



Notice: This guide is for informational purposes only and does not provide legal advice or create an attorney-client relationship. You should contact an attorney to obtain advice with respect to any particular issue or problem.

Employment Rules for Agricultural Workers in New Hampshire

Understanding labor and employment law is essential for operating a successful farm. Both federal and New Hampshire law treat agricultural work differently than other forms of employment. Depending on the size of the farm and the agricultural tasks done, an employee may be exempt from, for example, minimum wage. This guide is a brief look at what labor laws apply to farming activities to help New Hampshire agricultural employers and employees understand their rights and obligations. Most employee standards are detailed in Title 23 of New Hampshire's statutes.

I. Overview

There are two overarching steps in determining which labor laws apply to farm work:

1. Determine the legal classification of the farm worker. Is the worker an employee, intern, contract worker, or something else? This will dictate which labor laws, particularly around wages, working time, and benefits, apply.
2. If an employee, move on to section IV of this guide. Identify the labor law in question (minimum wage law, worker's compensation law, etc). Read the farm or agriculture definition for that law and then consider whether the employee activities qualify for the agricultural exemption. Note that if there is a federal and state law for the same topic, the farm must pick whichever is more favorable for the employee. This guide largely determines which a farm must pick, but if a farm is unsure, the farm should consider seeking legal counsel.

II. Determining the Legal Classification of the Farm Worker

Determining whether a farm worker is legally considered an employee, independent contractor, or unpaid intern is important for determining pay rates and other worker protections. New Hampshire law may have different wage and working-time requirements for different types of farm workers. Also, keep in mind that unique rules apply when employing minors.



A. Employees

An “employee” is someone who an employer directs or permits to work for them, and in return, the employee is paid. An employer determines both the work the employee performs as well as how the work is done. A written agreement is not required for someone to be an employee.

For example, someone hired to come regularly to a farm and weed, plant, water, prune, and harvest throughout the year would likely be an employee. They are hired to come on a regular basis to do a variety of tasks to help with growing a crop for sale. Most workers will be considered employees under the law.

B. Independent Contractors

An independent contractor is someone who performs a specific service for another while having control over how, and to a large degree when, the work is done.

Typically, an independent contractor is someone hired by the farm to complete a specific, discreet task, not to perform day-to-day operations. An independent contractor is not required to work exclusively for one employer and should have their own insurance and federal employer identification number. New Hampshire law also explains what an independent contractor is *not*. Independent contractors are *not* (i) integral to the business that hires their services, (ii) in a long-term or permanent relationship with the business, (iii) dependent on the business’s equipment, (iv) shielded from liability by the business, (v) dependent on the business for initiative, or, most fundamentally, (vi) in any way a part of the business.

For example, a builder hired to construct a barn, a custom applicator hired to apply fertilizer, or a technical service provider hired to create a farm’s nutrient management plan are all likely independent contractors. In each instance the independent contractor is hired to perform a specific, discrete task on the farm, likely bringing their own equipment, and likely working on several farms.

While a farm will need to request a W-9 from an independent contractor for taxes, a farm is not bound by workers compensation, minimum wage, or other typical employee labor laws for their independent contractors.

C. Unpaid Interns

A farm may only have unpaid interns if the intern is the primary beneficiary of the internship. New Hampshire and Federal law require businesses with unpaid interns to do several things to ensure that interns are the primary beneficiaries.

The New Hampshire Department of Labor (NHDL) requires all businesses, including farms, that wish to have unpaid interns to provide the NHDL with information explaining the objectives, activities, and details of the internship. The NHDL then checks several factors before approving an internship.

First, NHDL will check whether the internship has specific educational goals and objectives. Next, NHDL will holistically consider these seven federal requirements:

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 internship program should, to some degree, be incorporated into 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 with 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 completing the internship does not entitle them to a paid job.

For example, a farm that solicits 3-4 college students each summer to work and learn for 8 weeks might qualify. If the students gain valuable soil health, crop rotation, and composting training in organized daily training modules from paid employees; receive summer class credit for their time on the farm; and help prune, weed, and water with regular guidance from paid employees; the students would likely be considered the primary beneficiaries of the program. Thus, they could lawfully work as unpaid interns on the farm.

However, if the program didn't have organized training modules, wasn't considerate of the academic calendar, or clearly replaced farm labor that was regularly needed throughout the growing and harvesting seasons, those working would likely be farm employees instead.

D. Farm Apprentice

There is no such thing as an apprentice under New Hampshire or Federal Law. Thus, a farm with an apprentice designation will need to determine whether, for legal matters, that individual is an unpaid intern or employee.

E. Volunteer

Under federal law, a volunteer is someone who donates their time and labor without a promise or expectation of payment. To ensure a volunteer is not an unlawfully unpaid employee, the Fair Labor Standards Act requires that volunteers only work toward a charitable and public purpose. Thus, for farms, volunteers will generally only work on registered nonprofit farms that have certified they serve a charitable public purpose. Further, a volunteer cannot displace regular employees.

III. Default New Hampshire “Agriculture” and “Farming” Definitions

If a worker is an employee (as explained above), then employee labor laws apply unless there is an agricultural employee exception. Several of the key agricultural employee labor law exemptions are outlined below. These exemptions largely turn on the various definitions of agriculture and farming.

When not otherwise defined, “agriculture” and “farming” in New Hampshire include, but are not limited to:

- the growing and harvesting of crops including in aquaculture and greenhouse systems
- raising livestock, poultry, horses, deer, bees for honey, domestic fur-bearing animals
- work done on a farm connected to farming operations such as
 - preparing of unmanufactured farm products for market
 - transporting farm workers
 - using herd dogs
 - composting
 - **marketing** or selling farm products, including **agritourism**.
 - roadside farm stands

While broad, “agriculture” and “farming” in New Hampshire would not likely include actions *entirely unrelated* to farming like selling prepared meals at a farmer’s market or canning produce off the farm.

A. “Agritourism” and “Marketing”

Marketing in New Hampshire law includes “selling at wholesale or retail . . . any livestock or products derived principally from the production of the farm . . . whether on-site or off-site” as well as **agritourism** which means “attracting visitors to a farm to attend events or activities that are accessory uses to the primary farm operation, including, but not limited to, being provided a meal, making overnight stays, enjoyment of the farm environment, education which shall be instruction or learning about the farm’s operations, or active involvement in the activities of the farm.”

Despite these definitions, what New Hampshire considers to be “agritourism”, and thus farming, remains unclear. If a farm is unsure whether a specific activity would be considered “farming,” the farm should consider consulting legal counsel. In the meantime, it is best to err on the side of caution and not consider more tangential activities like catering a farm wedding “agriculture” or “farming”.

Recall: When federal and state laws differ, a farm must always pick the law most favorable to the employee.

IV. Minimum Wage and Overtime for “Farm Labor” under New Hampshire Law

For most employees, New Hampshire mirrors federal law for minimum wage and overtime (see below). However, “farm labor” is fully exempt from both requirements.

Because New Hampshire law exempts more farm-related activities than Federal law, federal laws governing minimum wage and overtime are more favorable to the employee, and thus govern (see below).

V. Minimum Wage and Overtime for “Agricultural Labor” under Federal Law

Federal minimum wage is \$7.25/hour. **Thus, non-exempt employees must receive at least \$7.25/hour.** Further, federal overtime law requires non-exempt employees to receive 1.5x their regular salary for any hours worked over 40 hours in a week.

Smaller farms are fully exempt from these minimum wage and overtime requirements. Specifically, farms are exempt if in the previous year there wasn’t a single quarter (three-month period) in which there were over “**500-man-days**” of **agricultural labor**.

Thus, before calculating specific wage and overtime benefits due to current employees, a farm must determine, based on last year, whether they qualify for agricultural labor exemptions this year.

A. “Agricultural Labor” Under Federal Law

Federal agricultural labor exceptions only apply to employees who engage **exclusively** in agricultural labor. Agricultural labor under federal law includes “farming in all its branches” as well as “any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations.”

For instance, this definition includes cultivating and tilling soil; dairying; the production, cultivation, growing, and harvesting of any agricultural or horticultural products; raising livestock, bees, fur-bearing animals, or poultry; any practices (including any forestry or lumbering operations) performed on a farm in conjunction with farming operations, and activities required for delivering a crop to storage or market.

However, this somewhat broad definition does not include work on a farm if unrelated to the farming operation or work on a farm product when the work is completed off-farm and done by someone not employed by the farmer. For example, under the federal definition, canning peaches at a cannery, most agritourism activities, and packing other farms’ products would likely not be considered agricultural labor. Therefore, the agricultural labor exemption from federal minimum wage and overtime requirements would not apply to employees who do these kinds of work.

B. A “man-day”

Federal agricultural exemptions for minimum wage and overtime only apply to farms that used fewer than 500 man-days of agricultural labor in all quarters of the prior year. A “man-day” is *any day* during which an employee performs agricultural work for an hour or more. 500 man-days are approximately the equivalent of seven employees employed full-time in a calendar quarter.

In calculating man days, do *not* include employees that are:

- a spouse or child of the employer
- Those primarily working in the livestock range production
- Harvesters who commute daily, are paid on a piece rate basis, are employed in a job traditionally paid on a piece rate basis, and were employed in agriculture less than 13 weeks in the previous year
- Non-local minors, age 16 or under, who are harvesters employed on the same farm as a parent and are paid the same piece rate as those over age 16

C. Calculating Minimum Wage under Federal Law

Even if a farm is exempt from paying minimum wage to their agricultural labor (based on the 500-man day definition explained above) if an employee spends any time working on something that is not agricultural, the minimum-wage exemption does not apply for *any* work that the employee does during that workweek. This means that **if a farm employee spends even one hour of time on a non-agricultural task, the employee must be paid at least the minimum wage for all hours worked in that week.**

For example, a farm with an employee doing some non-agricultural labor (like working at a cash register at a café on the farm) and some agricultural labor (like weeding) must pay that employee at least minimum federal wage for the **entire workweek**.

D. Calculating Overtime under Federal Law

As explained, a farm is permitted to exempt workers who performed agricultural labor from federal overtime laws if the farm did not have more than 500-man days of agricultural labor in any quarter during the previous year.

Overtime is determined per week. Thus, on an exempt farm, a *current* employee would be exempt from overtime pay rates during a workweek where they worked over 40 hours doing *only* agricultural labor.

Conversely, if the employee worked over 40 hours but did a mix of agricultural and non-agricultural labor, they would receive overtime pay. Recall that overtime pay must be at least 1.5x an employee’s “regular rate” and if doing a mix of agricultural and non-agricultural labor in a week, a farm must pay at least the federal minimum wage. Thus, in one week an employee might earn the federal minimum wage for their agricultural labor but a higher wage for their

non-agricultural labor. If so, the “regular rate” used to determine overtime pay is calculated by dividing the employee’s total weekly earnings by the total hours worked during the week.

For example, on an exempt farm, Avery performs agricultural labor for 30 hours and non-agricultural labor for 15 hours in one week. Though exempt, the farm must pay Avery at least the federal minimum wage for all labor that week since she performed a mix of agricultural and non-agricultural labor. On this farm, non-agricultural labor makes \$12.75/hr rather than minimum wage, and when applicable, pays the minimum 1.5x an employee's regular rate for working overtime.

In Avery’s case, she performed agricultural work for 30 hours at \$7.25 an hour or \$217.50 total. For her non-agricultural work, she worked 15 hours at \$12.75 an hour, or \$191.25 total. Thus, Avery’s “regular rate” is \$9.08 per hour ($\$217.50 + \$191.25 = \408.75, divided by 45 total hours worked that week). Thus, Avery’s overtime pay is \$13.62/hr for the 5 hours worked that week above 40 (1.5x her \$9.08 /hr “regular rate”).

VI. “Agricultural Labor” and Federal and State Unemployment Tax

Generally, an employer must pay federal and state unemployment taxes. The government then uses this money to provide temporary compensation to eligible unemployed workers. However, there are special rules and exemptions for farms.

Normally, unemployment tax is due when the business either:

- has or had one or more employees during some portion of a day in 20 different calendar weeks in either the current or preceding calendar year, whether or not such weeks are or were consecutive; OR
- paid out \$1,500 or more in gross wages during a calendar quarter (3-month period) during the current or previous year.

However, if farms employ farmworkers to do “agricultural labor” (as defined below), then the employer is exempt from paying both New Hampshire and Federal unemployment taxes unless or until:

- The farm pays cash wages of \$20,000 or more to farmworkers overall during any calendar quarter over the previous or current calendar year, OR,
- the farm employed 10 or more farmworkers for any part of a day (even if not at the same time during the day) during any 20 or more weeks in the prior two years or the current year.

In doing this calculation, include wages paid to those working under a temporary H-2A visa.

For unemployment tax, “agricultural labor” has a unique, and particularly broad definition.

Agricultural labor includes any services performed on a farm in connection with things commonly considered farming like cultivating the soil, raising or harvesting an agricultural or

horticultural commodity (including training and managing bees, and wildlife). However, it also explicitly includes producing or harvesting maple sugar and mushrooms; operating ditches and other waterways used exclusively for farm water; handling planting, processing, or delivering to market any agricultural commodity; and operating, managing, improving, or maintaining farm tools, salvaging timber, or clearing hurricane debris off a farm.

Thus, while aqueduct management, mushroom foraging, and off-site tractor repair work might not be considered “agricultural labor” for federal overtime and minimum wage, they likely would be “agricultural labor” for unemployment tax law. These activities would be part of a farm’s overall “agricultural labor” calculation when determining whether they need to pay unemployment tax.

The specific amount of federal tax is found [here](#), under section 10, and state unemployment tax levels are found at the [New Hampshire Employment Security Office](#).

VII. Workers’ Compensation

A. New Hampshire Law

Essentially every employer with employees, non-profit or otherwise, must provide workers’ compensation to all employees (including family members and part-time employees). This state-sponsored insurance program provides medical benefits and money to employees injured as a result of an on-the-job accident, injury, or occupational disease.

However, a sole proprietor, partner, or self-employed person is not required to, but may, carry workers’ compensation on themselves. Similarly, an LLC or corporation with under 4 executive officers or members and no other employees may also choose not to provide workers compensation. Thus, unless a farmer only works the land themselves with no other employees, they will need to provide workers compensation for those employees.

B. Federal Law

Federal Law is less favorable to the employees than New Hampshire law. Because New Hampshire Workers Compensation Law requires all employers to provide coverage, New Hampshire law governs.

VIII. Pay Periods, Wage Withholdings, Wage Notice, and Record Keeping

A. New Hampshire Law

Generally, employers must follow several detailed requirements regarding employee pay notice, and timing. Farms are exempt from these requirements unless they employ five or more people for farm labor (as defined in the minimum wage and overtime section). **When there are five or more farm laborers, a farm must follow the regular New Hampshire laws surrounding**

an employer’s duties with regard to pay rates, wage withholdings, wage notifications, recordkeeping, and the like.

Specifically, when there are five or more farm laborers, the farm must provide written notice of lunch times, days of rest, pay frequency, pay rate, pay days, vacation days, place and form of payment, and pay deductions. Farms must also keep a record of each employee’s hours worked, wages, and types of employment for at least three years. Finally, the farm must pay its employees on a weekly or biweekly basis, unless the farm chooses to submit a request to the N.H. Department of Labor Commissioner.

B. Federal Law

Further, if an employer employs over 500-man days of labor in agricultural labor (as defined above) then records of hours worked, wages paid, wage deductions, and employees’ full names and addresses must be kept for at least three years.

IX. Summary

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

X. Further Resources

- [Migrant and Seasonal Agricultural Employment Act](#) fact-sheet - for seasonal and temporary employees.
- [The Fair Labor Standards Act In Agriculture](#)– federal series of fact sheets specific for farm labor employment
- [Legal Guide for New Hampshire Agricultural Producers](#) – 2017 University of New Hampshire Cooperative Extension and Farm Commons
- [New Hampshire Statutes Section 21:34-a](#) Farm, Agriculture, and Farming Definitions
- [New Hampshire Statues Section 275](#) Protective Legislation for Workers
- [Federal Overtime Pay Requirements](#): Fact Sheet # 23
- [New Hampshire Department of Labor](#)

This guide was prepared by Gina Hervy, CLF Legal Intern and Student at Pace Law School. Thanks to Daniel E. Granfield of Sulloway & Hollis for his helpful review and comments.

Looking for legal help?
*Contact the Legal Food Hub to see if you qualify for **free** legal assistance!*
legalfoodhub.org
legalfoodhub@clf.org
1-844-LAW-GROW (1-844-529-4769)