

UC Santa Cruz

Teaching Direct Marketing and Small Farm Viability

Title

Teaching Direct Marketing and Small Farm Viability: Resources for Instructors, 2nd Edition.
Part 8 - Farm Employees and Innovative Models for Interns and Apprentices

Permalink

<https://escholarship.org/uc/item/4gt2g6v5>

ISBN

978-0-9828781-1-8

Publication Date

2015-04-03

Peer reviewed

UNIT 8.0

Farm Employees and Innovative Models for Interns and Apprentices

| | |
|--|-----|
| Introduction | 351 |
| Lecture 1: Farm Employees—Definitions and Employee Protections | 353 |
| Lecture 2: Employers' Obligations—Taxes, Safety, Workers' Compensation, and More | 359 |
| Lecture 3: Innovative Models for Apprenticeship or Internship Programs | 365 |
| Resources and References | 368 |

Introduction: Farm Employees & Alternative Models for Interns & Apprentices

Please note: This unit is intended to introduce new and beginning farmers to issues around hiring or obtaining extra labor on a farm, and having on-farm interns/apprentices. Although it discusses state and federal laws, employee laws, and related tax issues, it is not intended to take the place of getting legal or tax guidance. Additionally, laws change and can be interpreted differently. We suggest that prior to bringing on interns/apprentices and/or employees, farmers check with a lawyer and other applicable professionals.

UNIT OVERVIEW

While many beginning farmers may start their new business using only their own labor, they will generally need help for the farm to grow and become profitable. It is important to understand the legal requirements for hiring employees and working with apprentices and interns.

Lecture 1 will familiarize students with employee protections—the federal and California state employment laws as they pertain to small farms. Most other states have employment laws administered through the state government in a manner similar to California. Generally, workers are entitled to minimum wage and overtime pay, and employers are subject to penalties for violating the law. There are limited exceptions for family members and some agricultural workers and trainees. This unit will look carefully at how the law treats on-farm internships and apprenticeships. These relationships are often viewed by both parties as something other than employment, but most of the time federal and state law requires an “intern” or “apprentice” to be treated as an employee under the law.

Lecture 2 looks at the obligations of an employer. In addition to complying with federal and state minimum wage laws, employers must also pay federal and state payroll taxes on time and comply with applicable state and federal safety standards to protect workers, such as carrying workers compensation insurance. Other federal and state rules cover requirements to keep certain types of records and to provide employees with certain notices.

Lecture 3 covers emerging alternative models for affordable and legally compliant farm apprenticeships: (1) working with an accredited educational institution to develop a registered apprenticeship program, (2) sub-leasing part of your land to an aspiring farmer, and (3) starting a separate business—a farm-school—and seeking funds to offset the costs of training provided to employees.

MODES OF INSTRUCTION

- > LECTURES (3 LECTURES, 1 HOUR EACH)

LEARNING OBJECTIVES

CONCEPTS

- Farm employers who have anyone else unrelated to them working on their farm are likely subject to federal and state employment laws.
- There are federal and state laws to protect workers with minimum hourly wages and mandatory overtime pay.
- Federal and state law governs the definition of protected employees and allows for few exceptions. Employers who break the law are subject to steep financial penalties.
- Employers are obligated to pay federal payroll taxes and in many states, including California, state payroll taxes. For federal purposes, misclassifying a worker as an independent contractor will result in owing back payroll taxes assessed with interest and penalties. California imposes an additional \$10,000 per incident fine.
- Federal and state laws obligate employers to maintain a safe working environment. In California and many other states, employers are also required to carry workers compensation insurance to cover employees who are injured at work.
- Employers are required to keep records and to inform employees of their rights.
- Although the law covering employees and employers is strict, there are some alternative ways to structure an internship or apprenticeship. The alternatives may save money in the long run, but they may be difficult to set up and administer.

SKILLS

- Understanding of minimum wage and overtime protections for workers.
- Ability to distinguish between an employee and an independent contractor, and an understanding of the consequences of misclassification.
- Understanding of the basic obligations of an employer: verifying immigration status, paying minimum wage, complying with overtime rules, paying payroll taxes on time, and maintaining a worker safety program.
- Familiarity with options for managing payroll reporting and other compliance requirements.
- Familiarity with options for structuring an internship or apprenticeship program.

Lecture 1: Farm Employees—Definitions & Employee Protections

Portions of this lecture are based on Alcorta, Beckett, and Knox 2013, California Guide to Labor Laws for Small Farms (see Resources and References)

A. Obtaining Help on the Farm

1. An informal apprenticeship model has been a common method for both training new generations of farmers and providing help on the farm, particularly for small-scale farmers. However, many of these situations are considered employee/employer relationships under labor laws.
2. It is very important to understand the definitions of different types of work relationships (employers, employees, independent contractors, apprentices, volunteers, etc.), employee protections and employer obligations when bringing people in to help work on your farm

B. Employee Protections—Introduction

1. Discussion questions:
 - a) What does it mean to be an employee? Who is an employer?
 - i. The legal test defining whether someone is an employee (as compared to an independent contractor) has to do with control. In a typical employee/employer relationship the employer controls which tasks the employee will perform as well as how and when the tasks will be performed. In contrast, in a typical independent contractor relationship, the contractor retains the autonomy to figure out all of the “what, when and how” decisions, and simply delivers a particular result by an agreed upon time.
 - b. Why does it matter?
 - i. As a farmer, or any type of business owner, you need to understand that people who work for you may have the rights of employees even if neither of you think of the relationship as an employment relationship. You may have legal obligations as an employer regardless of what you call, or how you pay, the people who work for you. Most importantly, failure to comply with employment laws, knowingly or unknowingly, can result in severe financial penalties in the event of an audit. Federal and state employment laws protect workers in a number of significant ways including minimum wage and overtime pay, and workplace safety standards. Employers who do not follow the law are subject to significant fines and penalties. Also, since the government collects payroll taxes on employment wages, the government has a financial interest in ensuring that employers do not avoid their obligations by misclassifying employees as independent contractors.
 - c. Is there anything besides employee/employer and independent contractor?
 - i. Yes, but it is up to the person benefiting from the labor to prove why the relationship is something other than employee/employer. In other words, the presumption will usually be that the relationship is between employer and employee and thus subject to all employment laws.
2. First we will discuss the basics of federal and state employment law and then we will cover some exceptions that might be useful to small-scale farmers

C. State and Federal Laws

1. Minimum wage and overtime laws
 - a) The Fair Labor Standards Act (FLSA) of 1938 is the Federal law establishing minimum wage, overtime, recordkeeping, and youth employment standards
 - i. This is the federal law—for many smaller farms state law rather than federal law applies—but state law will provide the same or higher levels of protection for workers
 - b) Most states have laws setting minimum wage, overtime, recordkeeping, and youth employment standards for businesses operating within the state
 - i. For quick links to your state's minimum wage laws, see: www.dol.gov/whd/minwage/america.htm
 - c) Although federal payroll taxes are deducted from an employee's wages, the taxes go towards the employee's Social Security and Medicare account, so they are a form of future protection to benefit the employee
 - i. This is another reason the law leans heavily towards the presumption that a worker should be paid as an employee unless there is strong evidence to the contrary
 - d) Most employees must be paid overtime according to the applicable state or federal law. The Federal Labor Standards Act (FLSA) exempts some farmworkers from minimum wage and overtime; for more information see the Department of Labor Compliance Assistance Resources at: www.dol.gov/compliance/topics/wages-agricultural.htm.
 - e) California labor law overtime rules and exemptions for agricultural workers are complex and depend on the specific job. For example, field workers may be treated differently than packing house workers.
 - i. The California Department of Industrial Relations sets wage orders. Currently Wage Order 14 applies to field workers and Wage Order 13 applies to packing house workers. Office work, even if on a farm, is not subject to any of the ag-related exceptions from overtime. For specifics see: www.dir.ca.gov/dlse/FAQ_OvertimeExceptions.htm.
 - f) In California, an employer may pay less than minimum wage:
 - i. To an immediate family member,
 - ii. To a person enrolled in an apprenticeship program registered with the California Department of Industrial Relations Division of Apprenticeship Standards, and
 - iii. For the first 160 hours of employment of a person who has no previous similar or related experience to the job
 - But "not less than 85% of minimum wage rounded to the nearest nickel"
 - g) On many small farms a common practice is paying interns or apprentices a stipend rather than an hourly wage
 - i. In California, and most states with strong worker-protections, the stipend must be greater than or equal to the minimum wage (including overtime pay requirements) to which the intern or apprentice is entitled
 - ii. Even if a state has a special exemption for farm trainees for purposes of federal payroll taxes, the IRS will consider most interns or apprentices "statutory employees" and require the employer to pay federal payroll taxes on the wages (applicable minimum wage with overtime, or the prevailing local rate) that should have been paid. See Unit 6.3, Basics of Bookkeeping and Farm Taxes, for more information on payroll taxes.
 - h) The value of meals and lodging provided may count towards minimum wage:
 - i. But only with a written agreement between the employer and the employee
 - ii. For federal purposes the amount must be "reasonable"

- iii. California sets specific limits. Detailed information is available at: www.edd.ca.gov/ and in the California Employer's Tax Guide (DE 44).
- i) The six criteria and italicized text below are taken directly from a fact sheet published by the U.S. Department of Labor Wage and Hour Division (U.S. Department of Labor, 2010). For federal purposes trainees (including interns and apprentices) are only exempted from minimum wage protections (and employers are only exempted from payroll tax obligation) if all of the following are true:
 - i. *"The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;*
 - ii. *The internship experience is for the benefit of the intern;*
 - iii. *The intern does not displace regular employees, but works under close supervision of existing staff;*
 - iv. *The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;*
 - v. *The intern is not necessarily entitled to a job at the conclusion of the internship; and*
 - vi. *The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.*

If all of the factors listed above are met, an employment relationship does not exist under the FLSA, and the Act's minimum wage and overtime provisions do not apply to the intern. This exclusion from the definition of employment is necessarily quite narrow because the FLSA's definition of "employ" is very broad."
- j) Students who are enrolled in an accredited university or college are subject to this six-point test.
 - i. It may be easier to establish that the activities are primarily educational and not for the benefit of the farmer—but it is not automatic
- k) Discussion questions
 - i. How might you structure an internship program so it meets the criteria of the laws governing these situations?
 - How would you show benefit to the intern?
 - How would you structure training so it is similar to that provided in an educational environment?
 - How can you show the intern works under close supervision of existing staff and is not doing labor that the farmer would otherwise pay someone to do?
 - How can you show that the farmer does not receive an immediate advantage from the activities of the intern? How can you show how farm operations are occasionally impeded by interns? How do these two factors balance out?
 - ii. What might happen if you accept an internship or apprenticeship for less than minimum wage?
 - Could you later report the farmer and get back wages? (Yes.)
 - Could the farmer be forced to pay significant wages and back taxes with interest and penalties? (Yes.)
 - iii. What do you know about historic and current abuses of farm-laborers? How do you think protecting farm-laborers should or should not relate to enforcing labor laws on interns and apprentices?
 - If you think the law should be applied differently because of the learning and training component, do you think farm laborers have equal opportunities to become interns or apprentices and learn management skills?

2. Independent contractors are not employees

- a) There is no “bright line” test to distinguish between an independent contractor and an employee. It is important, however, that you identify your workers in the correct category.
- b) Unlike an employee, an independent contractor must file her or his own income tax returns and report income earned as an independent contractor generally as “self-employment income”
- c) If you hire an independent contractor you must report annually to the IRS (on form 1099) any amount paid to a single person in excess of \$600 per year
- d) In the event on an audit, either because of a worker’s complaint or independent action by state or federal tax agencies, the auditor will attempt to determine if your independent contractors should have been paid as employees. The key factor is the amount of control each person has over the execution of the work. Criteria will include considering if the person:
 - i. Filed an income tax return showing your payments to them as self-employment income;
 - ii. Provided her or his own tools and equipment;
 - iii. Determined her or his own work schedule, and worked largely without supervision;
 - iv. Had multiple sources of similar income (for example a business providing specialized pruning services for a number of farms).
 - v. Other factors that will be considered 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 either party
 - vi. None of these factors is determinative; they are indications of control and independence.
- e) If most of the questions above are answered “yes,” the person will likely be considered an independent contractor. If not, the farm may owe back payroll taxes and other penalties because the person should have been treated as an employee.
- f) Since 2012 California has imposed a penalty of up to \$10,000 per employee per pay period for each incident of an employer willfully misclassifying an employee; in other words, for each pay period in which the person should have been paid on payroll but was instead paid as an independent contractor.
- g) Discussion questions
 - i. How would a typical apprentice or intern answer the questions regarding whether someone is an independent contractor (which are listed above under item 2)
 - ii. What would you do if a farmer offered to pay you as an independent contractor for an internship or apprenticeship?
 - iii. What do you think you would learn from someone who knowingly or unknowingly breaks a law that could have such serious consequences?

3. Volunteers

- a) There is no exception for volunteer labor at a for-profit business. A farmer who uses “volunteers” could end up owing back wages, payroll taxes, penalties, and interest.
- b) Not-for-profit businesses and organizations must also comply with applicable federal and state labor laws, but there is more flexibility for incorporating volunteer labor
- c) Charitable, religious, or faith-based organizations exempt from federal taxation under IRS Code Section 501(c)(3) may use volunteer labor under some circumstances

- d) For federal purposes a volunteer performs service for civic, charitable, or humanitarian reasons, without any expectation of compensation. Volunteer labor is exempt from the employer/employee labor laws described above.
- e) State law will generally follows federal law in determining if work is exempt as “ordinary volunteerism.” The factors to consider are:
 - i. Is the entity that will benefit/receive services from the volunteer a nonprofit organization?
 - ii. Is the activity less than a full-time occupation?
 - iii. Are the services offered freely and without pressure or coercion?
 - iv. Are the services of the kind typically associated with volunteer work?
 - Note that this factor will be the most difficult to demonstrate when the services are routine farm labor such as weeding or harvesting
 - v. Have regular employees been displaced to accommodate the volunteer?
 - vi. Does the worker receive (or expect) any benefit from the entity to which it is providing services?
- f) Many farms host schools or educational non-profits for hands-on learning. Volunteers may assist at such events. This is in the spirit of the law if the volunteers are associated with the school or the visiting non-profit and not with the ordinary for-profit activities of the farm.
- g) Organizations such as Senior Gleaners harvest crops that would not otherwise be harvested and give the harvest to food banks. In this case the farmer does not profit from the labor and the food bank, a not-for-profit civic charity, receives the benefit. The labor is volunteer labor and the volunteers are not entitled to any of the protections due to employees.

Lecture 2: Employers' Obligations: Taxes, Safety, Workers' Compensation, & More

A. Hiring an Employee

1. Determine legal immigration status
 - a) United States Citizenship and Immigration Services web page will have current resources and tools for employers
 - i. You can download the I-9 form from the U.S. Citizenship & Immigration Service (USCIS) www.uscis.gov/i-9, or request it by calling 1-800-870-3676
 - ii. Keep the I-9 for 3 years from the date of hire or 1 year after they stop working for you, whichever is later. You do not need to send this form to anyone, but will need to produce it if requested by a U.S. government official.
2. Comply with minimum wage and overtime laws as discussed in Lecture 1, Farm Employees and Innovative Models for Interns and Apprentices
3. Pay state and federal payroll taxes
4. Comply with health and safety regulations including regulations covering farmworker housing if you provide housing
5. Comply with other reporting and notification requirements

B. Payroll Taxes

1. Managing Your Payroll
 - a) 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.
 - i. Employer provides the payroll service with secure electronic access to the bank account so the service can transmit payroll taxes electronically as required
 - ii. Employer transmits hours worked for each employee in time for the paychecks to be issued according to the payment schedule selected;
 - electronically or
 - by phone
 - iii. Payroll service assists employer in acquiring all the appropriate documentation to set up a new employee for payment
 - iv. Payroll service usually provides other materials to assist employer with various labor compliance requirements and sends regular newsletters updating employers on changes to laws or tips for safety, etc.
 - v. A payroll service can be used with or without the services of a bookkeeper or an accountant, and can work well with QuickBooks or other accounting programs (see also Unit 6.3, Basics of Bookkeeping and Farm Taxes)
 - b) QuickBooks offers a compromise between a payroll service and doing everything yourself. You can calculate taxes and net paychecks using the program and pay for online support to prepare deposits and quarterly and annual reports.
 - c) Understand that specific rates, forms, and dates are subject to change, so if you do your own payroll you will need to constantly check for changes to applicable laws; one of the best benefits of a payroll service is receiving their updates on these changes.
 - d) No matter how you manage your payroll, you will need to understand the deduction for meals and lodging. The rules may be different for payroll and income tax purposes than for calculating state minimum wage.

- i. For federal purposes, the value of meals and lodging provided for the convenience of the employer are not included in taxable wages. Provided for the convenience of the employer means things like needing the employee on the premises regularly at night to keep an eye on livestock, or providing a lunch and dinner because town is too far away to drive there and back on a break.
 - e) You will likely find that a payroll service, or at least a supported software program, is an economical investment. But if you choose to manage your payroll yourself there are a variety of publications available at the Internal Revenue Service website, the Federal Department of Labor website, and the equivalent counterparts at the state level.
2. Federal payroll tax requirements
- a) Federal payroll taxes are discussed in detail in IRS Publication 15 (Circular E – Employer’s Tax Guide) and Publication 51 (Circular A – Agricultural Employer’s Tax Guide). There are many options for various levels of professional and computer assistance to help you calculate payroll taxes and comply with reporting and depositing requirements. We will discuss these options later. For now we will just introduce the basic concepts.
 - i. The IRS definition of agricultural laborers only includes field labor. Hours spent working in the office or packing shed, or driving delivery, or selling at the farmers’ market are not agricultural labor hours.
 - b) The Federal Insurance Contributions Act (FICA) tax includes two separate taxes:
 - i. Social Security tax. The current tax rate for social security is 6.2% for the employer and 6.2% for the employee, or 12.4% total. Social Security tax is only charged on wages up to the applicable wage base limit. In 2013 the base is \$113,700.
 - ii. Medicare tax. The current rate for Medicare is 1.45% for the employer and 1.45% for the employee, or 2.9% total. There is no current wage base limit for Medicare.
 - Check with the IRS each year for changes
 - c) Note that self-employed people pay both portions of the tax calculated on net earnings from self-employment reported on IRS Schedule C for most business or Schedule F for self-employed farmers. It is called the “Self-employment Tax” and is calculated in addition to income tax.
 - i. A self-employed farmer deducts ordinary and necessary business expenses, including wages and payroll taxes paid to others, to arrive at net self-employment income subject to the Self-employment Tax
 - A self-employed farmer does not pay wages to herself/his self and does not include Self-employment Tax payments when remitting payroll taxes to the IRS
 - d) Usually employees also have a portion of the Federal Income Tax withheld from each paycheck in addition to the mandatory Social Security and Medicare tax withholdings. There are various reasons why an employee would not have Federal Income Taxes withheld. The employee notifies you of how much to report by giving you an IRS Form W-4. You use the information on the W-4 to calculate the amount to withhold from each paycheck.
 - i. You may receive a notice from the IRS requiring you to withhold additional amounts from an employee’s check to cover back taxes or other federal debts
 - e) As an employer you become a trustee for your employees and the IRS. The money you withhold is not yours. It is due to the IRS and may create a federal benefit for your employee. Failing to timely remit money withheld from an employee’s paycheck and due to the IRS is treated as a serious offense and penalties and interest begin to accrue daily as soon as you are late.
 - f) Payroll tax deposits must be made electronically and are due either monthly or semi-weekly depending on your prior year’s total payroll.

- g) In addition, you must file IRS Form 941, Employer's QUARTERLY Federal Tax Return on or before April 30, July 31, October 31, and January 31.
 - h) Several additional reports are due January 31, and may be applicable to your farm:
 - i. Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return
 - ii. Form 943, Employer's Annual Federal Tax Return for Agricultural Employees
 - iii. Form W-2, Wage and Tax Statement to report wages, tips and other compensation paid (due to the employee)
 - In addition, you have until February 28th for paper filers and March 31st for electronic filers to file a Form W-3 and copies of all W-2 forms with the Social Security Administration.
 - Careful! Though no tax is due with the W-2s and W-3, there are penalties for late or inaccurate forms.
 - i) Before you can begin withholding, paying, and reporting you need to apply for an Employment Identification Number (EIN) using IRS form SS-4. You can find it at IRS.gov or have one sent to you by calling 1-800-TAX-FORM.
3. State Payroll Tax Requirements
- a) State payroll tax requirements vary, but follow a similar structure
 - b) The California Employment Development Department (EDD) administers state payroll tax payment and reporting requirements. Detailed information and rates are available at: www.edd.ca.gov and in the California Employer's Tax Guide (DE 44).
 - c) Employers must notify the EDD
 - i. within fifteen days of paying over \$100 in wages in a calendar quarter
 - ii. within twenty days of hiring or rehiring an employee
 - The start-of-work-date is the first day services were performed for wages. Submit a Report of New Employees form online or by mail. See the "Required Filings and Due Dates" section on the EDD website for more information.
 - Based on this filing you may receive a notice from the state requiring you to withhold additional amounts from an employee's paycheck to cover child support or back taxes
 - d) State Disability Insurance (SDI) must be withheld from each employee's paycheck each pay period
 - e) California assesses an Unemployment Insurance Tax and an Employee Training Tax (ETT) on the employer only (you may not deduct any portion of these taxes from your employee's paychecks)
 - f) Most workers will have Personal Income Tax (PIT) withheld from paychecks to pay towards any state income tax they may owe at the end of the year
 - g) The value of meals and lodging provided to employees for the employer's convenience
 - i. is not included in gross wages to calculate personal income tax;
 - ii. is included in California gross wages to calculate California payroll taxes

C. Creating a Safe Environment for Your Workers

- 1. Workplace safety standards
 - a) The Federal Occupational Safety and Health Act (OSHA) applies to all American employers and may be administered concurrently with a stricter state law. 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 website often for current and useful information: www.osha.gov
 - i. OSHA standards include specific safety and training requirements for farm employers, including:

- Providing sanitary toilets, hand-washing facilities, and shade,
 - Providing training about good hygiene practices,
 - Keeping records of trainings, injuries, and illnesses at the workplace, and
 - Specifically for farm employers in some states (including California), maintaining a Heat Illness Prevention Program.
- b) Most states have enacted their own workplace safety laws, which are administered in a similar manner to federal law. States may provide more protection than the federal law, but not less.
- c) The California Occupational Safety and Health Act (Cal OSHA) applies to all California employers. Similar to the federal law, employers with fewer than ten employees have modified requirements. Cal OSHA is administered by the Division of Occupational Safety and Health (better known as CalOSHA) within the California Department of Industrial Relations. Check the web site often for current and useful information: www.dir.ca.gov/dosh
- d) Heat Illness Prevention Program
- i. All California employers are required to comply with the Cal/OSHA Heat Illness Prevention Standard including:
 - Training: Employees and Supervisors must all be trained about heat illness prevention
 - Water: Employees must be provided with enough fresh water in order to drink at least 1 quart per hour, and employers must encourage them to do so
 - Shade: Employees must be provided with shade, and encouraged to take a rest in the shade for at least 5 minutes before any feelings of illness occur. Employees should not wait until they feel sick to cool down.
 - Planning: Employers must develop and implement written procedures for complying with the Cal/OSHA Heat Illness Prevention Standard
 - More information and resources for how to develop a program, workshops and meetings, and free consultation services from Cal/OSHA can be found on their website: www.dir.ca.gov/dosh/HeatIllnessInfo.html
- e) Farm employers are also generally required to maintain an Injury and Illness Prevention Program, including a Heat Illness Prevention Program
- i. An injury and illness prevention program must be in writing and must identify on-farm hazards and provide guidance on employee illness and injury avoidance
 - ii. Employers are required to keep records of trainings, injuries, and illnesses (see also Unit 7.0, Introduction to Food Safety)
- f) Every place of employment is subject to unannounced state or federal OSHA workplace inspections. Unannounced inspections may occur in response to a report of an industrial accident, a complaint about an occupational safety and health hazard, or as part of an inspection program targeting industries (such as farming) that have a high rate of occupational hazards, fatalities, injuries, or illnesses.
- i. You have a constitutional right to request an OSHA inspector (or indeed any federal, state, or local government official) obtain a warrant prior to entering your property. Should you choose to exercise this right, remember to be respectful of people who are working to administer the law and ensure the health and safety of vulnerable workers. They in turn should respect your right to exercise a protection guaranteed to you by the 4th Amendment to the US Constitution. You do not need to offer any explanation for why you are exercising a constitutional right. If the official has a valid reason to believe that there is an imminent threat to public health or safety she or he may enter without a warrant, and you should seek legal counsel at once.

- ii. If you are targeted by an OSHA inspection and believe you may be cited for violations, you should notify your attorney immediately
- 2. Workers' compensation
 - a) Workers' compensation is a regulatory form of insurance designed to offer prompt payment to injured employees. Employers pay into the system, and in the event of a work-related injury the injured employee will have medical and rehabilitation expenses paid and may also receive temporary or permanent disability payments, or death benefits for dependents, based on lost wages.
 - i. Workers' compensation insurance also limits an employer's liability in the event of a workplace accident
 - ii. Similar to the discussion above regarding payroll taxes, an injured worker may be considered an employee for worker's compensation purposes even if the person is paid as an independent contractor
 - iii. If an independent contractor or other non-employee is injured on the farm, the farm may be liable for more than what worker's compensation would pay, because the injury is not covered by the worker's compensation system
 - b) Most states require employers to carry workers' compensation insurance. Small business and agricultural exemptions vary by state.
 - i. California requires all employers to carry workers' compensation insurance. You must also provide information about workers' compensation protection to your employees at the time they are hired. Find the most current Time of Hire pamphlet at: www.dir.ca.gov/dwc/dwcrep.htm#2
 - c) Workers' compensation insurance limits liability in the event of a workplace accident
 - i. This means the injured employee generally cannot sue the employer or other co-workers for damages beyond the amounts paid by worker's compensation insurance. The only exception would be if the employer knowingly and recklessly endangered the employee.
 - ii. If a California employer does not have workers' compensation insurance and an employee is injured, medical treatment and other benefits are paid by the Uninsured Employers Benefit Trust Fund administered by the California Department of Industrial Relations (DIR). The DIR will then begin enforcement and collections actions against the uninsured employer for reimbursement and fines and may also issue a stop work order in addition to imposing fines.
 - d) Typically workers' compensation insurance is available through private insurance companies
 - e) For more information about the California program contact the DIR Division of Workers' Compensation at www.dir.ca.gov/dwc
- 3. Other employer obligations: Posting, recordkeeping, notification
 - a) 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
 - b) Most states, including California, have similar requirements
 - c) Posters must be posted in a conspicuous place at the worksite. The federal and state governments will send you these posters for free, but you generally have to contact the appropriate government agency to request them. If you use a payroll service to help you comply with notice requirements, they will typically provide the necessary information and materials.
 - d) Federal Posting Requirements
 - i. Employee Rights Under the Fair Labor Standards Act
 - ii. Notice—Migrant and Seasonal Worker Protection Act

- iii. A complete list of federal workplace posters and an explanation of who must post them is available online at: www.dol.gov/oasam/programs/osdbu/sbrefa/poster/matrix.htm. Free posters can be obtained through the same website.
- e) California Workplace Posting Requirements
 - i. Similar to federal requirements. Information available at: www.dir.ca.gov/wpnodb.html
- f) Required records
 - i. Generally, you should keep three to seven years' worth of records sufficient to document your compliance with all applicable rules and regulations
 - ii. Records for each worker should include the worker's name, Social Security number, hours worked, wages paid, taxes withheld, and trainings and workplace injuries received
 - iii. The Migrant and Seasonal Agricultural Workers Protection Act has additional requirements, but any payroll system should comply with the level of detail required for migrant and seasonal workers. The specific requirements are to show: rate of pay, total hours worked each day and each week, the date that wages were paid, and the period of time covered by the payment.
- g) Paystub notification
 - i. California requires you to provide employees with specific information with each paycheck, called an itemized wage statement. The penalty for failure to comply is \$250 per employee per incident for the first violation and \$1,000 per employee per incident for subsequent violations.
 - Many other states have similar requirements
 - A payroll service will provide compliance with paystub notification rules. The required information on the itemized wage statement, includes:
 - Name and address of the employer
 - Dates of the pay period
 - Employee name and last 4 digits of social security number
 - Hourly rates with corresponding hours worked at each different rate
 - All piece rates paid during that period, and number of pieces paid at each rate if applicable
 - Total hours worked by employee for that period
 - Gross earnings for the pay period
 - Total deductions for the pay period
 - Net earnings for the pay period

Lecture 3: Innovative Models for Apprenticeship or Internship Programs

A. Registered Apprenticeship Programs

1. A registered apprenticeship program is one avenue to having apprentices on a commercial farm. The key concept of a registered apprenticeship training program for farm apprentices is that it combines paid-on-the-job learning on the farm with related instruction (which is usually set up with an accredited educational institution). A registered apprenticeship sets standards for learning and accomplishment, and in some cases provides funding to offset the employer's training costs or to assist the trainee with tuition or housing to enable them to complete the training.
 - a) It does not do much to alleviate an employer's cost, but it may greatly enhance the quality of the learning experience for the intern/apprentice and may help the qualifying educational institution with whom the farm is partnering to obtain funds to support their efforts to provide academic support to beginning farmers
2. Federal and state law provide for registered apprenticeship programs and provides funding to assist businesses and organizations interested in creating and running such programs
3. State and regional programs may receive federal, state, or industry funding to administer the program and to provide financial assistance to local program participants
4. A program must have an organized, written plan embodying the terms and conditions of employment, training, and supervision, including provisions for:
 - a) Instruction in technical subjects related to the occupation;
 - b) Periodic review and evaluation of the apprentice's performance on the job and in related instruction;
 - c) Granting of advanced standing or credit when applicable; ability to transfer an apprenticeship from one program to another; and recognition for successful completion.
5. Additional financial and technical assistance opportunities vary by state. Some states offer tax credits, others offer grant funding.
6. In California, employers may work with qualified educational institutions to develop a registered apprenticeship program. Apprentices are paid according to minimum wage and overtime requirements, and state funds are available to compensate the employer and the educational institution for training costs.
 - a) The California Department of Industrial Relations (DIR), Division of Apprenticeship Standards (DAS) oversees 500 apprenticeship programs around the state in the trade industries, including plumbing, electrical, masonry and carpentry. In 2011, DAS approved the first organic farming apprenticeship program in the state, a program in Marin County through the College of Marin and Fresh Run Farm.
7. Registering an apprenticeship program does not change the requirement to comply with minimum wage and overtime requirements – except, as in the case with Fresh Run Farm/Marin College, the program may qualify you for the short term “trainee” exemption and allow you to start an apprentice at slightly below minimum wage.
8. See California FarmLink, 2013 in the Resource and References section for a case study of the Fresh Run Farm/Marin College program. This document also contains examples of other types of apprenticeship arrangements.

B. Landlord-Mentor

1. The more experienced farmer serves as both landlord and mentor
2. The beginner farmer leases a small plot of land from the more experienced farmer and operates an independent farm business, including filing her or his own income tax returns for self-employment income or loss
3. The parties will need a written lease agreement addressing all of the following:
 - a) The exact piece of land to be leased (this may work best with a simple map attached), the lease rate and terms, any common areas the lessee can access, any private areas the lessee is explicitly asked not to enter without permission
 - b) Inputs and supplies. The beginning farmer may purchase his or her own inputs and supplies, but one of the advantages of the mentorship relationship may be allowing the beginning farmer to buy small quantities from the established farmer who may have more experience in what to buy and who may receive a better deal for ordering larger quantities. Questions to consider are: the price the established farmer will charge, any limitations on amount and frequency of beginning farmer purchases, and the expected time for the beginning farmer to reimburse the mentor-farmer.
 - i. Regardless, the beginning farmer will need to maintain a full set of records to document their own business expenses for income tax purposes
 - c) Water and utilities are commonly either charged at a pro-rata share or included in the per/acre cost of the lease. The lease needs to specify which.
 - d) One of the other major advantages to the beginning farmer from a lease-mentor agreement is the ability to access the mentor-farmer's equipment. It is important to establish mutual expectations about equipment use.
 - i. Is equipment use charged separately or included in the per/acre rent? If charged separately, how? Perhaps based on hourly usage?
 - ii. Which equipment is available when?
 - iii. Will fuel and maintenance expenses be included in the equipment rent? What happens if the beginning farmer breaks something?
 - e) Another advantage of the lease-mentor model is it may provide the mentor farmer with extra product, and the beginning farmer with access to more established sales channels. The agreement and expectations should be part of a written agreement.
 - i. Beware that sales between two farms may also require additional compliance under the standards set by the National Organic Program and new, proposed food safety rules currently in development by the Food and Drug Administration

C. Create a Second Business: a Farm School

1. Farming is the business of growing food or raising animals for food, fuel, or fiber
2. Education is a separate business. Income from providing educational services is not considered income from farming even if the education takes place on a farm.
3. Some farms with robust apprenticeship programs have established a second business as a farm school; a for-profit educational center for training farmers. The school has an agreement with the farm business regarding access to land and equipment. Students pay tuition that is income to the farm-school business. The farm may also choose to hire students to perform labor – in which case all of the employment rules and regulations discussed above are followed.
 - a) Tuition payments compensate the farmer for the cost of providing training, and establish a clear understanding that the aspiring farmer will receive training, not merely the opportunity to work for free
 - b) Wages paid to students for their labor keep the farm in compliance with the law

4. Each of the two separate businesses needs a full and separate set of accounting records "books"
 - a) A separate checking account for each
 - b) A separate chart of accounts and general ledger accounting for income and expenses for the two businesses separately
5. The two businesses need a written agreement regarding shared expenses. This can take the form of a memo kept with the accounting records explaining which expenses are "farm school" which are "farm" and which are "shared."
6. For shared expenses, one or the other of the two businesses can pay all the expenses during the year and at the end of the year the other business can write a reimbursement check
7. The school also needs to have a separate lease agreement with the farm covering expectations about when and where education occurs on the the farm, and perhaps explaining what services the farming operation will provide to the school (for example, access to viewing and participating in daily activities on the farm). The school should pay some amount to the farm to compensate for access to the operation and services rendered.
 - a) This payment does not have a tax effect, since both businesses are owned by the same person or people. The purpose is to establish that the two businesses are indeed separate. A sloppy short-cut without careful separate records could be construed by labor or tax officials as a scheme to avoid paying for labor. It is important to have curriculum and financial records to demonstrate a legitimate separation between the tuition charged by the school and the wages paid by the farm.
8. For income tax reporting purposes, a sole proprietor will report the farm- school income and expense on IRS Schedule C and the farm will report income and expense on IRS Schedule F
 - a) A partnership, LLC, or an S-Corp will report teaching income and expense as ordinary income and expense and farm income and expense on a Schedule F
9. Another possibility is for the Farm School to be operated by a non-profit organization or educational institution. In this case there is a service agreement as described above and the farmer simply receives a payment for services rendered. The farmer would report this as "other farm income" on Schedule F of the annual income tax return.

Resources & References

PRINT

Alcorta, Marisa, Jessy Beckett, and Reggie Knox. 2013. *California Guide to Labor Laws for Small Farms*. National Center for Appropriate Technology & California FarmLink. www.californiafarmlink.org/storage/documents/CA-Guide-update-3-2014.pdf

Apprenticeships and internships have long been a strategy to provide both new farmers with training while getting help on the farm. However, the way many of these apprenticeships operate breaks state or federal labor laws. This guide provides an overview of what is needed to have a legal apprenticeship in California, how to hire employees, and how to provide for their safety. Employer taxes and other obligations are also discussed.

California FarmLink. 2013. *California FarmLink Apprenticeship Resource Series*. attra.ncat.org/attra-pub/summaries/summary.php?pub=462

This document is a companion to California Guide to Labor Laws for Small Farms. It provides case studies regarding California labor law.

Hayes, Kathryn, Eric Toensmeier, Judith Gillan, and Miranda Smith. 2005. *Cultivating a New Crop of Farmers – Is On-Farm Mentoring Right for You and Your Farm? A Decision-Making Workbook*. Belchertown, MA: The New England Small Farm Institute.

This 49-page manual was designed to help farmers who are contemplating developing a mentoring program on their farm. It offers worksheets to explore whether the farm operation is good fit for a mentoring situation, if the farmer is ready to be a host, and how the trainees may affect the farm operation and context. \$20 from www.smallfarm.org/main/bookstore/publications/

Heyman, Amanda N., and Jennifer Jambor-Delgado. 2012. *Farmers Guide to Farm Employees: Federal and Minnesota Labor and Employment Law for Small-Scale Family Farm*. Saint Paul, MN: Farmers' Legal Action Group, Inc., August 2012. www.flaginc.org/wp-content/uploads/2012/08/20120813-MILE-Guide-interactive-Jan14.pdf

This 178-page document provides comprehensive information on the rules around hiring and paying workers on a farm.

Jambor-Delgado, Jennifer and Amanda N. Heyman. 2013. *Farmers' Guide to Farm Internships: Federal and Minnesota Labor and Employment Law*. Saint Paul, MN: Farmers' Legal Action Group, Inc., February 2013. www.flaginc.org/wp-content/uploads/2013/05/Farm-Intern-Guide-FINAL-w-covers.pdf

This 173-page guide provides extensive information on how to legally have interns on your farm in Minnesota.

Jones, Doug. 1999. *Internships in Sustainable Farming: A Handbook for Farmers*. Cobleskill, NY: Northeast Organic Farming Association New York. www.nofany.org/sites/default/files/internshipandbook.pdf

This 16-page document explores if being a mentor is a good choice for you, how you select and train trainees, how to provide a quality learning situation, addressing labor regulations, and housing issues.

Smith, Miranda. 2005. *The On-Farm Mentor's Guide – Practical Approaches to Teaching on the Farm*. Belchertown, MA: The New England Small Farm Institute.

This 196-page guide provides a comprehensive look at the benefits and drawbacks to providing on-farm mentoring. It also provides extensive instructions to those who choose to provide this service, including how to design your program, implement teaching, address housing, and recruit trainees. It also provides worksheets to make decision making and trainee management easier, and 40 pages of additional resources. \$35 from www.smallfarm.org/main/bookstore/publications/

U.S. Department of Labor. 2010. Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act. Wage and Hours Division, April 2010. www.dol.gov/whd/regs/compliance/whdfs71.htm

VIDEO

Workers and Employees: Understanding the Farmers' Responsibilities. 2014. Farm Commons. farm-commons.org/workers-and-employees-understanding-farmers%E2%80%99-responsibilities

This 2-hour video of a webinar discusses legal issues regarding various labor arrangements, such as with volunteers, trade-labor, interns and employees.

WEB-BASED RESOURCES

Division of Occupational Safety and Health – State of California (Cal/OSHA)

www.dir.ca.gov/dosh/

This site provides information on California health and safety laws, and provides information on compliance.

Farm Commons (Wisconsin)

farmcommons.org

This organization provides legal resources for farmers, such as guides, checklists, and model documents. They have a sample farm employee handbook, checklists for hiring employees, instructions to create a worker share program, and other documents.

Farm Employment Labor Services FELS (California)

www.fels.net

This is a subscriber organization, related to the California Farm Bureau Federation. It serves its members by helping them work within labor laws and dealing with labor relations.

Farmers Legal Action Group FLAG (Minnesota)

www.flaginc.org

This non-profit organization is dedicated to providing services to family farms, and keeping the farmers on the land. They provide publications and information on labor issues, as well as taxes, contracts and a variety of other issues.

Internal Revenue Service

www.irs.gov

The IRS website has a wealth of resources. Local offices also offer free printed copies of many useful publications and may offer webinars and workshops.

U.S. Department of Labor - Compliance Assistance Resources

www.dol.gov/compliance/topics/wages-agricultural.htm

This section of the Department of Labor's website provides an overview of how to be in compliance regarding wages paid in agriculture.

U.S. Department of Labor - Wage and Hours Division

www.dol.gov/whd/

The Wages and Hours Division provides need tools to observe with the laws this division oversees, which includes minimum wage, overtime, agricultural employment and several other topics. They provide information to both employers and workers.

U.S. Department of Labor – Occupational Safety and Health Administration (OSHA)

www.osha.gov

This OSHA site provides information on health and safety laws and provide publications to assist employers in providing a safe work environment.

Sustainable Economies Law Center SELC (San Francisco, CA)

www.theselc.org

This organizations provides legal tools and assistance to build community resilience and such as helping communities develop sustainable food sources.

