

## **Rights and Responsibilities, Farmworkers and Farmers**

By Elizabeth Henderson

A farmer who runs a mid-sized vegetable farm fires a worker. The only reason she gives is that the worker wears purple too often. Does the farmer have the legal right to fire a worker this way? When I ask this question of the would-be farmers who take my workshops on creating a fair farm only about half get the answer right. Dear readers – do you know the answer? If you are working on a farm (or if you employ workers on your farm), it might be a good idea to inform yourself about the legal rights of farm workers.

### **At-Will Law**

The answer to the question about the employer's right to fire a worker for no particular reason is yes, at-will law (present in 49 or the 50 states) allows employers to fire workers without just cause. There are many limits to that right. An employer cannot discriminate against a worker for a whole list of reasons that include race, ethnicity, or age. An employer cannot fire a worker for getting sick or injured. But unless the farm has clear written policies for terminating workers, a written contract, or a union contract, employers can do what they want. Courts tend to interpret employee handbooks as promises to follow the written procedures they contain, so if an employer does not follow his own rules, the court may side with the worker.

At-will, of course, gives workers the freedom to leave too, but the power in the situation is very much with the employer. To prevent successful lawsuits by disgruntled former employees, a smart employer will have written policies, adhere to them, keep a file with a record of every evaluation and warning, and be able to show a good reason for terminations. To be fair, employees would have free access to these files.

### **Safety**

Workers have the right to a safe work place. If you are hurt on the job, the employer is liable for damages. That is why most farm employers invest in Workers Compensation, insurance that covers on the job injuries and disease. Workers Comp for farm labor is a legal requirement in most Northeast states. NY and VT exempt farms with very small payrolls - \$1200 a year in NY, \$10,000 in VT. Part-time employees, borrowed employees, leased employees, family members and volunteers are included under the workers' compensation law. Also included are unpaid student interns. For only a few dollars more, employers can add disability insurance that covers off-farm illness and injuries to employees. NY workers' compensation law excludes farm laborers from the requirement that employers provide disability insurance to employees. Workers' Compensation is a "no fault" system – who is to blame for an injury is not an issue. The Workers' Compensation Board, not the employer, decides whether an injury or illness is covered.

Abundant information on farm safety is easily available. The New York Center for Agricultural Medicine and Health ([www.nycamh.org](http://www.nycamh.org)) has a remarkably thorough collection of guidelines in both English and Spanish for preventing accidents on farms covering tractors, PTOs, hearing protection, manure pits, livestock handling, etc., etc. In NY and a couple of other NE states, NYCAMH will provide farms with FREE on farm safety assessments and safety training. They are also offering small grants to improve farm safety from the John May Farm Safety Fund. In its tool kit for farmers, the Agricultural Justice Project (AJP) provides a guide to creating a farm safety plan and model farm safety policies ([http://agriculturaljusticeproject.org/?page\\_id=116](http://agriculturaljusticeproject.org/?page_id=116).)

The Occupational Safety and Health Act of 1970 gives employees the right to file complaints about workplace safety and health hazards, and, if a worker fears retaliation, s/he can request that the employer does not learn their name. Workers can make complaints online at [www.osha.gov](http://www.osha.gov), or download a complaint form and submit it to the nearest regional OSHA office.

The recently updated Worker Protection Standards (WPS) require that employers provide annual training in pesticide hazards to workers who may be exposed. The training must take place before exposure and tell workers how to protect themselves. Employers must give workers access to chemical information sheets (Material Safety Data Sheets). For the full regulations, see the EPA website: <http://www.epa.gov/pesticide-worker-safety/revisions-worker-protection-standard>

### **Wages and other benefits**

Federal and State wage and hours laws protect workers' rights to be paid for all of the hours they work. The Fair Labor Standards Act (FLSA), a federal law, requires that most employers pay a minimum hourly wage and pay time and a half for overtime over 8 hours a day and 40 hours a week. However, FLSA exempts farm labor from the time and a half overtime requirement. And if a farm does not have more than 500 "man-days" of agricultural labor in a year (roughly equivalent to seven employees employed full-time in a calendar quarter) the farmer is exempt from paying federal minimum wage. But that is not the end of the story. Farmers must still comply with state minimum wage laws which vary by state. New York, Rhode Island and Connecticut require agricultural labor to be paid at the general state minimum wage which is \$9 in NY and \$9.60 in CT and RI. In Vermont, New Hampshire and Maine, agricultural work is exempt from the state minimum wage so is paid at the federal rate unless exempt under FLSA. Currently the federal minimum wage is \$7.25 an hour. Massachusetts has an agricultural minimum wage of \$8 an hour. Meals and lodging may be credited against the minimum wage, but only with a *written agreement between the employer and the employee*, and the limits are different from state to state.

For picking berries and tree fruit, some farmers pay "piece rate" to get workers to pick faster. They pay a certain amount per pound or other unit. State and federal laws require that the "piece rate" be set so that the slowest worker still makes minimum wage. Unless the farm has a good system for keeping track of each worker's pickings, piece rate can lead to wage theft.

Whether a worker is entitled to time and a half for overtime depends on both the federal and state definitions of farmwork. In some states, if you are driving a delivery truck, packing vegetables but they are not from your own farm, or selling at a farmers' market, you are not doing farm work. Employer may have to pay workers differently if they are doing both farm and non-farm work. In "A Legal Guide to the Business of Farming in Vermont," attorney Annette Higby helps us understand federal law:

"The FLSA uses a two-pronged definition of agriculture that includes both primary agricultural activities as well as those activities that are secondary or incidental to carrying out the farming operation. The primary definition includes "farming in all of its branches" – cultivation and tillage, dairying, growing and harvesting horticultural crops, raising livestock, bees, fur-bearing animals, and poultry. Anyone performing these activities is engaged in agriculture regardless of whether he or she is employed by a farmer or on a farm.

"Agriculture—and thus the exemption—also includes activities that are secondary to the farming operation. Those activities must be performed by a farmer on a farm "as an incident to or in conjunction with such farming operations" to be considered "agriculture." For example, employees who build a silo or a terrace, or those who dig a stock well, are exempt when those activities are performed in conjunction with a farming operation. Logging activities, for example, are also exempt when they are part of a farming operation. But when these employees work for an employer

engaged exclusively in forestry or lumbering, they are not considered agricultural employees. These secondary activities must be subordinate to the farming operation. If they amount to a separate business, they lose the agricultural exemption.”  
<http://www.uvm.edu/farmtransfer/LegalGuideV.pdf>

### **Written Farm Work Agreement**

Farmers should provide all farmworkers with a written statement that covers the basic information about employment: farm name and address, work location, description of work to be done, the period of employment, wages and hours, pay period, deductions, housing and food provided, other benefits, time off, Workers Compensation policy number, and unemployment compensation insurance, if provided. With the weekly pay, should come a pay stub listing hours worked, amount paid, deductions and tax withholdings, and total amount paid.

### **Conflict Resolution and Grievances**

Workplaces with perfect harmony all the time are as rare as hen’s teeth. So employers should set up a clear approach to conflict resolution. Workers have the legal right to talk with their employer about workplace problems, though of course, some employers resist this and refuse to meet with groups of workers. When everyone on a farm knows who to talk to and what the process is for resolving conflicts it makes for a much happier workplace. There are examples of conflict resolution policies in the AJP farmer tool-kit, ([http://agriculturaljusticeproject.org/?page\\_id=116](http://agriculturaljusticeproject.org/?page_id=116).)

### **Interns/Apprentices/Trainees**

Whatever name you give it, federal law probably regards on farm interns and apprentices as employees and to avoid fines, the employer must pay at least minimum wage for all hours worked. For a farm, taking on interns is not cheap labor. It is a commitment to providing a real learning experience and means that the farmer will be acting as teacher as well as employer. *The California Guide to Labor for Small Farms* offers several models for on-farm training that meet legal requirements.

#### **The six-part test for whether a person is an intern is as follows:**

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school.
2. The training is for the benefit of the trainees or students.
3. The trainees or students do not displace regular employees, but work under their close supervision.
4. The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion his/her operations may actually be impeded.
5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period.
6. The employer and the trainees or students understand that the trainees or student are not entitled to wages for the time spent in training.

The New England Small Farm Institute (NESFI) has excellent materials on mentoring and on-farm training which you can order from their website: [www.smallfarm.org](http://www.smallfarm.org)

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Maybe the status of farmworker is a step towards owning and running a farm. Or perhaps farm work will continue for many years and may even be a person's chosen life work. Our movement for a local, sustainable agriculture needs both more farmers and more professional farm workers. Knowing your rights as a worker (or your responsibilities as an employer) provides the basis for a positive relationship so that small farms function as integrated teams. In this era of climate change, it takes everyone's contributions to make farms flexible and resilient...In her keynote speech at the NOFA-NY Winter Conference, Rosalinda Guillen, Director of Community to Community, spoke eloquently about "good hard work," and about how her farmworker father taught her and her siblings to work with pride and with appreciation for the beauty of working close to nature. If we want our network of small farms to be a way of life that is worth sustaining, farm work must become a respected vocation that is compensated appropriately for the values farm workers provide for society.

Resources:

"A Legal Guide to the Business of Farming in Vermont,"  
<http://www.uvm.edu/farmtransfer/?Page=legalguide.html>

A Legal Guide to Farming in New Hampshire and accompanying videos <http://www.nesare.org/State-Programs/New-Hampshire/Farm-labor>

*California Guide to Labor for Small Farms*, Aug. 2013 NCAT and CA FarmLink. – Much of the information in CA specific, but some applies country wide. Main goal of publication – to boost on-farm learning opportunities and help farms that train interns do it legally. Appendix has template for intern contract and a sample time card for employees.

Farmer Legal Action Group **FLAG** (Minnesota) <http://www.flaginc.org/>

- *Farmers Guide to Farm Employees: Federal and Minnesota Labor and Employment Law for Small-Scale Family Farmers*, August 2012, Farmers' Legal Action Group, Inc.
- *Farmers' Guide to Farm Internships: Federal and Minnesota Labor and Employment Law*, February 2013, Farmers' Legal Action Group, Inc.

From the **New England Small Farm Institute**: [www.smallfarm.org](http://www.smallfarm.org)

- *Cultivating a New Crop of Farmers – Is On-Farm Mentoring Right for You and Your Farm? A Decision-Making Workbook* (\$20)
  - *The On-Farm Mentor's Guide – practical approaches to teaching on the farm* (\$35)
- \**DACUM Occupational Profile for On-Farm Mentor*, 2001.

Order these online at <http://www.smallfarm.org/main/bookstore/publications/>