



# Decoding Your Food Safety Liability Coverage

00;00;03;09 - 00;00;13;10

Eva

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Eva

I'm Eva

00;00;15;04 - 00;00;15;22

Kate

and I'm Kate.

00;00;16;12 - 00;00;27;19

Eva

And each episode we explore real legal issues faced on farms every day, providing key knowledge and tangible solutions to help you grow a thriving agricultural business.

00;00;27;21 - 00;00;42;27

Kate

From managing liability to navigating tough conversations with landlords and neighbors. We've got your back. Let's get started.

00;00;43;00 - 00;01;08;22

Eva

Hi, everyone. Welcome to the Farm Commons podcast. We're back today to explore a very important topic that can lurk in the back of the minds of farmers and ranchers, and that is food safety liability. Now, these words may not resonate with you as a producer. Those words exact words, because these are the words that insurance agents and attorneys typically use.

00;01;08;24 - 00;01;35;19

Eva

But I'm pretty sure you've got your own words that you use for this issue. So essentially, food safety liability is the risk of someone getting sick from the food you've produced. So those might be some of the words that you have in your mind. And I say that this topic may be lurking in the back of your mind because you farmers and ranchers out there are generally doing everything that you can to produce and sell safe foods.

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Eva

However, you know, there's always the chance that something can go wrong and because of that, fear can linger. Of course, insurance is a key risk management strategy here to both cover a food safety incident and provide peace of mind in the meantime. However, food safety liability policies are typically clear as mud. So Rachel is back with us to help decode how food safety liability coverage works so that you can face and tame any worries that may be lurking in the dark corners of your mind. Hey, Rachel.

00;02;14;19 - 00;02;42;12

Rachel

Hi, Eva. Good to be talking about this issue again. I'm looking forward to it. Now, specifically today, I'm excited to talk about the specific angle of what do you need to know about food safety, liability insurance coverage. So, generally speaking, of course, our conversation today is going to be especially helpful for folks, whether you already have it in one, to understand the insurance policy you're, you know, currently paying for it.

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Rachel

But also, if you don't have it, this conversation will help you figure out if this is something you want to pursue, if it's going to be on your priority list to get this kind of coverage. Another goal, of course, is to help you tame those worries, help you sleep good at night and make decisions that are really right for you, that, you know, often when we're talking about this subject, a good place to start is, well, exactly what food safety incidents can occur.

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Rachel

You know, insurance policies handle the different types of incidences differently. How's that sound?

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Eva

Yeah, sounds great. Rachel, Let's do it. So we'll cover a couple different types of food safety incidents today. To give you an idea of how these these policies work. But let's begin with the big one. The the the incident that folks normally think about right away, which is an incident resulting in a foodborne illness that somebody gets from eating your food.

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Eva

So typical culprits of a foodborne illness can more easily be remembered with the acronym SEL which funny not funny could be pronounced as Sel, you know, like selling food, not trying to sell the SEL. SEL stands for salmonella, E coli and listeria. So three typical culprits of foodborne illness in a food. And so these these bacteria are dangerous because they're sneaky.

00;04;19;17 - 00;04;57;08

Eva

Salmonella can show up in, you know, fresh greens harvested from the farm that are eaten in a salad and unsuspecting kale that's chopped up for a side of, say, slaw

can be covered in E coli. And listeria can make its way into caramel apples eaten after, say, a farm tour. So given worker hygiene, irrigation, water harvesting and packing equipment and wildlife, visitors to the farm are all possible vectors that are capable of transmitting pathogens.

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Eva

You know, cell shows up. And so whatever the causes may be with farm grown products, sell FCL, salmonella E coli, and listeria is what we absolutely want to avoid when making sales.

00;05;13;28 - 00;05;43;05

Rachel

Definitely. Definitely can't emphasize enough that following best practices for reducing contamination is totally vital and effective in helping to prevent these incidences. But we also know bad things happen to good people and sometimes stuff still sneaks through. So risk management is really important for all of us. When you take a look at the big picture, the Centers for Disease Control, the CDC, they estimate that each year 48 million people get sick.

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Rachel

And and, you know, a smaller percentage of those, only 128,000 are hospitalized. But still 3000 people die from foodborne illnesses in the United States. So this stuff really does matter and has a large impact overall. Admittedly, most of these incidences are minor. But no matter what, this is a subject that can really haunt produce farmers. You know, we all have heard these stories, as you recall the case.

00;06;11;21 - 00;06;42;09

Rachel

33 people died after eating listeria tainted cantaloupe in Colorado back in 2011. If you also follow that story, you might recall that the farm was owned by two brothers and they eventually pled guilty to misdemeanor counts of adulterated food and interstate commerce. They paid, you know, large amounts of money in

restitution to community service. So this stuff, it oof, you know, bad it has an impact.

00;06;42;11 - 00;06;44;29

Rachel

If anyone didn't know that already. Yeah.

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Eva

Oof is right. It's definitely like the word sounds that encompasses food safety, liability. Oof! And so there's also the hepatitis A outbreak recently, earlier this year, Rachel, from Frozen Strawberries. That happened like April, you know, were just in mid-May. That was just a last month, right? April. May, June.

00;07;08;19 - 00;07;16;22

Rachel

Exactly. Yeah. You know, throw a rock in the air. You probably hit a food safety incident, I guess. So, yeah, they happen for sure.

00;07;16;24 - 00;07;42;08

Eva

And the bottom line here is that food safety risks pose real legal risks for farm businesses, like what happened with the brothers farming the cantaloupe with the sale of your farm products, Whether they're raw or processed, comes the risk of people getting sick from consuming them. And that has the potential to include fines and penalties that can really threaten a farm's ability to thrive or even survive.

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Eva

And that is why implementing food safety protocols on your farm is so important. And it may also be required if your operation falls within FSMA regulations. So for many of you out there, this probably is not new news, but hopefully it's a helpful reminder. But FSMA regulations, that's a story for another day because we're here

to help you understand the particular role that insurance can play in managing the risks here.

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Rachel

Yep. I mean, you know, of course, folks are understanding and following the regulations. Right. But even then, we still need insurance to cover us, specifically food safety liability coverage in some form or another. You know, like a lot of conversations that from comments we get that we got the good news and we've got the bad news. What do you say we we start with the bad news. What do you. That's not good.

00:08;39;09 - 00:08;41;14

Eva

Yeah. And on a good note.

00:08;41;16 - 00:08;43;04

Rachel

Right.

00:08;43;07 - 00:08;53;20

Eva

Yes. And strong. But, Rachel, I feel like you are often the bearer of bad news. So how about I spilled the tea on this one and you show the good stuff later?

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Rachel

I love it. Finally. Finally, I get to be the good guy. You go first.

00:08;58;14 - 00:09;47;18

Eva

Okay, Well, do it. Well, do so. Insert dramatic pause here. Sell ACA, the risks of salmonella, E.coli and listeria, which can all spread disease are typically excluded from coverage. Yup. I said it. That is. That's the bad news. Salmonella, E.coli and

listeria are typically excluded from insurance coverage and a typical such exclusion in a policy will go something like, you know, air quotes, bodily injury or air quotes, property damage arising out of the transmission of a communicable disease by an air quotes insured is excluded.

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Eva

And these exclusions may, you know, they can be found lurking anywhere in your policy. Typically your policy will say within like the actual body of the text, the air quotes agreement that what is covered and it will list out numerous types of incidents that are not covered. And so those are your exclusions. And the the communicable disease provision is usually hidden in the exclusions section somewhere.

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Rachel

Yep. I hear you. Bad news. Buy it to folks listening in at home, you're probably thinking, I mean, communicable disease. Sure. You know, I've heard of hepatitis A, That's a communicable disease. I know. You know, you can get that from frozen strawberries, clearly. But like listeria. I mean, when I think of listeria, I think cheeses and lunchmeat, it's not it's not a disease in the classic sense that is communicable.

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Rachel

We don't primarily get it from other people in a in the way that we think about listeria. So does that does that help? Does that mean, okay, no coverage for hepatitis A? But but I get I get coverage for listeria, right? Well, no, I guess I guess the bottom line is that no matter what I do, I can't avoid being the bearer of bad news because there's usually another exclusion.

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Rachel

The bacterial and or fungal contamination exclusion. So if the bodily injury occurs because of bacterial contamination, no insurance coverage provided. So I guess you don't have good news yet.

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Eva

Not yet, but it's coming. But for now, that is bad news. Rachel. And I do think many people will find that shocking. You know, you're buying a policy. You think you're expecting it to cover you for a food safety incident. And then there's these exclusions of the, you know, most popular causes of food safety incidents. So so a few listeners find this shocking.

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Eva

That's normal. This this is we at Farm Commons were surprised to find this as well. And so a lot of common fears surrounding contamination and food from bacterial factors, communicable diseases. And so because they happen. Rachel, do you really you know, they've happened so commonly. Do you really think most folks are actually excluded for coverage from hepatitis A and S.L., Salmonella E coli, listeria in their policies?

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Rachel

You know, you and all of our listeners have good reason to doubt what we're saying. If you said, well, I mean, look, this is why I bought this insurance, how could there not be coverage for this? You know, we are we have done a lot of research in our and our eager to stand by our statement that most folks are not covered.

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Rachel

But I want to give you some of the more nuanced details behind that. The honest, unvarnished truth is that we as attorneys have from comments we are not certain that that coverage is not provided because the policies themselves are written with



language that is hard to decipher. It is hard to determine its effect on the policy as a whole or to understand exactly what these exclusions are intended or will exclude.

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Rachel

We've we've read dozens of policies. We have reached out to underwriters to get clarification. We have talked to insurance companies and we have turned up only more confusion. And it's not just us. It's not just from comments. It has this experience. I've spoken with a law professor who has also invested significant time and energy into researching food safety coverage, and he says the same thing.

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Rachel

Coverage is highly uncertain with these common exclusions. He had the same experience not getting much guidance from insurance companies themselves about what is the intention and the effect of these exclusions. So we we lead by saying, look, you probably don't have coverage because that's really what you should assume. If this language is ambiguous, you can bet the insurance company is going to try to argue that it excludes coverage.

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Rachel

So that's going to be their talking point. You can have a talking point that's like, no, this this should be read to include coverage, but you're going to fight about it. You know, this this is a really uncomfortable place to be. And we have to find our way out of it. So I guess some good news I do have is that, you know, the way out of it is to talk to your insurance agent.

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Rachel

If you have a product liability policy that specifically says product liability policy or if you have a commercial line of coverage as a food distributor, you might be in a better spot than if you are. If you just have a farm liability policy, you may perhaps still have coverage for communicable diseases like hepatitis A or bacterial

contamination, but the language is still confusing in those policies. So your chances are a little bit better if you are communicating clearly with your insurance agent and trying to get everything in writing as to what the extent of your coverage is.

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Eva

People are working on this, not just us, that that law professor and other educators trying to get clarity on this so that you producers can have some confidence in the insurance that you're putting your hard earned money into and the trust that you have while managing your business. So I think that's yeah, that's great advice, Rachel, Talk to your insurance agent and be prepared to have your speaking points that defend your interests and in coverage for being covered for a food borne illness.

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Eva

And so, you know, we're kind of like coming out of the dark here from the bumper news heading towards that good news that we promised. But you did mention the types of policies, Rachel, a product liability policy or a commercial food distributor policy, maybe positioning farmers in a better spot for coverage. Now, I'm curious, though, about farm liability insurance policies and and those those being the ones that typically include the communicable disease or bacterial contamination exclusions.

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Eva

So we're officially coming out of the dark now into the light. So what does that farm liability policy typically cover a farmer for with regards to food safety?

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Rachel

Great question. Three Encouraging words to remember. Foreign object contamination. Foreign objects. Think if you're loose, grows your pieces of glass, your stones and pebbles. Those can make their way into foods, especially when

we're working on the in the outdoors. And of course, if they do, they can cause bodily injury. And those generally are covered we find, in a common farm liability policy and of course also in your product liability policies.

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Rachel

So typical farm liability policies, they have a coverage for, you know, the odd nail or or pebble that falls into the salad mix. So in the policies that that we've reviewed here at Farm Commons and stuff, that's basically not food that's in food. Good chance of coverage for that.

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Eva

MM Oh that is good news Rachel, because those things do happen. That happened when I was younger, actually not on a farm but at a diner. My mom and I were getting pancakes when I was little and she cut into her stack and there were some shards of glass that had, I guess, made their way into the batter.

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Eva

But luckily she didn't eat the glass. You know, she saw the glass before she ate the pancakes. And so it kind of happened, though. And I guess there may be a good chance that the restaurant's liability policy would have had some coverage for that. You know, foreign object contamination.

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Rachel

Exactly right. Yeah. It's super lucky that your mom didn't actually eat that for her own sake. I'm sure that the restaurant was relieved as well that that that no one Athos Pancakes. So yeah. And the thing with foreign object contamination is that this is not that likely to happen. I think most of us can say that there's never been glass in food that we have have eaten or loose screws or nails.

00;18;37;19 - 00;19;04;07

Rachel

But you know, it is something that's worth having some protection for some parts do farms do have, you know, glass and other machinery screws that can get, you know, shaken off of the equipment they're holding and fall into, you know, your your salad mix. But, you know, it's it's it's less likely in a raw agriculture product like a bunch of radishes because they're heavy, they fall to the bottom.

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Rachel

You're going to see them when you're tossing the salad. All of those all of those those issues make it much less likely that somebody will get deeply hurt from this, even things, even if they do end up eating a stone or a pebble, it doesn't tend to harm your digestive tract. You might just chip a tooth and have, you know, an injury like that.

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Rachel

By contrast, you know, our our things like salmonella and listeria, The injuries involve like a lifetime of dialysis to address kidney failure. So, you know, it's it's a bummer that this thing that, you know, is not as impactful on on families and is less likely to happen is the thing that you get coverage. But it could be part of why you can get coverage for that, too.

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Eva

Yeah, for sure. That's helpful to parse out the likelihood of the foreign object contamination risk versus the the likelihood of a and the impact of a foodborne illness from a bacterial vector factor. Nasty little tiny bugs that we can't see that do bad things to us.

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Rachel

They don't fall out. Yeah, that's right.

00;20;15;21 - 00;20;49;22

Eva

More insidious. Yeah. So there's one more insurance provision to consider regarding foodborne illnesses, and that is food safety issues that result from a property loss risk. And so this this is like an incident that results from, say, like a big storm coming through, a tornado, a hurricane or other quote unquote, acts of God, where, for example, a tornado picks up sewage and blows it into the barn or the walk in cooler.

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Eva

And so there's there's some property damage that results in contaminated food. And so you're likely to have coverage for a loss of inventory under a farm property policy. So so actually, this is like an insider tip here. We'll be releasing some new guides on farm property insurance later this year. So be on the lookout for those if this is a topic of interest to you.

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Eva

But back to our scheduled programing right now, food safety incidents, If a storm blows that sewage into your production area and you lose your produce due to that contamination, you can recover some of that value without actually selling the product because if you sold it, you know, folks would get sick or they're the high risk of folks getting sick.

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Eva

And so you could be covered through property insurance. Now, on the flip side, if contamination occurred and you didn't know about it and you saw the produce anyway, there is still a chance that you might have coverage. So in this case, you you may be covered from both a property standpoint of the loss of your and your farm inventory because of contamination.

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Eva

And then also from a liability standpoint, if you didn't realize your farm products were contaminated, you sold them anyway and someone got sick, that would be the liability aspect there.

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Rachel

Absolutely. Yeah, it makes more sense. I think the bumper part of that, though, is that floods are what's most likely to cause the transfer of sewage into farm products. That then means that you can't sell it. And unfortunately flood coverage is usually handled differently. You, Eva, were specifically mentioning, you know, like tornadoes and thunderstorms and things like that.

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Rachel

And that's that's it's a lot less likely that that the tornado or the the thunderstorm is going to blow contaminated, you know, water into your your product. But if you do good news, more likely you will have coverage. So, you know, we've been sharing these trends from across insurance policies that we have reviewed and what's in, you know, the legal academic literature as well.

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Rachel

But it's worth reiterating that every insurance policy can be unique. And so, you know, the number one recommendation for you who are listening is, is that you should schedule a meeting with your insurance agent. You should ask them these specific questions. Am I covered for foodborne illnesses resulting from communicable diseases or bacterial contamination? And I ask those specifically, ask them separately and ask about hepatitis B, salmonella, E.coli, listeria.

00;23;43;25 - 00;23;59;19

Rachel

Then ask about foreign object contamination. And lastly, food is a food safety issue that could result from, you know, an act of God that causes you, you know, to lose your property or have it be contaminated. So talk to those insurance agents.

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Eva

Great advice, Rachel. Best practices there. Ask your agent for what you're covered for, and that applies across the board. Food safety, also any other type of insurance that you are spending your hard earned money on. And ideally the agent will point you to the part of your policy that specifically lists the exclusions so that you can see what is not covered and plan your budget and your, you know, just how you run your business accordingly.

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Eva

So after your meeting or phone call with the agent, another best practice is to follow up with your agent in writing. So an email about what you understand about your coverage based on the information that was shared with you in your conversation, you're essentially creating a record of of your conversation with them and the coverage that they confirmed you have.

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Eva

And so if you want to learn more about food safety, liability before you have that conversation with your agent, you can read [The Farmer's Guide to Food Safety Liability on Farm Comments](#). Our website, which will link in the show notes.

00;25;03;28 - 00;25;27;23

Rachel

Yep. Yep. So do that. We will love that action step. But I do want to end on a little bit of a big picture note. This isn't this isn't cool, right? It's not great. It's not helpful that farm safety, food safety liability policies typically exclude coverage from the top and most significant risk factors that cause this illness in the first place.

00;25;27;26 - 00;25;55;02

Rachel

And that's not good. The product liability policies, commercial distributor policies aren't necessarily better. It, you know, will require some advocacy to change this. And there are some ways we just want to drop right at the end here, some strategies going forward that you might keep in mind. Some folks have argued that federal support for subsidizing food safety liability coverage might help akin to crop and livestock insurance.

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Rachel

We can also advocate for better funding for food safety research so that we can understand the authentic risks of ACL, of salmonella, E.coli and listeria. Because some of the some of the difficulty securing a policy is the difficulty understanding exactly how likely these incidences are to happen from which practices. And also worth mentioning, we can advocate for a health care system that supports consumers in getting access to care in a way that helps them understand why they got sick in the first place, so that we can we can get better research and better data, which leads to better and more accurate pricing and design of insurance plans.

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Rachel

It's all connected. Maybe we'll talk more about that some time, but we just want to make sure that we drop the few ideas for what are long term solutions to this significant problem that we're that we're facing. So thanks, everybody for listening and thanks y'all.

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Eva

Till next time.

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Kate



We're so glad you joined us for this episode of the Farm Commons podcast. If you are looking for more resources on your burning farm law, questions, visit our Web site at Farm Commons, dawg for a variety of workshops, guides, checklists, tutorials and more. You can also email your questions and comments to [info@farmcommons.com](mailto:info@farmcommons.com). Stay tuned for our next episode and until then, keep growing.