

The National Agricultural Law Center



University of Arkansas  
School of Law



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## **Agricultural Labor: An Employer's Obligations and Responsibilities**

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Where we are, where we're going,  
where we've been

## ➤ **Liability for Employee Actions**

➤ Your responsibility **FOR** your employees

### □ **Labor Laws**

■ Your responsibility **TO** your employees

□ What does this law regulate?

□ Who does this law affect?

□ How do you conform to this law?

□ Why you should follow the rules?

### □ **Tips for Employers**

# Your workers.....



Typically fall into one of two categories:

- ▣ “Employees”
- ▣ “Independent contractors.”

## Why does this matter?

- You are potentially liable for the actions of the worker, depending upon which category he is classified in!

# Who are “Employees”?

- If you **direct** and **control** a person’s tasks, that person is an employee.
  
- Factors to determine whether the worker is an employee:
  - ▣ Do you give instructions about when, where, and how work is performed?
  - ▣ Have you trained the worker to do the job in a particular method or manner?
  - ▣ Are the worker’s services an essential part of the business operation?
  - ▣ Does the worker have any assistants?
  - ▣ Do you have a continuing relationship with the worker?
  - ▣ Do you set the work schedule?
  - ▣ Is the worker full time?
  - ▣ Do you specify the place that the worker performs the work?
  - ▣ Do you instruct the worker in the sequence of tasks?

# Responsibility for Employee's Actions

- You may be held liable for the actions of your employee based on the theory of “vicarious liability”
- Vicarious liability holds that you, as an employer, are responsible for the actions of your employees that are performed during the course of business.

# Vicarious Liability

- During harvest, your employee is driving the grain wagon from one field to another. He fails to stop at a blind intersection, and causes an accident. Are you potentially liable for the worker's mistake?
  - Answer – Yes, the accident occurred while the worker was performing a normal action of the business (moving wagons for harvesting) so it was in the course of business.

# Vicarious Liability

- After work that same worker went to the bar, left hours later intoxicated, and was involved in a car wreck. Is the owner potentially liable for the worker's drunk driving incident?
  - Answer – No, the worker's action was not done in the course of your business- he wasn't harvesting or moving your equipment.

# To Recap....

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- You are responsible for the actions of your ***employees during the course of normal business*** based on the doctrine of vicarious liability.
- However, your workers can fall into two categories. **What if they're not "employees"?**

# Independent Contractors

- A person or organization performing a job without control from the employer
  - Ex: custom harvester, crop duster, well driller

# Responsibility for Independent Contractor's Actions

- In general, the employer is not responsible for the negligent acts of an independent contractor except:
  - ▣ If you're negligent in hiring a competent contractor
  - ▣ If you furnish a contractor with faulty plans
  - ▣ If you interfere with a contractor
  - ▣ If you're hiring them to perform a dangerous task

# What do you think?

- Is a farm hand an independent contractor or an employee?
- *An employee*
- Why?
  - ▣ They work full time or substantially full time under the complete control of the operator and their services are often vital to the success of the operation

# What do you think?

- Is a custom harvester an independent contractor or an employee?
- *Independent Contractor*
- Why?
  - ▣ They supply all of their own equipment, work for a short period of time, the operator has little control over them, no training responsibilities, and there is no continuing relationship.

# What do you think?

- Is a hunting guide an independent contractor or an employee?
- *It depends.*
- Why?
  - ▣ It involves the amount of control that the operator has over the worker. In Montana and Alaska many of these guides would be considered independent contractors, however in Arkansas you would need to look at each case separately.

# What do you think?

- Is a seasonal farm worker an independent contractor or employee?
- *It depends*
- Why?
  - ▣ Even though they work part time and often require no additional training these workers may still be considered employees depending upon the circumstances surrounding the situation.

# Where we are, where we're going, where we've been

## □ **Liability for Employee Actions**

- Your responsibility FOR your employees

## ➤ **Labor Laws**

### ➤ **Your responsibility TO your employees**

- What does this law regulate?
- Who does this law affect?
- How do you conform to this law?
- Why you should follow the rules?

## □ **Tips for Employers**

# Labor Laws

1. Fair Labor Standards Act
2. Migrant and Seasonal Agricultural Worker Protection Act
3. Immigration Reform and Control Act
4. Occupational Safety and Health Act
5. Tax Responsibilities
6. FMLA, Title VII, ADA

# Fair Labor Standards Act: What?

- What does this law regulate?
  - Minimum wage-
    - Requires employers, unless exempt, to pay all employees at least the federal minimum wage
  - Maximum Hours-
    - Requires employers, unless exempt, to pay time-and-a-half for hours over 40 in a week.
  - Child Labor-
    - Restricts employing children under 16

# Fair Labor Standards Act: Who?

- Who does the **minimum wage provisions** affect?
  - ▣ **Except** those who used less than 500 man-days of agricultural labor during any calendar quarter of the preceding calendar year
    - About 5.5 full time employees.
  - ▣ **Except** employees who are members of the employers immediate family
    - Immediate family: Spouse, children, stepchildren, foster children, parents, stepparents and foster parents
  - ▣ **Except** employees paid on a piece-rate basis and not employed in agriculture more than 13 weeks in the preceding calendar year
  - ▣ **Except** employees under 16 years who are paid on piece-rate basis
  - ▣ **Except** employees primarily engaged in range production of livestock

# Fair Labor Standards Act: How?

- How do you conform to the **minimum wage provisions**?
  - ▣ If you are an employer who is not exempt from this law, you must pay at least the federal minimum wage to all employees.
  - ▣ The current federal minimum wage is \$6.55 per hour (effective July 24, 2008)
  - ▣ It changes to \$7.25 per hour (effective July 24, 2009)

# Fair Labor Standards Act: Why?

- Why should you follow the **minimum wage provisions**?
  - ▣ Potential \$10,000 fine and one month imprisonment for second conviction of willfully violating provisions
  - ▣ Liable for unpaid wages and an equal amount as liquidated damages plus attorney fees and costs

# Fair Labor Standards Act: Who?

- Who do the **maximum hour provisions** affect?
  - Exempts all employment in agriculture;
    - EXCEPT in a packing shed or processing plant that handles produce for more than one farm

# Fair Labor Standards Act: How & Why?

- Agriculture is almost completely exempt from this requirement.
- However, if you are not exempt, you must pay time-and-a-half for hours over 40 in a week.
- Penalties for violation of these provisions are the same as those given to violators of the minimum wage law

# Fair Labor Standards Act: Who?

- Who do the **child labor provisions** protect?
- All children under 16,
  - **Except** employees who are 14 or 15 years old and not employed in a “hazardous occupation”
    - As defined by Secretary of Labor
  - **Except** employees 12 or 13 years old who have written consent of parents or are employed on the same farm as parents
  - **Except** employees under 12 years old who have written parental consent on farms where the minimum wage provisions do not apply
    - 500 man-hour rule
  - **Except children of any age, working at any time, on farms owned or operated by their parents**

# Fair Labor Standards Act: Hazardous Occupations

- The following are considered hazardous occupations, forbidden to children under 16 hired to work on the farm:
  - ▣ Operating, connecting or disconnecting implements from a tractor;
  - ▣ Operating machinery, including combines, mowers, balers, dryers, augers, and power equipment, earth moving equipment, forklifts, and power driven saws;
  - ▣ Working with stud animals, a sow with suckling pigs, or a cow with a newborn calf;
  - ▣ Forestry activities on timber with a diameter of over 6 inches;
  - ▣ Working from a ladder or scaffold over 20 feet high;
  - ▣ Driving a bus, truck or automobile to transport passengers, or riding on a tractor as a passenger or helper;
  - ▣ Working inside: a storage facility for fruit, forage or grain, a manure pit or a horizontal silo;
  - ▣ Handling or applying toxic agricultural chemical identified by the words;
  - ▣ Handling or using explosives; and
  - ▣ Transporting, transferring, or applying anhydrous ammonia
- **These DO NOT APPLY to children employed on farms owned or operated by their parents**

# Fair Labor Standards Act: How?

- How do you conform to the **child labor provisions**?
  - ▣ If you employ children who are not exempt from the law, you must follow all hour/job restrictions set forth by the Department of Labor.
  - ▣ For more information, see:  
<http://www.dol.gov/esa/whd/childlabor.htm>

# Fair Labor Standards Act: Why?

- Why should you follow the **minimum wage provisions**?
  - ▣ Potential civil penalty of up to \$11,000 for each violation of child labor provisions.

# Migrant & Seasonal Agricultural Worker Protection Act: What?

- Federal law dealing exclusively with agricultural employment/seasonal labor
- Protects migrant and seasonal farmworkers
- Addresses issues of
  - ▣ Pay
  - ▣ Working
  - ▣ Work-related conditions

# Migrant & Seasonal Agricultural Worker Protection Act: Who?

- “Person who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes or transports any migrant or seasonal agricultural worker.”
- Exemptions:
  - Individuals or immediate family members who engage in farm labor contracting on behalf of their exclusively owned or operated operation
  - Any person except a farm labor contractor who qualifies for the 500-man-days exemption under the FLSA
    - Uses less than 500 man-days of agricultural labor during any calendar quarter of the preceding calendar year

# Migrant & Seasonal Agricultural Worker Protection Act: How?

- Farm labor contractors must register with DOL;
- If you use the services of a farm labor contractor, you must take “reasonable steps” to determine that they have a valid certificate of registration;
- Ag employers must disclose information about: wages, hours, workers’ compensation (when available) and other working conditions, and about housing when provided;
- Workers must be provided with written statements of earnings and deductions;
- If transportation is provided, vehicles must be safe and properly insured; and
- If housing is provided, it must meet health and safety standards.

# Migrant & Seasonal Agricultural Worker Protection Act: Why?

- ▣ Criminal sanctions for knowing and willful violation:
  - Fine up to \$1,000; and prison for up to 1 year
- ▣ Criminal sanctions for subsequent violation:
  - Fine of up to \$10,000; and prison for up to 3 years
  - Also liable in lawsuit by farmworker
- ▣ Civil Sanctions
  - Fine of up to \$1,000 for each violation
- ▣ Administrative Sanction
  - Farm labor contractors are subject to having their current certificate revoked and future applications for certificates denied

# Immigration Reform & Control Act:

## What?

- To control unauthorized immigration to the US
- Employer sanctions/penalties for employing illegal aliens
- Two purposes:
  - ▣ Verification of employees to make ensure that they are eligible to work in the United States
  - ▣ Prohibits discrimination with respect to hiring, or recruitment, referral for fee, or discharging on the basis of national origin

# Immigration Reform & Control Act:

## Who?

- ▣ Sanction: All employers, without exemption, are required to verify that each employee is eligible to work in the United States.
- ▣ Discrimination: All employers with 4 or more employees are prohibited from discriminating

# Immigration Reform & Control Act: How?

- Verify:
  - ▣ Eligibility of each employee to work in the United States; AND
  - ▣ Identity of each employee
- Documents that confirm eligibility and identity are listed on Form I-9
- Be aware of any restrictions on the documents, and follow up when necessary

# Immigration Reform & Control Act: Why?

- Employer sanctions:
  - ▣ Fines between \$250 and \$10,000 for each unauthorized alien
  - ▣ Maximum 6 month prison sentence if violator demonstrates a persistent pattern of hiring unauthorized aliens
- Discrimination sanctions:
  - ▣ Fines between \$250 and \$\$2,000 for each individual discriminated against

# Occupational Safety & Health Act (OSHA): What?

- Safe and healthful working conditions for U.S. workers
- Enforcement of standards developed under the law
- Helping and encouraging states in their efforts to assure safe and healthful working conditions
- Providing for research, information, education and training in the field of occupational safety and health

# OSHA: Who?

- ▣ OSHA applies to all employers
  - **Except** employers who employed ten or fewer employees (full-time or part-time) at all times during the previous twelve months AND do not maintain a migrant labor camp.
    - Family members of the employer are not considered “employees” for this purpose

# OSHA: How?

- ▣ Inform employees of your safety regulations.
- ▣ Post OSHA's Job Safety and Health poster in a permanent place where notices to employees are customarily posted.
- ▣ Report within eight hours to the nearest OSHA area office (by telephone or in writing) any fatal accident involving an employee or any other accident resulting in the hospitalization of three or more employees.
- ▣ Maintain up-to-date (within six working days) records of all occupational injuries and illnesses.
- ▣ Post the annual summary of your OSHA No. 200 log on February 1st of the following year and maintained for the entire month of February.
- ▣ Retain all records of occupational injuries and illnesses for five years after the end of the year.
- ▣ Furnish a place of employment free from recognized hazards that could cause death or serious physical harm to employees.
  - This allows OSHA inspectors to cite for serious hazards, even without a specific prohibition on that hazard in place.

# OSHA: What are How?

- OSHA has the following standards that apply specifically to agriculture:
  - Storage and handling of anhydrous ammonia.
    - Requirements for construction, location and installation of anhydrous containers, vehicles and equipment
  - Temporary labor camps.
    - Environmental and sanitation requirements
  - Pulpwood logging.
    - Environmental, protection, and maintenance requirements
  - Slow-moving vehicle emblems, signs, and tags.
    - All vehicles that travel at less than 25 mph must have the SMV sign on the rear of the vehicle, point up, two to six feet above ground level
  - Rollover protective structures.
    - Requires that tractors with more than 20 hp be equipped with a roll-over protective structure, and employees be trained in their use.
  - Guarding of farm field equipment, farmstead equipment, and cotton gins.
    - All agricultural equipment must have a completely guarded PTO drive line, including the use of the master shield on the tractor PTO; employees must be trained in its use.

# OSHA: Why?

- Civil penalties include
  - ▣ Between \$5,000 and \$70,000 penalties for each willful violation;
  - ▣ Up to \$70,000 for each repeated violation;
  - ▣ Up to \$7,000 for each serious violation (penalties are mandatory);
  - ▣ Up to \$7,000 for each other-than-serious violation.
- Criminal penalties include:
  - ▣ Up to \$10,000 and six months imprisonment for an employee's death (first offense)
  - ▣ Up to \$20,000 and one year imprisonment for making false statements in OSHA documents

# Tax Responsibilities: What?

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- Potential tax responsibilities include
  - ▣ Income tax withholding
  - ▣ Social Security & Medicare (FICA)
  - ▣ Federal Unemployment Tax (FUTA)
  - ▣ Self-employment Tax

# Tax Responsibilities: Who?

- Generally, you are responsible for paying self-employment tax for yourself and your husband, in your on-farm work.
- Generally, employers are responsible for withholding and payment of taxes for workers classified as *employees*
  - ▣ Unless employee is paid less than \$150 in cash wages or if employer pays less than \$2,500 per year to all employees
- Generally, employers are not responsible for withholding and payment of taxes for workers classified as *independent contractors*
  - ▣ Remember, there is a strong presumption that workers are employees, rather than independent contractors!!!

# Tax Responsibilities: How?

- Withhold FICA, Medicare, and federal income taxes from employee earnings
- Maintain earnings records
- Annually file reports of earnings
- Match FICA and Medicare taxes withheld from employees
- Pay both employees and employers FICA and Medicare taxes at proper time
- Separately report withholdings for Social Security and Medicare
- Ensure that each employee has a social security number and correctly record it

# Tax Responsibilities: How?

- Refer to the IRS website generally: [www.irs.gov](http://www.irs.gov)
- Specific IRS information:
  - ▣ Publication 51 (Circular A): Agricultural Employers Tax Guide
  - ▣ Publication 225 (Farmer's Tax Guide)
  - ▣ Type "Agriculture/Farmers" in the search box on the IRS site for more information
- TALK TO A TRAINED TAX PROFESSIONAL IF YOU HAVE ANY QUESTIONS OR CONCERNS

# Tax Responsibilities: Why?

- Civil Penalties
  - Back taxes
  - Interest
  - Penalties for non-payment
- Criminal Penalties
  - Prosecution for
    - Tax evasion,
    - Willful failure to file a return, supply information, or pay tax due,
    - Fraud and false statements, or
    - Preparing and filing a fraudulent return
  - Potential jail time/fines

# FMLA, Title VII, ADA: What? Who?

- The Family Medical Leave Act, which allows employees to take unpaid leave for certain family and medical reasons, is **applicable to private employers who employed 50 or more employees.**
- Title VII, which prohibits employers from discriminating against individuals based on race, color, religion, sex or national origin, **applies to employers with 15 or more employees.**
- The Americans with Disabilities Act, which prohibits employers from discriminating against individuals based on disability, **applies to employers with 15 or more employees.**

# FMLA, Title VII, ADA: Result

- As a result, these laws typically apply to only the largest agricultural employers.
- If they apply to your business, please see the following websites for more information
  - ▣ FMLA: Department of Labor
    - [www.dol.gov](http://www.dol.gov)
  - ▣ Title VII, ADA: Equal Employment Opportunity Commission
    - [www.eeoc.gov](http://www.eeoc.gov)

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## ➤ **Tips for Employers**

# Tips for employers

- Train employees thoroughly
- Provide a safe place to work
- Provide reasonably safe tools and machinery
- Warn and instruct employee of dangers which they could not reasonably expect to discover
- Provide competent fellow employees
- Make reasonable rules for conduct

# Tips for employers

- Become familiar with labor requirements and restrictions. Some sources include:
  - ▣ State Extension offices/websites
  - ▣ Government websites
    - Department of Labor
    - Internal Revenue Service
    - Social Security Administration
    - Occupational Safety and Health Administration
  - ▣ National Agricultural Law Center
    - [www.nationalaglawcenter.org](http://www.nationalaglawcenter.org)



## Contact Information

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