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Employment Rules for Agricultural Workers in Maine

Understanding the requirements of labor and employment law is essential in operating a successful farm business. **Both Maine and federal law treat agricultural work differently than other forms of employment.** Before hiring an employee, it is important to familiarize yourself with the relevant state and federal laws that govern the employer/employee relationship. Most employee standards are detailed in Title 26 of Maine’s statutes.

This guide is intended to inform farm employers about the general requirements when hiring employees.

I. What is Agricultural Labor in Maine?

To understand the legal requirements for agricultural workers in Maine, it’s important to understand how the law defines a handful of key terms. Both Maine law and federal law provide important definitions.

a. Maine Law

Agricultural labor in Maine includes a wide range of activities related to operating a farm. The law defines agricultural labor as any service performed on a farm “in connection with cultivating the soil or in connection with raising or harvesting any agricultural, aquacultural, or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife.” Agricultural labor also includes the following:

- Operation, maintenance, and management of a farm, its tools, and equipment;
- Work related to the production or harvesting of an agricultural commodity (including maintenance related to water supply for farming); and



- Preparing an agricultural/horticultural commodity for market, but only if the farm contributes over ½ the labor that goes into producing the commodity.

Another important term is “seasonal employer.” A **seasonal employer** is someone who works in an industry that operates in seasonal periods lasting less than 26 weeks in a calendar year.

b. Federal Law

The **Federal Fair Labor Standards Act defines agricultural work** to include “farming in all its branches,” covering:

- Cultivating and tilling the soil, dairying, producing, cultivating, growing, and harvesting any agricultural or horticultural commodities;
- Raising livestock, bees, fur-bearing animals, or poultry; and
- Any practices performed by a farmer or on a farm incidental to or in conjunction with farming operations, including preparing for market, and delivering farm goods to storage, to market, or to carriers for transportation to market.

These definitions are important in determining what wages must be paid for certain types of work.

II. What is the legal classification of your worker?

Correctly classifying your worker is important in determining pay rates and other protections owed to the worker. Farm workers are usually classified as employees, interns, independent contractors, volunteers, or apprentices. In Maine, there is a penalty for misclassifying workers. Keep in mind that certain restrictions apply to employing minors unless they are children of the employer.

a. Employee

An employee is someone who “may be permitted, required or directed by any employer in consideration of direct or indirect gain or profit, to engage in any employment.” The key part of this definition is that the employer can determine not only what work the employee performs, but also *how* the employee is required to do that work. This distinguishes an employee from an independent contractor. Most workers will be considered employees under the law.

b. Intern

Some farms offer internships to students or others. Most interns will be legally classified as employees, especially if they are paid. But the U.S. Department of Labor lists six criteria under which an intern is **not** classified as an employee. The following criteria must be considered together to determine whether the intern is the **primary beneficiary** of the internship program:

1. Both the intern and employer have an understanding that wages will not be paid (any promise of compensation suggests the intern is an employee);
2. The internship experience is similar to training given at an educational institution, including hands on training and supervision;
3. The extent to which the internship is incorporate in the intern's educational program through coursework or academic credit;
4. The internship accommodates the intern's academic experience to a reasonable extent;
5. The duration of the internship is limited to a period in which it provides the intern a beneficial learning experience;
6. The experience is for the benefit of the intern, and the intern does not displace regular employees; and
7. The intern and employer have an understanding that completion of the internship does not entitle them to a paid job at the conclusion of the internship.

c. Independent Contractor

An independent contractor is someone “free from the essential direction and control of the [employer], both under the person's contract of service and in fact.” To be considered an independent contractor instead of an employee, the person must:

1. Possess the right to control the means and progress of the work except the final result;
2. Be customarily engaged in an independently established trade or business;
3. Have an opportunity for profit and loss from the services being performed for the other individual or entity;

4. Have the ability to hire and pay assistants, and, if these assistants are employees, supervises the details of their work; and
5. Make their services available to other clients even if the person's right to do so is voluntarily not exercised or temporarily restricted.

Further, the individual must meet **at least three** of the following criteria:

1. The person has a substantive investment in the facilities, tools, instruments, materials and knowledge used to complete their work;
2. The person is not required to work exclusively for another entity;
3. The person is responsible for satisfactory completion of the work and may be held contractually responsible for a failure to complete;
4. The parties have a contract defining their relationship that gives contractual rights in the event that it is terminated by the other individual/entity prior to completion of the work;
5. Payment is based on factors directly related to the work performed and not solely on the amount of time worked;
6. The work is outside the person's usual course of business; or
7. The federal IRS has determined the person is an independent contractor.

d. Volunteer

Under federal law, a volunteer is “an individual who provides services, without any expectation of compensation and without any coercion.” Volunteers cannot work full time or displace regular employees, and an employee cannot volunteer to perform their own job. Importantly, only nonprofits can have volunteer workers.

e. Apprentice

An apprentice is someone 16 years of age (or 18 if required by law based on how dangerous the work is) and is employed to learn an “apprenticeable occupation” approved by the state. An apprenticeable occupation must:

1. Involve practical skills customarily learned through on-the-job teaching;
2. Be commonly recognized in the industry;
3. Involve manual, mechanical, or technical skills and knowledge with at least 2,000 hours of on-the-job learning to attain; and
4. Require related instruction.

Apprenticeship programs are registered with the Maine Apprenticeship Program and are subject to strict standards and training requirements.

III. How much are agricultural workers paid?

Once you classify your worker, you can then determine their pay rate based on the type of work they will perform. Minimum wage in Maine is currently \$12.15 per hour. **Agricultural workers are exempted from both state and federal minimum wage law if the business meets certain conditions.** In Maine, agricultural workers are exempt from the state's minimum wage rules if their work meets the state's **agricultural labor** definition discussed in section I above, unless the work is on a farm with over 300,000 laying birds.

If the work done by a farm's workers meets the federal agricultural labor definitions, the farm may still pay less than federal minimum wage of \$7.25 per hour if it employs less than 500 "man-days" of agricultural labor, according to the federal definition of agricultural labor discussed in section I above.

A man-day is when any employee performs agricultural labor for at least an hour. In simpler terms, 500 man-days equals roughly seven persons employed full-time in a calendar quarter (e.g., Jan. - Mar.). Immediate family members of the employer are not counted. Farms that hire part-time or seasonal labor may exceed 500 man-days even if they have fewer than seven full-time employees. If crops are harvested by an independent contractor, their days must also be counted. **The calculation for 500 man-days applies to any quarter in the previous calendar year**, so if a farm employed 500 man-days last year, it must pay minimum wage in the current year.

IV. What about payment periods and overtime?

Both agricultural and non-agricultural employees must be paid in intervals not exceeding 16 days.

Non-agricultural workers cannot be required to work more than 80 hours of **mandatory overtime** in two consecutive weeks. This limit on mandatory overtime does not apply to agricultural workers.

V. What about non-agricultural employees?

If your employee is engaged in work that is **not** agricultural labor, for example, serving customers in the farm store, the agricultural wage and overtime exemptions will not apply. **Non-agricultural employees must be paid the minimum wage in Maine and be compensated for overtime work at 1.5 times their pay rate.** Further, for businesses with three or more employees on duty, employees will be entitled to a 30-minute unpaid rest break after they work 6 consecutive hours.

VI. What responsibilities do you have when hiring an employee?

a. Taxes

All employers must withhold federal and state income tax from Maine employees' wages, as well as social security and Medicare taxes.

b. Workers' Compensation

The workers' compensation law has its own definition of **agricultural labor**. For purposes of workers' compensation agriculture means the operation of farm premises, including planting, cultivating, producing, growing and harvesting agricultural commodities; raising livestock and poultry; work incident to these farm operations (as long as the work is not provided as a service for other farm operations or employers); and equine activity. Most employers will be required to obtain a workers' compensation policy for their **employees**. Agricultural employers **can be exempt** under two conditions:

- Employers of seasonal or causal (occasional) agricultural laborers are exempt if they maintain (1) \$25,000 in employers' liability insurance and (2) at least \$5,000 in medical payments coverage.
- Employers with six or fewer agricultural workers are exempt if they maintain (1) employers' liability insurance of \$100,000 multiplied by the number of full-time agricultural or aquacultural employees and (2) at least \$5,000 in medical payments coverage. This also applies if you employ more than six agricultural workers, but their combined hours do not exceed 240 in a week.

Spouses and children of employers can waive workers' compensation benefits.

c. Unemployment Premium Payments

Employers must pay unemployment premiums for their agricultural employees to the state unemployment compensation fund if:

- During any calendar quarter in either the current or preceding year the employer paid total wages of \$20,000 or more to agricultural laborers; or
- For some portion of a day in each of 20 different calendar weeks (consecutive or not) in either the current or preceding calendar year, they employed 10 or more agricultural laborers, regardless of whether they were employed at the same time.

For all other employees, employers must start paying if:

- During any calendar quarter in the current or preceding year paid wages of \$1,500 or more; or
- For some portion of a day in each of 20 different weeks (consecutive or not) within either the current or the preceding calendar year, they employed one or more individuals, regardless of whether the same individual was employed in each day.

This “tax” is paid by the employer on the first \$12,000 in gross wages paid to an individual in a calendar year. Employees cannot waive their right to unemployment insurance.

d. Recordkeeping

Certain recordkeeping requirements apply regardless of your worker’s classification. For example, employers must keep daily records of hours and wages paid to each employee unless the employee is a family member. Federal law requires detailed payroll information about each individual employee. Employees in Maine have 6 years to bring a wage payment claim against their employer, so it is advisable to retain records of hours worked and wages received for at least 6 years.

e. Other requirements

This guide does not cover various labor and employment laws that farms must comply with, including the Maine or Federal Occupational Safety and Health laws, Fair Labor Standards Act, Migrant and Seasonal Agricultural Workers Act, EPA’s

Worker Protection Standards, or pesticide laws. Further, employers must ensure agricultural workers are protected from safety and health hazards.

Summary

Farms must be able to distinguish agricultural labor from other types of work to determine what wages must be paid and whether other important employment rules apply. Understanding the above requirements will help to ensure your farm is complying with the relevant state and federal laws when hiring workers. This is a complex area of the law, and we recommend seeking the advice of an attorney if you have questions about how these rules apply on your farm.

References

- Maine Law – Employment Standards and (26 M.R.S.A. §§ 601-604)
- Maine Law – Minimum Wage (26 M.R.S.A. §§ 621-639)
- Maine Law – Unemployment Compensation (26 M.R.S.A. §§ 1041-1051)
- Maine Law – Registered Apprenticeships (26 M.R.S.A. §§ 3201-3212)
- Maine Law – Workers’ Compensation (39-A M.R.S.A. §§ 101-113)
- Federal Law – Fair Labor Standards Act (29 U.S.C. § 203)
- US Dept. of Labor – [Fact Sheet #71: internship Programs Under the Fair Labor Standards Act](#)
- Maine Dept. of Labor – [Maine Apprenticeship Program](#)
- CLF - Employer Obligations [Guide](#)

This guide was prepared by Haley Gentry, CLF Legal Intern and Student at Tulane Law School.

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