not a bad idea to talk to a local attorney with experience in farm employment law about specific questions for your situation.*



Does agritourism change the way I do tax reporting and accounting?

Yes, agritourism activities are handled differently than production agriculture activities with respect to federal taxes. Agritourism activities are reported in accordance with IRS Schedule C, Profit or Loss from Business. This is because the IRS considers agritourism a “non-farm” business activity (even though it occurs on your farm).

This can be confusing to farmers, because “farming” income and losses are reported on IRS Schedule F. As the IRS sees it, farming includes things like growing and harvesting crops, raising livestock or poultry, and preparing unmanufactured farm products for market and delivery to market. On the other hand, hosting weddings and corn mazes, for example, are considered non-farming activities.

For example, if a farmer hosts a wedding in her barn and charges a fee, the fee would be included on the Schedule C. Likewise, wedding-related expenses (for example, event insurance or construction costs to remodel the barn for weddings) are also included on the Schedule C. The results of the Schedule C are then carried to the farmer’s regular tax return form, just as the Schedule F results are generally transferred to the Form 1040.

FOR MORE INFORMATION: *Farm Commons has published a Value-Added/Agritourism and Taxes Tipsheet with information on how to report both farm and non-farm business gains and losses with respect to agritourism and value-added products. The Internal Revenue Service has two related guides: Publication 535, Business Expenses, and Publication 225, The Farmer’s Tax Guide. Attorneys and tax accountants can help guide you through the complex intricacies of accounting for income and costs related to agritourism ventures.*



Am I liable if someone is injured at my farm event?

It’s usually impossible to predict who will be responsible for potential injuries at farm events. It all depends on the details: what, where, and how. Fortunately, farmers don’t need to know complex details behind legal liability for injuries. The best and easiest way to manage legal liability is to make sure the farm has insurance coverage and to follow the terms of the insurance policy. Under a good policy, the insurance company will provide an attorney to defend the farm. Then, it’s the

attorney's job to understand and present the legal arguments that vindicate the farm. Insurance is valuable even for the safest farms. Even if the farm did nothing wrong, that needs to be proven in court.

Although farmers typically have general farm insurance policies that cover farm-related injuries, these policies often do not cover agritourism. Often, farmers have to do a little research and talk to their insurance agent to learn if they have coverage for their envisioned event. If not, the insurance agent is also the best source for getting coverage.

A few options are generally available. A special event endorsement or rider may work best for the occasional event. If the event is held frequently, a commercial line of insurance may be a better choice. A commercial insurance policy is designed to cover injuries extending from the business as a whole, not just the farm operation. Farmers can often add a commercial policy to their farm policy at an affordable rate.

As part of the policy terms and conditions, insurance companies may require specific precautions such as repairing infrastructure, posting signs, or providing other warnings—things that are probably good ideas anyway. Because the insurance company knows the ins and outs of legal liability in detail, they assist their customers in minimizing the chance of liability.

FOR MORE INFORMATION: *Read pages 14–16 of Farm Commons' Hosting Safer, More Legally Secure On-Farm Events, and watch the video tutorial "Hosting Safe, Legally Secure Farm Events." For detailed information on insurance, see our guide Managing the Sustainable Farm's Risks with Insurance. For risk-reduction strategies, extension agents often have detailed information about safety measures for agritourism and on-farm events.*



Do I need to collect sales tax for tickets, meals, and other items sold as part of my agritourism venture?

Farms offering agritourism options may need to collect sales tax on tickets or fees, meals, and items sold. Most states exempt raw agricultural products from sales tax requirements, so farmers may not be experienced with sales tax. However, agricultural or grocery exemptions often do not extend to entertainment, services, meals, crafts, and other components of an agritourism venture.

If sales taxes are required, the farm will need to open a tax account—something farmers may already have done if they have engaged in other taxable sales. Once a sales tax account has been opened, withheld taxes may be deposited into the account on a regular basis. The state department of revenue generally provides detailed information on how to open these accounts and remit taxes.

FOR MORE INFORMATION: Professional accountants can be great sources of information on tax obligations and on how to efficiently collect and pay sales tax. Many states publish sales tax guides for farms, grocery stores, and food service establishments. These guides explain requirements and exemptions in detail. Farmers can also contact their state's department of revenue and their city government for specific information about tax policies.



If I host on-farm events, what accommodations do I need to make for people with disabilities?

The Americans with Disabilities Act prohibits businesses that serve the public from discriminating against people with disabilities. This means that business entities that host public events must make sure they don't exclude people with disabilities. For example, the farm should provide a way for people in wheelchairs to experience the event. Of course, things like accessible parking spaces, ramps, wide paths, and accessible picnic tables meet that requirement. But, simple things such as offering assistance pushing a wheelchair uphill or carrying a customer's items to a vehicle are also reasonable accommodations in many instances. Failure to provide reasonable accommodations can lead to lawsuits and fines.

Simple and low-cost solutions are often available for insuring access to disabled persons. Where major renovations are necessary, tax breaks may be available for making ADA-related access improvements. Since each farm event is different, call the Federal Department of Justice's ADA hotline with specific questions about their events and facilities. Each state has local Small Business Administration offices that can also answer questions.

FOR MORE INFORMATION: Information on ADA compliance is found on pages 7–9 of the Farm Commons guide *Hosting Safer, More Legally Secure On-Farm Events* and Farm Commons' video tutorial "Hosting Safe, Legally Secure Farm Events." The Department of Justice has a guide for small businesses, titled *ADA Guide for Small Businesses*, and a fact sheet on tax incentives, *Tax Incentives for Improving Accessibility*. The Department of Justice's toll-free hotline number is 800-514-0301. The Small Business Administration (SBA) also helps businesses understand how to comply with the ADA, and they have offices throughout every state. (Find one near you at www.sba.gov.)

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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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