



Farm Employer Overview

FBFS010—9/13 Mark Cannella, Farm Business Management Specialist, UVM Extension, 617 Comstock Rd, Suite 5, Berlin, VT 05602

The hiring and management of employees presents an opportunity for farm businesses to expand operations, increase efficiency and create jobs from the working landscape. Managing employees comes with not only the responsibility to promote a safe and desirable workplace, but it also comes with the responsibility to make sure everything is in compliance with state and federal labor standards and laws.

IMPORTANT: This document is an educational overview. It is not a comprehensive reference to all employment issues or requirements. This document does not cover topics on Migrant Agricultural Labor. Always consult current state and federal labor agencies, state and federal tax laws and the VT Department of Labor. Professional accountants and payroll services are valuable resources that can be consulted with to ensure that you are establishing and managing all employer obligations correctly. Laws change over time and adjustments will need to be made.

This is a general overview of employer responsibilities to set up for and employ workers on your farm. For more detailed information you will need to contact the following agencies:

Vermont Health Care Connect, Small Business Page: <http://info.healthconnect.vermont.gov/SB/faq>

VT Department of Taxes oversees numerous programs. Most relevant to farms will be individual income taxes, sales/rooms/meals taxes if required and property taxes.

<http://www.state.vt.us/tax/business.shtml> or 802-828-2551

Vermont Department of Labor

<http://www.labor.vermont.gov/> or 802-828-4000

IRS: Small Business and Self Employed Tax Center provides information on programs and policies to collect Federal income tax, Social Security and Medicare taxes, FUTA, self-employment tax and more.

<http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/>

United States Department of Labor oversee programs and regulations related to fair labor standards. Many laws have special criteria that relates to agricultural employers and employees.

<http://www.dol.gov/>

Federal Payroll Taxes: Internal Revenue Service (IRS)

As an employer you can manage these details yourself or you can choose to work with a hired accountant, bookkeeper or professional payroll service. Certain software programs also have the capacity to manage payroll requirements. These are the basic steps to setting up the documentation and tax record for an employee:

- Obtain Employer ID Number (EIN) from the IRS
- File forms W-4 and I-9 for each employee at the start of employment
- Keep track of employee wages
- Deduct employee taxes from their regular paycheck (withholding, Social Security, Medicare), and deposit them into a separate account for payments to IRS
- Pay, from the farm account, the IRS a matching amount of employee taxes on Social Security and Medicare
- File Form 943 annually
- File W-2 and W-3 for all employees



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Wages, Hours and Fair Labor Standards for Agriculture

The United States Department of Labor provides information related to the Fair Labor Standards Act (FLSA), the federal law which sets minimum wage, overtime, recordkeeping and child labor standards. In general, agricultural employers are not required to provide overtime payments of time and one half their regular rates for hours worked in excess of forty hours per week. Employers in agriculture who did not utilize more than 500 “man days” of farm labor in any calendar quarter of the preceding calendar year are exempt from the minimum wage and overtime provisions in the FLSA. (One “man day” is defined as any day which an employee works for at least one hour). In general, an employer with five or fewer employees will fall under the 500 man day per quarter limit.

Farm employers can reference “Fact Sheet #12: Agricultural Employers Under the Fair Labor Standards Act” available online from the US Department of Labor at: <http://www.dol.gov/whd/regs/compliance/whdfs12.htm>

Workers’ Compensation Insurance: Via Private Agents but subject to VT Department of Labor

VT Department of Labor oversees many programs including: Unemployment Insurance, Workers' Compensation, and the Wage & Hour Program.

Website: <http://labor.vermont.gov> or telephone: 802- 828-4000

Employers need to determine if they are required to provide workers’ compensation insurance to their employees. The Workers’ Compensation Statute is a no-fault insurance system. It provides the employer of an injured worker with protection from suit while it provides the injured worker with: medical treatment for the injury, compensation for lost earnings until the worker has returned to work, permanent partial disability compensation and vocational rehabilitation to assist the worker to regain earning capacity. Even if a business is not required to carry workers’ compensation, it may be a wise decision to do so in order to protect from the legal, financial or relationship outcomes of someone being injured on the farm.

This insurance product needs to be purchased from private insurers. There is a Workers’ Compensation Exemption, that indicates that businesses whose annual total payroll and compensation is less than \$10,000 are not required to pay for workers’ compensation insurance for employees. Total compensation includes the value of “non-cash” compensation. For farms this most often includes the value of food consumed from the farm and the value of on-farm housing. The value of these benefits are evaluated based on a “fair market value” test and that value is added to actual cash wages to determine total payroll. Business owners will acknowledge that the cost of workers’ compensation insurance is significant. A general estimate is that this coverage could cost approximately 8% of total payroll. The calculation is a function of (a) the industry of interest (ex. large livestock agriculture vs. timber harvest), (b) your company’s known history of safety or injury (known as an “experience rating”) and (c) the nature of the work performed. Payments will be different for each business. The best way to reduce your workers’ compensation payment rate is to promote safety in the workplace. Workplace safety programs and trainings are shown to reduce workplace injuries and keep your rates low.



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Workers' Compensation insurance is available for all workers, regardless of their immigration status.

For more information, contact:

Stephen Monahan
Director, Workers' Compensation & Safety Division
Vermont Department of Labor
5 Green Mountain Drive
PO Box 488
Montpelier VT 05601-0488
Tel.: 802-828-2138
Fax: 802-828-2195

Independent Contractor vs. Employee

Business owners are required to correctly determine if individuals providing services are considered employees or independent contractors. In general, businesses will need to withhold income taxes, withhold and pay Social Security and Medicare and pay unemployment taxes in addition to the wages paid to the employee. You do not generally withhold or pay any taxes on payments made to independent contractors.

The determination is based on the following three categories that provide evidence of the degree of control over the person providing service: behavioral, financial and type of relationship. In general, employees fall under a degree of behavioral control where the employer provides instruction on when and where to complete work and the order or sequence of work. Employees are provided with tools/equipment, supplies, training and evaluation of the process of work by the business. In contrast, independent contractors ordinarily use their own methods, their own tools and their own supplies to complete the work. Independent contractors are evaluated just on the end result but not the details of how the work was performed.

The financial control factors related to level of investment, unreimbursed expenses, opportunity for profit or loss, services available to the market and method of payment.

The type of relationship factors refer to how the worker and business perceive their relationship together. Factors include written contracts, employee benefits, permanency of the relationship and if the services provided are key aspects of the business.

Once you have made the determination that you have an employee, you will want to complete the necessary steps to set them up with the correct payroll, taxes and other benefits (see the sections above).

The Internal Revenue Service (IRS) provides guidelines to follow when making the determination between an employee and independent contractor. These guidelines can be found at the IRS website: <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-%28Self-Employed%29-or-Employee>



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If you have made the determination that the person you are paying is an independent contractor, you need to follow the required steps for appropriate tax filing. In general, this includes the contractor completing a Form W-9 (with the business retaining a copy) and the business completing Form 1099-MISC by January 31 of the year following payment. Business owners should contact the IRS to determine all requirements, criteria and any relevant exceptions related to the reporting of independent contractors.

The Affordable Care Act: What You and Your Employees Should Know

This is a very general overview of the new health care law. For more detailed information, please visit the government health care web site at: <http://www.healthcare.gov/index.html>

Employers

On March 23, 2010 The Affordable Care Act was signed into law and created sweeping changes to provision of health care to individuals and for businesses in the United States. The key number for employers is 50. A business that has 50 or fewer full-time employees is not subject to a **federal penalty** for failing to provide health insurance to its employees (full-time is defined as working thirty-hours a week (or more) on average during a one-month period).

In Vermont, however, there is only an exemption for the first four uncovered FTE's. There will be a penalty of \$40 per month for each uncovered FTE. This is confusing, contact Vermont Health Connect about your specific situation with full time , H2A or seasonable employees.

- If you have fewer than 25 employees, pay average annual wages below \$50,000, and provide health insurance, you may qualify for a small business tax credit of up to 35% (up to 25% for non-profits) to offset the cost of your insurance. This will bring down the cost of providing insurance.
- Starting in 2014, the small business tax credit goes up to 50% (up to 35% for non-profits) for qualifying businesses. This will make the cost of providing insurance even lower.
- In 2014, small businesses with fewer than 100 employees, will be able to shop in the Health Insurance Marketplace . This will give power similar to what large businesses have had, the ability to get better choices and lower prices. In the Marketplace, individuals and small businesses can buy affordable health benefit plans. Open Enrollment begins on October 1, 2013.
- The Marketplace will offer a choice of plans that meet certain benefit and cost standards. Starting in 2014, members of Congress will be getting their health care insurance through the Marketplace; you will be able to buy your insurance through the Marketplace, too. Find out how you can be ready to enroll.

Self-Employed

Many farm owners are self-employed. You will have access to shop for an insurance policy on the Health Insurance Marketplace starting in Fall 2013. By 2014, there will be tax credits available for certain self-employed individuals to support the purchase of your health care coverage. You will be required to enroll with a policy of your choice by a certain date, or, face a penalty for not enrolling in any health care coverage.

Farm Employees

Starting in Fall 2013, you will be required to purchase a health care policy of your choice through the Health Insurance Marketplace if you do not have health care coverage through your employer or another family member. At the start of 2014, you may apply for tax credits to reduce health care costs if your job doesn't offer health coverage or your job-based plan costs more than 9.5% of your income.