



# E.1 FARM LABOR

## PURPOSE OF THIS FACT SHEET

This fact sheet is to make you aware of your responsibilities as an employer. It is your duty to be aware of, and in compliance with any laws that apply to you. The penalty for failure to comply with the law is usually an order to come into compliance, and a fine. This area of law is called “regulatory law.” Unlike criminal law, a government official does not necessarily need a search warrant or an arrest warrant to find out if you are in compliance. State agencies charged with overseeing worker safety often do “spot” inspections of farms by simply showing up in a field where there are farm workers and asking questions. Just like with criminal law though, you always have what are called “due process rights.” This means you are always entitled to a hearing in which a government official explains their case against you, and you have an opportunity to show evidence against their case.

## CONCEPTS

**Who May Legally Work:** Federal law requires every employer to get a completed Form I-9, Employment Eligibility Verification Form from each person hired. The I-9 requires the employee to verify their identity and employment authorization (citizenship, legal resident status, or a special visa.)

**Definition of Employee:** Federal and state law define who is considered an employee and covered by employment law protections. Employers who break the law, by calling an employee an independent contractor or by paying “cash under the table” are subject to steep financial penalties.

**Test for Independent Contractor:** For federal purposes, misclassifying a worker as an independent contractor will result in owing back payroll taxes assessed with interest and penalties, and workers may also be owed back wages if they were paid less than minimum wage. For state purposes in addition to back payroll taxes you may be liable for costs and fines related to failing to cover an employee with workers compensation insurance. If someone you classified as a contractor gets sick or is injured while working for you and is found to be an employee, you will be responsible for paying all bills related to the injury or illness and you will be fined for failing to cover an employee with workers compensation insurance. In California failing to have workers’ compensation coverage is a criminal offense punishable by either a fine of not less than \$10,000 and up to \$100,000 or imprisonment in the county jail for up to one year, or both.<sup>1</sup>

Several factors determine if someone is properly classified as an independent contractor. In many situations enforcement will likely favor making the person an employee rather than an independent contractor, so it is important for you to consider carefully when deciding how you will pay someone. Factors generally in favor of legitimate independent contractor status include:

- They filed an income tax return showing your payments to them as self-employment income;
- They provided their own tools and equipment;
- They determined their own work schedule, and worked largely without supervision;

- They had multiple sources of similar income (for example a business providing specialized pruning services for a number of farms).

Other factors include the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party’s discretion over when and how long to work; the hired party’s role in hiring and paying assistants; and whether the work is part of the regular business of the either party.

Good examples of people who will always be treated as employees are people who weed, harvest or pack. You may hire a contract company to bring a crew to do these tasks, but each member of the crew is an employee of the contractor - or if the contractor is breaking the law and not treating them as employees they may be found to be your employees.

Good examples of people who are often legitimately treated as independent contractors are: bookkeepers who work off site and keep their own hours; graphic designers who create a logo for you; web designers who set up your web site; and a special equipment repair person who services all the farms in your area and is hard to get an appointment with and who comes up your driveway in a truck with the name of the business proudly painted on the door.

If you are trying to decide if someone will be seen as an employee or an independent contractor compare your relationship with them to your relationship with people who you know are employees and people you know are independent contractors. If in doubt consult a CPA or an attorney.

**Federal and State Minimum Wage Law:** Federal and state laws protect employees with minimum hourly wages and mandatory overtime pay. Most states have laws setting minimum wage, overtime, recordkeeping and youth employment standards for businesses operating within the state.

**Federal and State Payroll Taxes:** Employers are also obligated to pay federal payroll taxes and in many states, including California, state payroll taxes. In addition, employers must follow federal and state rules for withholding a portion of the employee’s pay and remitting that amount to federal and state income tax authorities.

**Other Employee Withholdings:** An employee’s social security number may be tied to a demand for a child support payment, back taxes, student loans, or other legally enforceable debts. You may be contacted by state or federal authorities to withhold, or “garnish” an employee’s wages and remit the garnished payment to the authorities.

**Special Rules for Agricultural Employees:** Most employees must be paid overtime according to the applicable state or federal law. Federal law and many states exempt some farmworkers from minimum wage and overtime. Look to your state for specific definitions of farm labor and the types of exemptions that may apply to farm labor. Agricultural labor may also be subject to preferential payment of federal payroll taxes. For more information on federal payroll taxes see IRS Publication 15 (Circular

E – Employer’s Tax Guide) and Publication 51 (Circular A – Agricultural Employer’s Tax Guide). Be sure to understand the specific definition of an agricultural employee under applicable federal law for federal payroll, or under applicable state law for minimum wage and other protections. In California for example there are complex rules distinguishing exempt agricultural workers from workers in packing operations, and these rules are difficult to apply to small diverse farms where most workers are in and out of field and packing work during the day.

**Worker Safety:** Federal and state laws also obligate employers to maintain a safe working environment. Most states require employers to carry workers compensation insurance to cover employees who are injured at work. The Federal Occupational Safety and Health Act (OSHA) applies to all American employers. Employers with fewer than ten employees have modified requirements. OSHA is administered by the Occupational Health and Safety Administration of the US Department of Labor. Check the web site for current and useful information:

<https://www.osha.gov>

**Other Worker Protections:** Federal laws require employers to display certain employment-related posters describing employees’ legal rights in an area that is frequented by employees such as a break room, locker room or bathroom. A complete list of federal workplace posters and an explanation of who must post them is available online at:

<http://www.dol.gov/oasam/programs/osdbu/sbrefa/poster/matrix.htm>.

Posters are also available at the same website.

State law may also require employers to keep specific types of payroll records and to inform employees of their rights.

**Workers Compensation Insurance:** is paid by the employer but covers the employee in the event of a of a work-related injury. The employee does not need to sue the employer to receive the benefits; the policy automatically pays medical expenses and other benefits such as temporary and permanent disability or job re-training payments. An employer may still be liable for an employee’s injury if the employer fails to take reasonable precautions to prevent conditions likely to cause serious injury, or if the employer caused or contributed to the injury. Most states require employers to carry workers’ compensation insurance. Small business and agricultural exemptions vary by state.

## HOW LABOR PROTECTIONS ARE ENFORCED

You may be notified by mail that your employment records have been selected for audit. A government official may go onto your farm and begin questioning people about their work. Often a complaint from a former employee will trigger an audit from one agency, and if that agency finds any violations they will notify other agencies. A common situation is that someone is paid as an independent contractor and when they leave your employment they file an unemployment insurance claim. Since there is no record of them working for you and yet they say they have worked for you there is an audit of your payroll which triggers a workers compensation audit and may also trigger an inspection from the occupational health and safety division of your state government.

## WHAT TO DO IF YOU ARE NOTIFIED OF A LABOR LAW VIOLATION

If you have made an error in calculating and reporting payroll taxes you can resolve the error with the assistance of an experienced bookkeeper or a CPA. If the underpayment, penalties and interest are too much for you to pay you may need the assistance of an attorney.

If you have violated a labor law that provides protections to workers you should seek the assistance of an attorney who specializes in labor law.

## WHERE TO GET HELP

Commercial payroll services generate payroll checks with all applicable deductions; and prepare, file and pay all applicable state and federal payroll taxes and reports as they are due. Commercial payroll services often also provide information on other aspects of employment law such as the required posters, and OSHA requirements. Your worker’s compensation insurance provider will also usually have additional resources to help you comply with OSHA and other safety requirements.

Local bookkeeping firms also offer payroll services and depending on your area may have knowledge of special rules for agricultural employers.

A Certified Public Accountant (CPA) may offer payroll services or may be able to refer you to a reputable bookkeeping firm. A CPA is someone who is licensed by the state where they practice. The requirement for licensing in most states is a four-year degree with a certain number of units in taxation, business law and accounting, a passing score on a difficult multi-day examination, and a certain number of hours worked under the supervision of someone already licensed as a CPA.

An licensed attorney is someone who is licensed by the state where they practice law. The license authorizes the attorney to represent clients in a court of law, or in an administrative appeal with a state or federal agency. The requirement for licensing in most states is a four-year degree, an additional degree from an accredited law school, a passing score on a difficult multi-day examination, and a background check. Some attorneys specialize in labor law.

## ADDITIONAL RESOURCES

California Farm Link California Guide to Labor Laws for Small Farms

<http://www.californiafarmlink.org/farm-business-management/labor-laws-for-small-farms>

Farm Commons (Wisconsin, and general resources)

<https://www.farmcommons.org/workers>

Farmers 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.

<sup>1</sup> California Labor code Sec. 3700.5

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