

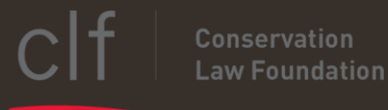
# A Farmer's Guide to Employment Laws in Rhode Island

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## I.0 Introduction

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Many complex state and federal laws exist to protect workers in all industries. These laws regulate aspects of employment including wages and working conditions. Understanding these laws for agriculture can be complicated because many special exemptions and exceptions are provided for farmers and their employees.

This guidebook is provided by the Conservation Law Foundation's (CLF) Legal Food Hub to help farmers understand state and federal employment laws. It is designed to give farmers an overview and summary of employment law issues that often arise on the farm. For example, it will discuss legal questions such as when employees are entitled to sick time and what the difference is between an intern and an employee.

Attorney Gina DiCenso authored this guidebook for the Legal Food Hub as a starting point for farmers. It is not an exhaustive resource on employment law, nor is it legal advice. The hope is that equipped with the information in this guidebook, Rhode Island farmers can begin to find solutions to the challenges of understanding and following employment laws.

Employment law is constantly changing, and while this guidebook may from time to time be updated to show these changes, it is important that you stay up to date with any legal developments that may affect your particular situation.

We encourage you to seek legal help if you have any questions or concerns about how any of the issues raised in this guidebook apply to your specific operation. You can begin by reaching out to the CLF Legal Food Hub, which provides free legal assistance to income-eligible farmers, at [legalfoodhub@clf.org](mailto:legalfoodhub@clf.org) or **1-844-LAW-GROW**. To learn more about the Legal Food Hub, visit [www.legalfoodhub.org](http://www.legalfoodhub.org).

This is our first edition of this guidebook. Every effort has been made to make sure that the information included is correct and relevant to farmers. We welcome comments, criticisms, feedback, and questions so that we can improve the guide for future editions or updates.

## **2.0 Wages and Other Payments**

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### **2.1 Are You an Employer of Agricultural Employees?**

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How you must pay your employees depends in part on whether they are agricultural or non-agricultural employees. Generally, agricultural employment includes all agricultural enterprises that occur on a farm or are performed by farmers. Agricultural employment also includes nursery workers.

To interpret what is and is not “agricultural and farm work” it is helpful to look at how the federal law defines “agriculture” under the federal wage and hour laws. Under the federal definition it 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, 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.

It is important to note that this definition of farming includes some work that is not directly associated with the farming operation so long as it is done by a farmer or on the farm in conjunction with the farming operations. Farm work includes packing produce for delivery, or delivery to retail outlets. Farm work does **not** include many activities that today’s small diversified farms do, such as value-added processing, retail sales, or agritourism. For example, workers selling produce at a local farmers market are not considered to be doing agricultural work.

### **2.2 How Must You Pay Your Employees?**

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In general, farm employers must follow federal **and** state wage and hour laws. Importantly, if state and federal wage laws differ, employers must follow the law that is more favorable to the employee. For example, the Rhode Island minimum wage is higher than the federal minimum wage. This means that agricultural employers must pay their employees the state minimum wage.

Importantly, under state **and** federal laws, agricultural employees are **exempted** from overtime pay requirements if they are doing farm work as defined in section 2.1.

#### **a. Minimum Wage**

In Rhode Island, farms must follow Rhode Island minimum wage requirements because they are more beneficial to the employee than the federal requirements.

Farmers must pay agricultural employees the following minimum wage:

- As of January 2018, \$10.10 per hour.
- As of January 1, 2019, \$10.50 per hour.

Under federal law, agricultural employers must pay workers their wages when due, and give workers itemized, written statements of earnings for each pay period, including any amount deducted and the reasons for the deduction.

#### **b. Overtime**

In Rhode Island, there is a special exception for agricultural workers, who do not need to be paid overtime. This means that agricultural workers doing farm work as defined in section 2.1 do not have to be paid time and one-half for the work they do in excess of forty (40) hours per week.

#### **c. Piece Rate**

Piece rate payment is determined by the amount of worker output regardless of hours worked. For example, in the farming context a worker may be paid by pounds of commodity picked rather than the number of hours worked. This form of compensation is allowed if it is set so that the slowest worker is paid at least the rate of minimum wage.

#### **d. Employee Breaks**

Under Rhode Island law, any employer who has three (3) or more workers on any shift at the same worksite must provide employees with:

- One twenty (20) minute **unpaid** mealtime during a six (6) hour work shift; and
- One thirty (30) minute **unpaid** mealtime during an eight (8) hour work shift.

## **3.0 Unpaid Interns, Apprentices, Trainees, and Volunteers**

### **3.1 How Does the Law Define Intern?**

In general, federal law requires for-profit employers to pay employees for their work, unless the employees qualify as interns under specific guidelines.

The US Department of Labor (DOL) considers seven (7) factors to decide if someone qualifies as an intern and can work without being paid. The factors apply to for-profit farms with interns who are not working through an educational institution. Greater flexibility in meeting these criteria may be given to for-profit employers who partner with educational institutions to provide on-site training.

The seven factors the DOL considers are:

1. The employer and the intern understand that the intern is not entitled to pay;
2. The internship training is similar to what would be given in an educational setting, including hands-on training given by the educational institution;
3. The internship is an integral part of the intern's formal education or coursework or the receipt of school credit;
4. The internship accommodates the intern's school commitments by following the school calendar;
5. The internship continues only for as long as it provides the intern with useful learning;
6. The intern's work complements, rather than displaces, the work of paid employees and is for the benefit of the intern; and
7. The intern is not necessarily entitled to a job at the end of the internship.

The DOL will evaluate these factors to determine who the "primary beneficiary" of the services is. If it is the employer, the worker must be paid.

If an employer pays its workers minimum wage (see Section 2.0 above), she may use the title "intern" even if the above criteria is not met.

Non-profit entities are permitted greater flexibility to use volunteer workers even if they do not qualify as interns. Unpaid internships for public sector and non-profit charitable organizations are generally allowed as long as the intern volunteers without expecting to be paid.

### **3.2 Apprentices and Trainees Versus Interns**

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The State of Rhode Island's Department of Labor and Training (DLT) does not recognize farming as a registered apprenticeship training program. Therefore, unless a person qualifies as an intern based on the seven (7) factors discussed above, the person is considered an employee and must be paid minimum wage for his work. As a rule of thumb, unpaid help is generally illegal for for-profit employers.

### **3.3 Volunteers**

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The law in Rhode Island permits people to do volunteer work for certain non-profit organizations, but **not** for-profit businesses. This means that people who work with for-profit organizations must be paid for their work unless they meet the intern criteria discussed above.

## **4.0 Rhode Island and Federal Leave Laws**

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### **4.1 Parental and Family Medical Leave**

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#### **a. When does parental and family medical leave apply?**

##### **i. Rhode Island Parental and Family Medical Leave Act (RI PFMLA)**

State parental and family medical leave law, under RI PFMLA, applies to Rhode Island employers who have fifty (50) or more employees. The Act covers employees who have been employed for the prior twelve (12) consecutive months.

##### **ii. Federal Family and Medical Leave Act (FMLA)**

Federal family and medical leave law, under the FMLA, applies to Rhode Island employers with fifty (50) or more employees. It covers employees employed for twelve (12) months (may be non-consecutive) who have worked for 1,250 hours in the 12-month period preceding the requested leave.

Both the RI PFMLA and FMLA apply only to those employees on the payroll.

#### **b. What leave is given?**

The RI PFMLA gives employees thirteen (13) consecutive weeks of unpaid leave if the employee gives the employer thirty (30) days' notice (unless an emergency prevents the employee from giving proper notice).

The FMLA gives employees twelve (12) weeks of unpaid leave during a 12-month period. FMLA, unlike RI PFMLA, lets employees take leave intermittently, rather than all at once, for serious health conditions.

#### **c. What are permitted leave uses?**

RI PFMLA leave may be taken for:

- The birth of a child;
- Placement of an adopted child sixteen years of age or younger;
- A serious illness or injury, impairment, or condition that involves inpatient care in a hospital, nursing home, or hospice for the employee or family member; and
- Outpatient care requiring continuing treatment or supervision by a health care provider for the employee or family member.

Family member means parent, spouse, child, mother-in-law, father-in-law, or the employee herself.

FMLA leave can be used for:

- Incapacity due to pregnancy, prenatal medical care, or child birth;
- Bonding with the employee's child after birth, or placement for adoption or foster care;
- Caring for the employee's spouse, son or daughter, or parent who has a serious health condition; and
- When a serious health condition of the employee makes the employee unable to perform job functions.

The FMLA permits an employee to choose, or an employer to require, the employee to use accrued or earned paid sick time, vacation time, and/or personal leave time during her leave.

#### **d. Returning to work**

Under both state and federal law, an employee that timely returns to work after completing family and medical leave must be given back his or her prior position or a similar position with equal seniority, status, employment benefits, and pay.

### **4.2 Sick Leave**

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#### **a. Who is covered by sick leave?**

Effective July 1, 2018, the Rhode Island Healthy and Safe Families and Workplaces Act (HSFWA) gives Rhode Island employees the right to take time off from work to care for themselves when they are too sick to work, are injured, or have a routine medical appointment. Employees may also use earned sick leave to deal with the impact of domestic violence, sexual assault, or stalking. In addition, they may use earned sick leave to assist their child, spouse, domestic partner, or other member of their household for the same purposes.

#### **b. What leave is given?**

The HSFWA requires employers with eighteen (18) or more employees to allow its employees to accrue three (3) paid sick days (twenty-four hours) per calendar year. An employer that has less than eighteen (18) employees is exempt from the requirement, but may not take adverse action against an employee solely based upon the employee's use of:

- Up to twenty-four (24) hours **unpaid** sick time during calendar year 2018;
- Thirty-two (32) hours **unpaid** sick time during calendar year 2019; and
- Forty (40) hours **unpaid** sick time per calendar year after 2019.

### **4.3 Rhode Island Military Family Relief Act**

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The Rhode Island Military Family Relief Act requires employers with at least fifteen (15) employees to allow eligible employees to take time off. Eligible employees are those who have a spouse or child who has been called to military service that will last more than thirty (30) days



in the state or the United States. The amount of leave given depends on the size of the employer:

- Employers with fifty (50) or more employees must allow employees to take up to thirty (30) days of leave.
- Employers with fifteen (15) to forty-nine (49) employees must allow employees to take up to fifteen (15) days of leave.

#### **4.4 Small Necessities Leave**

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Under Rhode Island law, employers with at least fifty (50) employees must give eligible employees up to ten hours of unpaid leave in any 12-month period to attend school conferences or other school-related activities for the employee's child.

#### **4.5 Jury Duty**

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Under Rhode Island law, employers must provide employees with unpaid leave for jury duty. Although the employer is not required to pay the employee for the lost time, the employer cannot punish or retaliate against the employee for taking leave to serve on a jury.

## **5.0 Additional Employee Rights and Benefits**

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### **5.1 At-Will Employment**

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Rhode Island is an at-will employment state. This means that an employer may fire an employee for any reason if the reason is not illegal. Illegal reasons include termination based on discrimination or because a worker got sick or injured.

### **5.2 Protection from Discrimination**

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There are many state and federal laws that outline the types of classes protected against discriminatory conduct. In general, it is unlawful for an employee to be the target of discriminatory conduct, including being paid less, based on the following classifications:

Under Federal Law -

- Race, gender, color, religion, national origin;
- Pregnancy;
- Age; and
- Disability.

Rhode Island law includes the above classifications and the following additional classifications -

- Sexual orientation, gender identity or expression; and
- Employees who are HIV positive or are perceived to be HIV positive.

Additionally, under Rhode Island law, any employer of fifty (50) employees or more must have a program of sexual harassment training, education, and policies in place.

Both state and federal laws also prevent employers from asking questions related to these categories during the hiring process.

The state and federal laws apply when employers meet certain criteria, such as minimum number of employees.

In most cases, only paid employees are protected under state anti-discrimination laws. However, non-paid employees are given some protections. For example, the Rhode Island Civil Rights of People with Disabilities law prevents any entity doing business in the state from discriminating against anyone – including volunteers – because of a disability. Although volunteers are not given all the rights of paid workers under the law, they are given some.

### **5.3 Whistleblower Protection**

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Under state and federal Whistleblower Protection laws, an employer cannot take negative action against an employee because that employee reported illegal conduct, or conduct he believed to be illegal.

### **5.4 Unemployment and Temporary Disability/Caregiver Insurance**

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#### **a. Which employees are entitled to unemployment benefits?**

Agricultural employees whose employers have paid \$1,000 or more total cash wages in any calendar quarter are covered by Rhode Island Unemployment Insurance. These workers are entitled to unemployment benefits if they are terminated for a reason other than misconduct, or if they voluntarily leave for good cause. An example of good cause would be if the employee left because of dangerous working conditions that the employer refused to fix or for certain personal reasons, such as to relocate with a spouse.

#### **b. Which employees are entitled to Temporary Disability/Caregiver Insurance?**

Agricultural employees are entitled to Rhode Island's Temporary Disability/Caregiver Insurance benefits:

- If they are unable to work due to a non-work-related injury or illness;
- To care for a seriously ill child, spouse, domestic partner, parent, parent-in-law, or grandparent; or
- To bond with a newborn child, new adopted child, or new foster-care child.

## **5.5 Affordable Care Act**

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Under the federal Affordable Care Act, employers with an average of fifty (50) or more employees in a calendar year must either offer minimum essential health care coverage that is “affordable” and that gives “minimum value” to their full-time employees (and their dependents), or potentially pay a fee to the Internal Revenue Service.

## **6.0 Workplace Safety**

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### **6.1 Workers’ Compensation Act (WCA)**

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#### **a. What is the WCA?**

Rhode Island’s WCA requires certain employers to maintain insurance to pay medical expenses and lost wages to employees who are injured while working.

#### **b. Which farm employers must have workers’ compensation insurance?**

Farmers, or agricultural employers who have twenty-five (25) or more farm laborers or agricultural employees for thirteen (13) consecutive weeks are required to maintain workers’ compensation insurance, **unless** the farmer or agricultural employer maintains health and disability insurance for all its farm laborers or agricultural employees, **and** the health and disability insurance premium is greater than the premium for workers’ compensation insurance.

Farmers or agricultural employers with fewer than twenty-five (25) farm laborers or agricultural employees or who employ their laborers for fewer than thirteen (13) consecutive weeks are exempt from the requirement to maintain workers’ compensation insurance.

The WCA defines farmers or agricultural employers as agricultural enterprises which produce greenhouse crops, fruit and vegetable crops, herbaceous crops, sod crops, viticulture, viniculture, floriculture, feed for livestock, forestry, dairy farming, aquaculture, the raising of livestock, fur-bearing animals, poultry and eggs, bees and honey, mushrooms, and nursery stock.

Non-employees or employees of an exempt employer not covered by workers’ compensation laws can sue their employer on a fault-based tort theory and potentially recover more money than they would with a workers’ compensation claim.

### **6.2 Occupational Safety and Health Act (OSH Act)**

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#### **a. What is the OSH Act?**

The federal OSH Act requires employers to provide a safe working environment. Specifically, the law requires employers to provide “each of his or her employees employment and a place

of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.”

Additionally, the OSH Act requires employers to comply with safety and health standards created by the OSH Act, including both general and agriculture specific standards.

### **b. What are employers required to do under the OSH Act?**

Employers must stay informed of the hazards present in the workplace and keep employees informed about the hazards. The term “employee” is defined broadly and applies to any worker who is paid.

For example, the OSH Act requires employers who use, produce, or distribute hazardous chemicals and substances to develop a written Hazard Communication Plan. This plan must describe the hazardous chemicals and give details on how the employer will protect employees from these hazards. The employer must also supply protective equipment to those employees who are exposed to the hazardous materials.

## **6.3 Worker Protection Standard (WPS)**

### **a. What is the WPS?**

The federal WPS requires owners and employers to protect employees on farms from on the job exposure to agricultural pesticides. The requirements of the WPS are meant to inform workers and handlers about pesticide safety, provide protections from potential exposure to pesticides, and mitigate exposures that do occur.

### **b. What is required by the WPS?**

Requirements include:

- Worker training;
- Notification, access, and distribution of safety data information;
- Limiting employee exposure to hazardous substances; and
- Mitigation of exposure to hazardous substances.

### **c. Who is covered by the WPS?**

The WPS protections cover all agricultural workers who perform tasks related to growing and harvesting plants on farms, in greenhouses, or in nurseries.

## **6.4 Rhode Island’s Hazardous Substance Right-To-Know Act**

In Rhode Island, an employer who “uses, transports, stores, or otherwise exposes its employees to toxic or hazardous substances” must keep and make available to the employees a list of all hazardous substances that the employees are or may be exposed to.

Additionally, employers must:

- Maintain Material Data Safety Sheets conforming to Occupational Health and Safety Administration regulations;
- Update on an annual basis the chemical identification list;
- Make sure that the local fire department is informed of the types and locations of hazardous substances on the premises; and
- Give training and education to employees about hazardous substances before the employees start to work with such materials.

## **7.0 Employer Record Keeping Requirements**

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### **7.1 Employer Payroll Records**

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All employers must retain payroll records for inspection by the state of Rhode Island for at least four years from the date when state employment taxes are due or paid, whichever is later. Information contained in these records is kept confidential. Employers should record the following information about each worker:

1. Name, address, and social security number;
2. Rate of pay and effective date;
3. Number of hours worked each day;
4. Last day of employment and reason for termination; and
5. For each payroll period:
  - a) Gross amount of cash wages for the specified period, including vacation pay, holiday pay, and bonuses. Do not include sick leave pay that is paid under a plan or system;
  - b) Cash value of any wages paid in any form other than cash;
  - c) Commissions, bonuses, tips, and dismissal wages; and
  - d) Payments for traveling and other business expenses more than actual expenses incurred.

### **7.2 Employment Eligibility (Form I-9)**

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Within three (3) days of hiring, the employer must verify the employee's eligibility to work in the United States by looking at acceptable forms of documentation that are used to document identity and citizenship, legal alien status, or visa status, such as a passport, social security card, or permanent resident card.

A complete listing of acceptable documents may be found at USCIS - Form I-9 Acceptable Documents - <https://www.uscis.gov/i-9-central/acceptable-documents>.

An employer may not ask specifically about an applicant's citizenship status.

Employers must retain original I-9 forms for three (3) years after the date of hire, or one (1) year after the date employment ends, whichever is later. The forms should be stored separately from other personnel files.

## **8.0 Employee Policies: Written Policies and Handbooks**

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While not required by law, it is helpful for farmers to develop clear written policies and to discuss their expectations with their workers. Employee handbooks are useful for laying out policies and practices of the farm. If an employer has written policies, whether in a handbook or otherwise, it is critical to follow them and to apply them uniformly to all employees.

### **a. What are some useful policies to have in writing?**

- Attendance policies;
- Policies for paid or unpaid time off;
- Dress code;
- Substance abuse policies;
- Anti-discrimination/harassment policies;
- Payroll practices and compensation policies;
- Confidentiality requirements;
- Disciplinary procedures; and
- Conflict resolution and grievance procedures.

### **b. What should an employee handbook include?**

- A statement indicating that nothing in the employee handbook should be considered to be a contract;
- An employee acknowledgement that they have received and reviewed a copy of the handbook;
- A statement that the employment relationship is entirely “at will” and that this means that employment may be terminated for any reason; and
- A statement that the policies may be changed at any time in the discretion of the employer.

## **9.0 Information for Employees**

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### **9.1 Terms and Conditions of the Job**

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Under federal law, every agricultural employee must receive information about the working terms and conditions of the job in a language that she understands. Employers have different obligations for different types of employees:

- If the employee lives permanently in the area, the employer is only required to tell her about the job, unless the employee asks for a written statement of the terms and conditions.
- If the employee does not live in the area permanently, the employer is required to give her a written statement of terms and conditions when recruited.

The information provided to the employee must include:

- The location of the work;
- The time period the work will cover;
- The type of work, including the crops to be harvested;
- The wage rates, including any piece rates;
- Any benefits, such as housing or transportation, and the cost, if any; and
- Whether workers' compensation or state unemployment insurance is provided.

## **9.2 Information that Must Be Posted in the Workplace**

Under state and federal law, agricultural employers may be required to post information notifying their workers of the laws that are discussed in this guidebook.

The following is a list of notifications that must be posted in a conspicuous place for your workers if they apply to the employer's workplace.

Rhode Island Laws:

- Rhode Island Parental and Family Medical Leave Act (for employers with more than 50 employees);
- Rhode Island Right to Know Law (for hazardous substances);
- Minimum Wage Laws;
- RI Child Labor Laws;
- Rhode Island Unemployment and Temporary Disability/Caregiver Insurance;
- Workers Compensation Act;
- Discrimination is Illegal;
- Notice of Right to Be Free from Discrimination because of Pregnancy, Childbirth and Related Conditions;
- Sexual Harassment; and
- Illegal to Smoke in this Establishment.

Federal Laws:

- Fair Labor Standards Act (Minimum Wage);
- Family and Medical Leave Act;
- Military Family Leave;
- Migrant and Seasonal Agricultural Worker Protection Act;

- Employee Polygraph Protection Act;
- Notice to Workers with Disabilities;
- Uniformed Services Employment and Reemployment Rights Act Notice;
- Equal Employment Opportunity Act; and
- Job Safety and Health Protection OSHA Notice.

The state and federal departments of labor provide these notices on posters free of charge upon request.

## 10.0 Useful Resources

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- **United States Department of Labor, Wage and Hour Division  
Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act:**  
<https://www.dol.gov/whd/regs/compliance/whdfs71.htm>
- **Department of the Treasury, Internal Revenue Service, Publication 51  
Cat. No. 10320R (Circular A), Agricultural Employer's Tax Guide For Use in 2018:**  
<https://www.irs.gov/pub/irs-pdf/p51.pdf>
- **Rhode Island Department of Labor and Training Employer Handbook  
Rhode Island Digest of Labor Laws, Section II**  
Division of Labor Standards, Overtime Provisions, Exceptions:  
<http://www.dlt.ri.gov/lmi/publications/handbook.htm>
- **United States Department of Labor, Wage and Hour Division  
Fact Sheet #12: Agricultural Employers Under the Fair Labor Standards Act:**  
<https://www.dol.gov/whd/regs/compliance/whdfs12.pdf>
- **United States Department of Labor, Wage and Hour Division  
Fact Sheet #49: The Migrant and Seasonal Agricultural Worker Protection Act:**  
<https://www.dol.gov/whd/regs/compliance/whdfs49.pdf>
- **United States Department of Labor, Wage and Hour Division  
Cultivating Compliance: An Agricultural Guide to Federal Law:**  
<https://www.dol.gov/whd/FLSAEmployeeCard/AgGuideEnglish.pdf>
- **United States Environmental Protection Agency  
Agricultural Worker Protection Standard (WPS):**  
<https://www.epa.gov/pesticide-worker-safety/agricultural-worker-protection-standard-wps>



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