



December 2013

CAPITAL RESOURCE CONSERVATION AND DEVELOPMENT AREA COUNCIL, INC.

---

# **GUIDE TO INTERNSHIPS AND EMPLOYMENT FOR PENNSYLVANIA FARMS: *AN OVERVIEW OF LEGAL CONSIDERATIONS***

---

401 EAST LOUTHER STREET, CARLISLE PA 17055 (717) 241-4361

# TABLE OF CONTENTS

ACKNOWLEDGEMENTS	1
ABOUT THIS GUIDE	1
BACKGROUND	2
SECTION ONE: LEGAL DEFINITIONS OF INTERNSHIP, APPRENTICESHIP, AND EMPLOYMENT	
1.1 INTERNSHIP	3
1.2 APPRENTICESHIP	4
1.3 EMPLOYMENT	5
1.4 ADDITIONAL RESOURCES ON LEGAL DEFINITIONS	6
SECTION TWO: OVERVIEW OF EMPLOYMENT LAWS FOR FARM WORKERS	
2.1 WAGE & HOUR LAWS	7
A. Minimum Wage & Exemptions	7
B. Defining Agricultural Labor	7
C. Overtime Pay Exemption for Agricultural Labor	8
D. Minimum Wage Exemption for Small Farms/500 Man Day Exemption	8
E. Minimum Wage Compensation Including Deductions	9
F. Additional Resources on Wage and Hour Laws	10
2.2 HOUSING CONSIDERATIONS	
A. Understanding the Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA) and Exemptions	11
B. Understanding the Occupational Safety and Health Act (OSHA) and Exemptions	11
C. Defining a Seasonal Farm Labor Camp in Pennsylvania	11
D. Additional Resources for MSWAPA, OSHA, and Housing Regulations	12
2.3 WORKERS' COMPENSATION	12
A. Additional Resources for Workers' Compensation Law	13
SECTION THREE: EMPLOYMENT TAX LAWS, LIABILITY, AND HIRING PROCEDURE	
3.1 OVERVIEW OF EMPLOYMENT TAX LAW	14
A. Understanding FICA and Exemptions	14
B. Understanding FUTA and Exemptions	14
3.2 LIABILITY CONSIDERATIONS	15
3.3 HIRING PROCEDURE AND CHECKLIST	16
CONCLUSIONS	17

## **ACKNOWLEDGEMENTS**

This guide draws upon the wealth of resources, dedication, and passion many other organizations and individuals have committed to the difficult task of aligning the realities of small scale agriculture today with current labor laws and regulations. Individuals and organizations who provided significant assistance to this research project include: Rachel Armstrong, founder of Farm Commons; Stuart O'Neill, Executive Director of the Rogue Farm Corps; Judith Gillan, Director of the New England Small Farm Institute; PSU Cooperative Extension staff including: David L. Swartz, District Director and Senior Dairy Systems Educator, Tianna DuPont, Educator in Sustainable Agriculture, Winifred W. McGee, Senior Extension Educator. Also, thank you to Ross Pifer, Director of the Agricultural Law Resource and Reference Center at the Penn State Dickinson School of Law; Cynthia James, Food Production Specialist with the Rodale Institute's ASC Program, and to the Natural Resources Conservation Service for funding this project.

Special thanks to Heidi Witmer for research and development of this guide

## **ABOUT THIS GUIDE**

This guide is an overview and compilation of resources on the legal considerations of farm employment. It is not intended to be legal advice or to take the place of the professional services of an attorney or accountant. This guide is also not a definitive or comprehensive resource for agricultural employment law. Individuals and organizations are advised to obtain legal and technical assistance in their community/locality to understand the application of the law to their specific circumstances.

The resource guide is intended for Pennsylvania farmers who currently have or are looking to design an on-farm internship or employment program. Wading into the complicated world of farm employment law is no small task and many farmers have taken an "ignorance is bliss" approach. However, as small scale and diverse farming enterprises have become a growing force in Pennsylvania agriculture the amount of regulatory scrutiny has increased. While the challenge of compliance can seem daunting, this guide offers an accessible overview of employment law as well as links to other helpful resources and innovative models.

Information contained in this guide is divided into three subsections: legal definitions, guide to employment law, and an employer's responsibilities upon hiring a worker. As frustrating as it can be, it is important to acknowledge there are often no black and white interpretations of employment law as it relates to on-farm labor as states and even localities interpret and enforce laws differently. Equipped with this information, you can begin to determine your solution to the challenge of compliance. This guide has been developed with an awareness of the value of on-farm internships both for farms and the future of agriculture and with a desire to support farms engaging in this work.

## **BACKGROUND**

Across the country and for generations, young people interested in learning to farm have found farmers willing to exchange room, board, and a small stipend for their time working and learning on the farm. As interest in farming and food production grows, so does the popularity and awareness of this arrangement. It seems like a simple - even ideal - solution to the need to train the next generation of farmers. However, in the US, this simple arrangement does not align easily with the laws designed to protect employees and non-citizen labor from exploitation. Under Pennsylvania and federal law, most farm interns or apprentices are seen as employees and are therefore covered by the protections of the Fair Labor Standards Act and other state and federal regulations that make them entitled to receive minimum wage, overtime pay and other protections.

There are many individuals and organizations working to bridge the gap between the current realities of small farmers and employment laws in three basic ways – designing legally-vetted internships, working to change the law to acknowledge the unique situation of small farms, and most fundamentally, identifying the barriers to profitability of small farms that restrain labor options. Through gaining an understanding of the basic legal definitions and relevant laws, you can decide which path you want to take.

## **SECTION ONE: LEGAL DEFINITIONS OF INTERNSHIP, APPRENTICESHIP, AND EMPLOYMENT**

One of the most confusing and surprising aspects of agricultural employment law is the gap between the common understanding of these terms and the legal definitions. This section provides a basic overview of the legal definitions with links to more in-depth resources on these concepts.

### **1.1 INTERNSHIP**

The US Department of Labor (DOL)<sup>1</sup> has established six criteria to define an internship (which would not require a for-profit business to pay wages) versus an employment position, they include:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

The criteria above apply to for-profit farms with interns who are not working through an educational institution. Different rules apply under state and federal law for internships under a nonprofit organization or individuals also enrolled in school at the same time. If a farm is paying its workers minimum wage they may use the title “intern” without concern for compliance with the six criteria above. While most for-profit farms find it challenging to manage an affordable internship or apprenticeship program that complies with these criteria, some collaborative models are beginning to emerge, most notably the [Rogue Farm Corps](#)<sup>2</sup>. In these models, a group of for-profit farms join together to collaboratively host interns while another organization, often a non-profit, coordinates the educational aspect of the interns’ experience. Keep in mind that even if someone else coordinates the educational program, the farm must also comply with criteria 2 and 3. That is, it may not benefit and cannot displace employees, that burden may be difficult to overcome.

### **1.2 APPRENTICESHIP**

While many farm programs use the terms internship and apprenticeship interchangeably, there is a significant legal distinction between the two titles, notably

---

<sup>1</sup> <http://www.dol.gov/whd/regs/compliance/whdfs71.pdf>

<sup>2</sup> The [Rogue Farm Corps](#), located in the Rogue Valley of Southern Oregon and founded in 2003 by a community of Southern Oregon farmers, launched one of the first legal, bona fide on-farm internship programs in 2010.

“apprenticeships” require a registration and approval process with regulatory agencies.

The [Farm Commons](#), a nonprofit legal services organization which focuses on providing farmers with proactive legal counsel, has recently drafted helpful and accessible legal overviews of internship, apprenticeship, and employment regulations. Their website describes apprentice requirements below:<sup>3</sup>

A registered apprenticeship program must meet several requirements. First, the apprenticeship program must be in writing and must specify the apprentice’s sponsor. The plan must include metrics: Are you going to offer a skill-based apprenticeship where the individual graduates upon learning the necessary tasks? Or, is it time-based? If you choose the latter, the apprentice must work at least 2000 hours in the position, or about one year of work. The farm’s apprentice program must include a written description of processes to be learned and an approximation of the time spent on each module. Not only that, the farm needs to provide “organized, related instruction” at about 144 hours per year, or a little more than 3 weeks. And yes, that means classroom-style learning.

After the farmer describes the program itself, the farmer will have to describe herself. If she is a young individual with little experience in farming and no educational background, she might have a hard time getting approval. The law requires that the farmer be experienced and attend adult education training of some sort.

At this point, few formal agricultural apprenticeship models exist in the US. In many parts of Europe, however, there is a very well-developed agricultural apprenticeship system in place.

### **Why are these definitions important?**

These definitions become legally important if a farmer intends to pay an individual less than minimum wage AND the farmer would otherwise be obligated to pay minimum wage. The title of “Intern” or “Apprentice” is only a justification of sub-minimum wages if the position complies with the definition of intern or apprentice. Not all Pennsylvania farms are obligated to pay minimum wage to farm employees. Section 2 contains more information regarding minimum wage laws and farms. If a farmer treats his or her interns and apprentices as employees, and complies with any laws that apply to regular employees, then the farmer is free to use the title Intern or Apprentice if the farm so chooses. There is no restriction against using the job title; the question is whether employment laws apply to the position, regardless of the title.

### **1.3 EMPLOYMENT**

Some farmers view their interns and apprentices as volunteers instead of employees, and treat them like any other volunteer who receives farm produce or other amenities in exchange for work. The problem with this situation is that laws regulating farm employees aren’t limited to individuals who go through a formal hiring process. Even

---

<sup>3</sup> <http://farmcommons.org/wp-content/uploads/2012/10/Creating-a-Farm-Apprenticeship-Program.pdf>

informal workers can be considered “employees” and require all the benefits farm employment law gives to formal employees. The term employment is a broad and legally inclusive term. For example, under federal minimum wage law, a person is an employee (in part) if they are permitted to work for a for-profit business in exchange for compensation. The compensation does not need to be cash and even informal arrangements may be considered employment rather than volunteerism. Interns and apprentices are unlikely to be considered volunteers under the law. That means if they don’t meet the definition of an intern above, they should be treated as employees.

Other farmers may have heard about “independent contractors” and wonder if their interns or apprentices can be considered independent contractors, and thus avoid employment laws that way. Most on-farm internship-style programs will be classified as employee positions rather than independent contractors. The Internal Revenue Service (IRS), in Publication 51, Circular A, defines employee status in this way:<sup>4</sup>

“Employee status under common law: 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.”

If you doubt whether or not your farm internship program meets the legal criteria for an internship, you can be safe by paying minimum wage or the equivalent in other compensation, as explained in Section 2. (see “Creative Ways to Pay Minimum Wage” below).

If you plan to manage your on-farm workers as interns, there are two particularly helpful resources available. The [Farm Commons](#) document entitled “[Creating a Farm Internship Program.](#)” gives a step by step overview of how to comply with the DOL’s six internship criteria and is easily accessible on their website. Additionally, although not technically vetted through the legal system, the [Rogue Farm Corps](#), located in the Rogue Valley of Southern Oregon, in 2010 launched one of the first farm internship programs in the country that specifically accommodate the federal criteria and are working to make their model transportable to other communities. More detailed information is available on their website ([roguefarmcorps.org](http://roguefarmcorps.org)).

---

<sup>4</sup> <http://www.irs.gov/pub/irs-pdf/p51.pdf>

#### 1.4 ADDITIONAL RESOURCES ON LEGAL DEFINITIONS

- Internship defined by the US Department of Labor
  - <http://www.dol.gov/whd/regs/compliance/whdfs71.pdf>
- IRS Publication 51, Circular A: Agricultural Employer's Tax Guide
  - <http://www.irs.gov/pub/irs-pdf/p51.pdf>
  - Section 2 – Who Are Employees?
- Farm Commons – Helpful legal understanding of internships:
  - <http://farmcommons.org/wp-content/uploads/2012/10/Creating-a-Farm-Internship-Program.pdf>
- Farm Commons – Helpful legal understanding of apprenticeships:
  - <http://farmcommons.org/wp-content/uploads/2012/10/Creating-a-Farm-Apprenticeship-Program.pdf>
- New England Small Farm Institute's "On Farm Workstays Project Report"
  - <http://www.smallfarm.org/uploads/uploads/Files/On Farm Workstays Project.pdf>
  - Page 1, "Are trainees employees?"
- IRS resource for determining employee status – employee vs. contractor:
  - [http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Independent-Contractor-\(Self-Employed\)-or-Employee%3F](http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Independent-Contractor-(Self-Employed)-or-Employee%3F)
- Common Law Test – Employee vs. Contractor:
  - <http://www.utb.edu/ba/purchasing/information/documents/2->

## SECTION TWO: OVERVIEW OF EMPLOYMENT LAWS FOR FARM WORKERS

This section of the guide covers the most essential laws that farmers with farm workers should comply with in order to avoid problems with the law: wage and hour laws, housing regulations, and worker's compensation requirements.

### 2.1 WAGE & HOUR LAWS

In 1938, the first minimum wage was set at 25 cents an hour as a part of the federal Fair Labor Standards Act (FLSA) and was designed to protect employees from unfair labor practices and exploitation.<sup>5</sup> Many states have also passed their own minimum wage laws. The spirit of the law, the protection of employees, continues today and poses unique challenges to farmers who employ farm workers. There are a few wage and hour law exemptions relevant to farmers that are outlined below. There are also creative ways to account for paying minimum wage outlined below, including deducting the cost of room and board from employee pay.

#### A. MINIMUM WAGE & EXEMPTIONS

Federal minimum wage law does not require small farms who hire for agricultural labor to pay minimum wage, but some Pennsylvania laws do require minimum wage. Farmers must comply with the most restrictive law. In Pennsylvania, farms employing **permanent** agricultural workers do not have to pay minimum wage by assigning employees only work that meets the definition of "agricultural labor," AND meeting the small farm exemption criteria, also known as the 500 Man Day Exemption. More information about the definitions of agricultural labor and the small farm definition appear below and more in-depth discussions can be accessed through the links in the additional resources section. However, the above exemption only applies to permanent employees on a Pennsylvania farm. If a farm hires an individual on a **seasonal or temporary** basis, (whether full time or part time), that individual must be paid the state minimum wage. In Pennsylvania, our state minimum wage is the same as federal minimum wage, \$7.25 in 2012.<sup>6</sup> The only exemption would be if the farm is running a legal internship as described above.

#### B. DEFINING AGRICULTURAL LABOR

Having employees perform only "agricultural labor" in PA exempts the farm employer from paying minimum wage to **permanent** employees if the farm also meets the 500 Man-Day Exemption and exempts the farm from paying federal unemployment taxes in most situations. While the federal definition for agricultural labor includes "farming and

---

<sup>5</sup> From "Creating a Farm Internship Program" by Rachel Armstrong and available here:

<http://farmcommons.org/wp-content/uploads/2012/10/Creating-a-Farm-Internship-Program.pdf>

<sup>6</sup> <http://www.dol.gov/whd/minwage/america.htm> - Pennsylvania

all its branches,”<sup>7</sup> there are tricky questions regarding if all of what your on-farm worker does in the normal course of their work counts as “agricultural.” Many organizations and farm employers interpret the definition of “agricultural” labor differently and most are in agreement that selling at a farmer’s market does not count as “agricultural” labor.<sup>8</sup> The [New England Small Farm Institute](#) put considerable time and resources into addressing these questions and offers this interpretation in their “On Farm Workstays Project Report,”<sup>9</sup>

The federal definition of agricultural labor (which most states also adopt) does not include many activities that today’s small diversified farms engage in, such as value added processing, retail sales or agri-tourism. Therefore, to qualify as agricultural labor a farmer may need to limit the work the trainee does.

### **C. OVERTIME PAY EXEMPTION FOR AGRICULTURAL LABOR**

Under the FLSA, farm employers are exempt from paying overtime pay (any work over 40 hours per week) if the farm worker does *exclusively* “agricultural labor” as defined above. If a farm worker does even one hour of non-agricultural work, then that employee is entitled to time-and-a-half pay for every hour over 40 in that week. For this reason and many others, it is very important to keep documented timesheets for each farm worker. Pennsylvania law also exempts agricultural employees from minimum wage law. However, Pennsylvania seasonal farm labor law prohibits farm employers from requiring overtime from **seasonal or temporary** employees. More information is available in the PA Department of Labor and Industry’s site for seasonal farm labor law.<sup>10</sup>

### **D. MINIMUM WAGE EXEMPTION FOR SMALL FARMS/500 MAN DAY EXEMPTION**

“Small farms” which meet the legal definition overviewed below are exempt from paying federal and state minimum wage to **permanent** employees performing agricultural

---

<sup>7</sup> From the [US Department of Labor Fair Labor Standards Act](#), Sec. 203 (f), “Agriculture” includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.”

<sup>8</sup> From “Farmers’ Guide to Farm Employees: Federal and Minnesota Labor and Employment Law for Small-Scale Family Farms”, Chapter 4, page 9, <http://www.flaginc.org/publication/need-topic-farmers-guide-to-farm-employees-federal-and-minnesota-labor-and-employment-law-for-small-scale-family-farms/>

<sup>9</sup> <http://www.smallfarm.org/uploads/uploads/Files/On Farm Workstays Project.pdf>

<sup>10</sup>

[http://www.portal.state.pa.us/portal/server.pt/community/labor\\_law\\_compliance/10515/seasonal\\_farm\\_labor/599416](http://www.portal.state.pa.us/portal/server.pt/community/labor_law_compliance/10515/seasonal_farm_labor/599416)

labor. Similarly to the other legal definitions explored in this guide, the definition of “small farm” can be complicated. This provision of the FLSA uses the concept of an agricultural “man day”<sup>11</sup> to calculate the size of a farm. Rachel Armstrong, Director of the Farm Commons, defines “man day” as “any day in which the farm hires an employee for at least one hour, as long as that employee isn’t a member of the farmer’s immediate family.” She goes on to say, “Hiring 5 employees for 1 or more hours of work is equal to 5 man-days. Thus, a farm who hired 5 employees for at least 100 days in a 3-month time frame last year must adhere to minimum wage and overtime pay requirements this year.”<sup>12</sup>

The New England Small Farm Institute published in 2006 a book entitled The On-Farm Mentor’s Guide: Practical Approaches to Teaching on the Farm,<sup>13</sup> which covers this topic and many agricultural laws and is often seen as the most definitive resource on interpreting agricultural law for on-farm workers.

### **E. MINIMUM WAGE COMPENSATION INCLUDING DEDUCTIONS**

Many farms have decided to meet the minimum wage requirement by including the cost of room and board into the farm worker’s compensation. Under the law, this is considered deducting room and board from the employee’s wages, and the farm must comply with several deduction requirements. The first step is to determine the “fair market value” of each resource. The fair market value of the room and board is what a normal person might pay in the regular marketplace for similar accommodations. Then, the farmer needs to determine the reasonable cost of operation and maintenance to the farm of providing the housing. This calculation cannot include returning a profit to the farm. The farm may only charge the lesser of the two costs: the fair market value OR the reasonable cost of providing the resource. Deducting a fee for education is NOT allowed under state or federal minimum wage law. See Section 2.2 below for a discussion of farm employee housing regulations.

If you are planning to deduct room and/or board from a farm worker’s wages, you must get a signed statement that the employee confirms and agrees to the deduction amounts.

---

<sup>11</sup> <http://edis.ifas.ufl.edu/fe407>

<sup>12</sup> Blog post by Rachel Armstrong from 7/2/11 published on the Farm Commons website: <http://farmcommons.org/employment-101/>

<sup>13</sup> This publication can be purchased here: <http://www.smallfarm.org/main/bookstore/publications/>

## F. ADDITIONAL RESOURCES ON WAGE AND HOUR LAWS

- US Department of Labor Minimum Wage Map:
  - <http://www.dol.gov/whd/minwage/america.htm#.UM9QHnPjnDI>
- “An Action Plan for a Farm Internship Program by Rachel Armstrong and A. Bryan Endres:
  - <http://farmcommons.org/wp-content/uploads/2012/10/Action-Plan-for-Intern-Programs1.pdf>
- “Creating A Farm Internship Program” by Rachel Armstrong:
  - <http://farmcommons.org/wp-content/uploads/2012/10/Creating-a-Farm-Internship-Program.pdf>
- US Department of Labor, Fact Sheet #12, Agricultural Employers Under the Fair Labor Standards Act:
  - <http://www.dol.gov/whd/regs/compliance/whdfs12.pdf>
- The New England Farm Institute’s document entitled “The ‘On-Farm Workstays’ Project: On-Farm Mentors and Labor Law: Year-end Report 2008”:
  - <http://www.smallfarm.org/uploads/uploads/Files/On Farm>

## 2.2 HOUSING CONSIDERATIONS

While many farmers are not rich, they often have a wealth of space and offer housing as a part of a farm worker’s pay. Additional laws that come into play in determining the regulations for housing – state and federal seasonal worker laws and the Occupational Safety and Health Act (OSHA).

### A. MIGRANT AND SEASONAL WORKER LAWS

In Pennsylvania, if you provide or rent housing to even one farm worker less than year-round, your farm most likely meets the definition of a “seasonal farm labor camp.” If you provide or rent year-round housing to four or more farm workers, you also fit the criteria of a “farm labor camp.” Farm labor camps must register and receive a permit. Before the permit is issued, the camp must be inspected and must comply with housing regulations. There are a number of helpful resources through the PA Department of Agriculture, linked below in the Additional Resources section. There are also helpful guides and worksheets for how to comply with the regulations in The On-Farm Mentor’s Guide: Practical Approaches to Teaching on the Farm<sup>14</sup> published in 2006 by the New England Small Farm Institute.

---

<sup>14</sup> This publication can be purchased here:  
<http://www.smallfarm.org/main/bookstore/publications/>

The federal MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT (MSAWPA) MSAWPA law protects all farm workers who are hired seasonally, whether migrants or not. If your farm qualifies for the 500 Man Day Exemption (see minimum wage section above), then you are also exempt from other MSAWPA regulations. If your farm does not meet this exemption, you are expected to comply with the MSAWPA regulations in the areas of wages, housing, transportation, disclosure, and recordkeeping. The DOL Employment Law Guide to MSAWPA and Fact Sheet #49 linked below in the Additional Resources section succinctly outlines these regulations.

## **B. UNDERSTANDING THE OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA) AND EXEMPTIONS**

In PA, there are both federal and state levels of the Occupational Safety and Health Act (OSHA). While there are small farm exemptions, they are perhaps the most complicated part of employment law to decipher. In the 2008 “On Farm Workstays Project Report,”<sup>15</sup> The New England Small Farm Institute (NESFI) explains the small farm exemption like this:

If a farmer has employed 10 or fewer persons at all times during the past twelve months and is not currently maintaining a temporary labor camp, the farm qualifies as an “exempt workplace” under OSHA’s small farm exemption. This means that the farm operation is exempt from OSHA enforcement activity (i.e., inspection, etc.) but does not mean that the farm is exempt from the regulations themselves.

## **C. Defining a Seasonal Farm Labor Camp in Pennsylvania**

A temporary labor camp is any on- or off-site housing relating to the employment of farm workers. Farmers who provide housing may be inspected for OSHA compliance.

---

<sup>15</sup> <http://www.smallfarm.org/uploads/uploads/Files/On Farm Workstays Project.pdf>

## D. ADDITIONAL RESOURCES FOR MSWAPA, OSHA, AND HOUSING REGULATIONS

- US Department of Labor – Employment Law Guide to the Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA):
  - <http://www.dol.gov/compliance/guide/mspa.htm>
- US Department of Labor Fact Sheet #49: The Migrant and Seasonal Agricultural Worker Protection Act:
  - <http://www.dol.gov/whd/regs/compliance/whdfs49.pdf>
- US Department of Labor – OSHA Guidelines for Housing Regulations Regarding a Seasonal Farm Labor Camp
  - [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=STANDARDS&p\\_id=9791](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9791)
- PA Department of Labor – Definition of Seasonal Farm Labor Camp
  - [http://www.agriculture.state.pa.us/portal/server.pt/gateway/PTARGS\\_0\\_2\\_2\\_4476\\_10297\\_0\\_43/AgWebsite/ProgramDetail.aspx?name=Seasonal-Farm-Labor-Camps-&navid=12&parentnavid=0&palid=72&](http://www.agriculture.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_2_4476_10297_0_43/AgWebsite/ProgramDetail.aspx?name=Seasonal-Farm-Labor-Camps-&navid=12&parentnavid=0&palid=72&)
- PA Department of Agriculture – Overview of Seasonal Farm Labor Camp
  - [http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS\\_0\\_2\\_2\\_4476\\_10297\\_0\\_43/http%3B/10.41.0.77/AgWebsite/ProgramDetail.aspx?name=Seasonal-Farm-Labor-Camps-&navid=12&parentnavid=0&palid=72&](http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_2_4476_10297_0_43/http%3B/10.41.0.77/AgWebsite/ProgramDetail.aspx?name=Seasonal-Farm-Labor-Camps-&navid=12&parentnavid=0&palid=72&)
- PA Department of Agriculture – Determination of Housing
  - [http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS\\_0\\_2\\_2\\_4476\\_10297\\_0\\_43/AgWebsite/Files/Forms/SFLC\\_DETERMINATION\\_OF\\_HOUSING.pdf](http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_2_4476_10297_0_43/AgWebsite/Files/Forms/SFLC_DETERMINATION_OF_HOUSING.pdf)
- PA Department of Agriculture Seasonal Farm Labor Camp Self Inspection Checklist
  - [http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS\\_0\\_2\\_2\\_4476\\_10297\\_0\\_43/AgWebsite/Files/Forms/selfinspectionlaborcamps.p](http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_2_4476_10297_0_43/AgWebsite/Files/Forms/selfinspectionlaborcamps.p)

### 2.3 WORKERS' COMPENSATION

Workers' compensation insurance (often called "workers' comp") provides two very important kinds of protection to your farm – to the farm worker and to you as the farm employer. First, it compensates the employee for an injury sustained in working on the farm. Secondly, it protects the farm employer from being sued.<sup>16</sup> In almost all situations, workers' compensation insurance is both mandatory and a wise choice. In addition, it is necessary to carry liability insurance for visitors, customers, or business people who might be injured on your farm.

The Farm Commons non profit offers a helpful flowchart to determine your

---

<sup>16</sup> "Farm Volunteers: Legal Concerns, Legal Solutions." By Rachel Armstrong and A. Bryan Endres

responsibilities as a farm employer regarding worker's compensation in their "Action Plan for a Farm Internship Program,"<sup>17</sup> available on the [Farm Commons website](#). In Pennsylvania, most farms will not qualify for any exemptions to covering workers' compensation. Only the smallest agricultural operations which pay less than \$1200 in wages (of any kind) or hire a farm worker for less than 30 days qualify for an exemption from carrying workers' compensation insurance.

#### **A. ADDITIONAL RESOURCES FOR WORKERS' COMPENSATION LAW**

- PA Department of Labor – Workers' Compensation Overview
- [http://www.portal.state.pa.us/portal/server.pt/community/workers%27\\_compensation/10386/about\\_workers%27\\_compensation/552721](http://www.portal.state.pa.us/portal/server.pt/community/workers%27_compensation/10386/about_workers%27_compensation/552721)
- New England Small Farm Institute's "On Farm Workstays Project Report"
  - [http://www.smallfarm.org/uploads/uploads/Files/On Farm Workstays Project.pdf](http://www.smallfarm.org/uploads/uploads/Files/On_Farm_Workstays_Project.pdf)
- "An Action Plan for a Farm Internship Program by Rachel Armstrong and A. Bryan

---

<sup>17</sup> <http://farmcommons.org/wp-content/uploads/2012/10/Action-Plan-for-Intern-Programs1.pdf>

## **SECTION THREE: EMPLOYMENT TAX LAWS, LIABILITY, AND HIRING PROCEDURE**

This section provides a brief overview of three very complicated topics – employment tax laws, liability insurance guidelines, and hiring procedures. These resources are meant to assist you in getting started and are not an exhaustive or definitive explanation. The Internal Revenue Service (IRS) publishes an “Agricultural Employer’s Tax Guide” (Publication 51) which covers these topics in detail and is available online at <http://www.irs.gov/pub/irs-pdf/p51.pdf>

### **3.1 OVERVIEW OF EMPLOYMENT TAX LAW**

The two major employment tax laws that farm employers must comply with are the Federal Insurance Contribution Act (FICA) and the Federal Unemployment Tax Act (FUTA). Combined, these taxes are often referred to simply as “payroll taxes.” The requirements for each of these laws are extensive, but there are some exemptions that benefit small farms.<sup>18</sup>

#### **A. Understanding FICA and Exemptions**

The Federal Insurance Contribution Act (FICA) began in the 1930s as a part of the New Deal legislation. Through taxing employers and employees, FICA funds both Social Security and Medicare. The exact percentage of the tax is determined annually. Your farm business qualifies for exemption if 1) you pay \$150 or less in cash wages to any employee in a year OR 2) you pay \$2500 or less total to all employees in a year.<sup>19</sup>

#### **B. Understanding FUTA and Exemptions**

The Federal Unemployment Tax Act (FUTA) is used to fund unemployment agencies and benefits. Pennsylvania’s Unemployment Compensation law does the same thing. Small scale farm employers are exempt from both if they can answer “no” to both of the following questions:<sup>20</sup>

- Did you pay cash wages of \$20,000 or more to farmworkers during any calendar quarter in 2011 or 2012?
- Did you employ 10 or more farmworkers during some part of the day (whether or not at the same time) during any 20 or more different weeks in 2011 or 20 or more different weeks in 2012?

---

<sup>18</sup> Page 152, The On-Farm Mentor’s Guide, Miranda Smith, 2006, New England Small Farm Institute

<sup>19</sup> From IRS Publication 505 on Withholding Taxes  
<http://www.irs.gov/publications/p505/ch01.html>

<sup>20</sup> From IRS Form 940, <http://www.irs.gov/pub/irs-pdf/i940.pdf>

If you are not exempt by this definition, you should refer to state and federal employer websites for more information and to register as an employer. Links to the state and federal sites are contained below. State -

[http://www.portal.state.pa.us/portal/server.pt/community/employer\\_uc\\_services/10343](http://www.portal.state.pa.us/portal/server.pt/community/employer_uc_services/10343).

Federal - <https://www.eftps.gov/eftps/>

### 3.2 LIABILITY CONSIDERATIONS

Again, this is a complex topic and you will need to discuss it in depth with your insurance agent. The amount of liability insurance your farm will need depends on the nature of your farm business. It is helpful to talk with other farmers in your region of a similar scale and operation. If you sell at a farmer's market, most markets will require proof of liability insurance.<sup>21</sup> Liability insurance and workers' compensation insurance protect you and your farm in different ways and so both are normally necessary.

### 3.3 HIRING PROCEDURE AND CHECKLIST

This section overviews the steps you will need to take when employing a farm worker. The checklist that follows draws largely from three sources, the "Checklist for Hiring Employees" developed by the Rogue Farm Corps, the "[Internships In Sustainable Farming: A Handbook For Farmers](#)" by Doug Jones<sup>22</sup> and the [Federal Tax Guide from IRS: Publication 51: "Circular A, Agricultural Employer's Guide."](#) These resources are specific to Pennsylvania where necessary.

#### A. Obtain an Employer Identification Number (EIN) ([Form SS-4](#))

- It is necessary to get an EIN, also known as your Employer Tax ID, from the IRS before hiring employees
- Apply for an EIN online at: [http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Apply-for-an-Employer-Identification-Number-\(EIN\)-Online](http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Apply-for-an-Employer-Identification-Number-(EIN)-Online)
- Or apply by mail using this form: <http://www.irs.ustreas.gov/pub/irs-pdf/fss4.pdf>

#### B. Establish Your Records for Withholding Taxes

- Federal Income Tax Withholding ([Form W-4](#))
  - Have employee complete W-4 before first starting employment
  - Form W-4 is available here: <http://www.irs.gov/pub/irs-pdf/fw4.pdf>
- Federal Wage and Tax Statement ([Form W-2](#))
  - Every year, employers must report wages paid and taxes withheld to the federal government using the Form W-2
  - Employers must send Copy A of Forms W-2 to the Social Security Administration by the last day of February to report the wages and taxes

---

<sup>21</sup> Page 154, [The On-Farm Mentor's Guide](#), Miranda Smith, 2006, New England Small Farm Institute

<sup>22</sup> "Internships In Sustainable Farming: A Handbook For Farmers" by Doug Jones and (available online at <http://mofga.org/Portals/2/Files/internshipandbook.pdf>)

of your employees for the previous year. In addition, employers should send copies of the W-2 to employees by January 31.

- W-2 filing instructions can be found at <http://www.ssa.gov/employer/>
- State Taxes
  - To register for employer withholding tax in PA, read more here: [http://www.portal.state.pa.us/portal/server.pt/community/employer\\_withholding/14495](http://www.portal.state.pa.us/portal/server.pt/community/employer_withholding/14495)

### **C. Verify Employment Eligibility ([Form I-9](#))**

- Within 3 days of hiring, the employer must verify the employee's eligibility to work in the US. Form I-9 is completed by the employer by examining acceptable forms of documentation supplied by the employee is used to document citizenship, legal alien status, or visa status.
- Instructions and forms can be found at <http://www.uscis.gov/files/form/i-9.pdf>
- Considerations for H-2A employees are beyond the scope of this document. Please consult the US Department of Labor website and/or professional advice.

### **D. Register with the Pennsylvania New Hire Reporting Program([New Hire Report Form](#))**

- Within 20 days of hiring, employers must report newly hired (or rehired) employees to a state directory.
- Report New Hires online here: <https://www.cwds.state.pa.us/cwdsonline/NewHire/NewHireProgramInformation/NewHireInformation.aspx>
- OR report by mail using this form: [https://www.cwds.state.pa.us/cwdsonline/NewHire/Documents/FORM\\_INSTRUCTIONS\\_NEWHIRE.pdf](https://www.cwds.state.pa.us/cwdsonline/NewHire/Documents/FORM_INSTRUCTIONS_NEWHIRE.pdf)

### **E. Obtain Workers' Compensation Insurance**

- Farm employers must purchase a policy with their insurance agent unless exempt. See section 2.3 Workers' Compensation in the guide

### **F. Have Employee Sign Work Agreement**

- With as much clarity as possible, outline the agreement regarding compensation and deduction (such as room & board) that you are offering your employee and have the employee sign it before they begin working.

### **G. Apply OSHA's Workplace Safety Practices**

- OSHA offers a "Compliance Assistance Quick Start" tool with step by step instructions which is available online here: [http://www.osha.gov/dcsp/compliance\\_assistance/quickstarts/index.html?cm\\_sp=External](http://www.osha.gov/dcsp/compliance_assistance/quickstarts/index.html?cm_sp=External)

### **H. Register for Unemployment Insurance Tax if required**

- If your farm does not qualify for FUTA's small farm exemption (explained above), you are required to pay unemployment insurance taxes.

- For more information on PA Unemployment Tax regulations, read:  
[http://www.portal.state.pa.us/portal/server.pt/community/employer\\_uc\\_services/10343](http://www.portal.state.pa.us/portal/server.pt/community/employer_uc_services/10343)

### **I. Keep Good Records!!**

- Well-documented records are your protection and legal shield. Unfortunately, regulatory agencies will frequently assume non-compliance unless your documentation shows how you are compliant.
- For more information on how to keep good records:  
[http://www.portal.state.pa.us/portal/server.pt/community/employer\\_uc\\_services/10343](http://www.portal.state.pa.us/portal/server.pt/community/employer_uc_services/10343)

An experienced bookkeeper may be able to help develop required procedures to manage hiring, withholding and filings.

### **Conclusions**

The intention of this guide is to provide an overview of topics and resources that address employment regulations pertinent to small farm internship or employment programs. It is not intended to be legal advice or to take the place of the professional services of an attorney or accountant. Further, although we hope to introduce a number of important issues, this guide is not a definitive or comprehensive resource for agricultural employment law. If you are unable to find answers to your specific questions using the resources noted in this guide, please seek assistance from the Pennsylvania Department of Labor and Industry and/or the US Department of Labor or when appropriate, the services of a legal, human resources or accounting professional.



capitalrcd.org

Capital Resource Conservation and Development Area Council, Inc (Capital RC&D)  
December 2013