



Employment Laws for Urban Farmers



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Topics Covered

- Why do we have employment laws?
- Why are employment laws important?
- As an employer, what are your responsibilities?
- Are you an employer?
- Ownership x Employment Laws
- Nonprofit x Employment Laws



Employment law in the U.S. context

- We operate in a capitalist economy, which relies on private ownership of means of production and decisionmaking
- US employment relationships are based on the concept of a “master-servant” relationship
- No laws were allowed to interfere with freedom of contract until 1920s



Employment law in the U.S. context

- 1935 – National Labor Relations Act, legalized collective bargaining
- 1935 – Social Security Act, created federal assistance for those unable to work
- 1938 – Fair Labor Standards Act, established standard work week, minimum wage, overtime, prohibition against child labor
- But, **Agricultural Exceptionalism!**



Why are employment laws important?

Compliance is a significant risk management tool!

- As an employer, you have *legal obligations* to your employees and to the government
- Employees have *enforceable legal rights*
- Compliance with employment laws can be a *significant ongoing business cost*
- *Noncompliance is even costlier!*
- You can *potentially reduce these costs*, but only if you have a solid understanding of your rights/responsibilities



Structure of employment laws

- Employment laws exist at all levels of government (federal, state, city/county)
- They create baseline requirements
- State laws can be more strict than federal, and local laws can be more strict than state (i.e. minimum wage)
 - Federal: \$7.25/hr
 - California: \$10.50 or 11/hr
 - San Diego: \$11.50/hr
- Employment laws are non-negotiable, you can't contract around them
- Generally, penalties are assessed strictly



Working Together

- Employee – Working for someone else
- Intern/Apprentice – Working for your own benefit
- Volunteer – Working for the public's benefit
- Independent Contractor – Working for yourself
- Partner – Working with someone else



Applying the law

Risk Management Tip: Assume that anyone working for you is an employee, and work back from there

Obligations to an employee

- Minimum Wage
- Overtime
- Meal/Rest Breaks
- Paid Sick Leave
- Wage Statements



Obligations to the government

- Periodic Reporting
- Workers' Compensation
- Workplace Safety
- Payroll Taxes



Minimum Wage

- California: \$10.50 or 11/hr
- San Diego: \$11.50/hr

+ Overtime (unless exempt)

Pay Period: Must pay employees at least twice per month





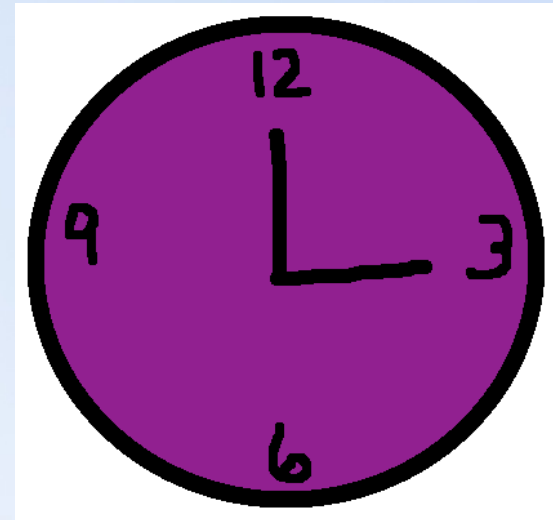
Overtime Pay

- General requirements:
 - (1.5x) after 8 hours in a day, or for first 8 hours on 7th consecutive day
 - (2x) after 12 hours in a day, and after 8 hours on 7th consecutive day
- Less overtime for some agricultural laborers, though that will change over the course of the next 4 years



Meal/Rest Breaks

- PAID Rest breaks (10 min / 4 hrs)
- UNPAID Meal breaks (30 min / 5 hrs)
- 1 day off per 7 days,
- Restrictions on hours for young people, may need a permit for Dept. of Labor



<u>Sun</u>	<u>Mon</u>	<u>Tue</u>	<u>Wed</u>	<u>Thr</u>	<u>Fri</u>	<u>Sat</u>
Work	Work	Work	Work	Work	Work	<u>DAY</u> <u>OFF</u>



Paid Sick Leave

- Required for almost all employees!
- Eligible after 30 days of work, can be used after 90 days
- At least 24 hours or 3 days per year
- Minimum accrual is 1 hr / 30 hrs of work
- Check city ordinances for specific rules





Wage Statements

- Employees are entitled to a wage statement every pay period
- If you use a payroll service, they take care of this for you
- If not, you need to include specific information on each wage statement

BLANK HOURLY WAGE STATEMENT – EMPLOYEE COPY

STATEMENT DATE			
PAY PERIOD STARTING		PAY PERIOD ENDING	
EMPLOYEE NAME		LAST 4 DIGITS SOCIAL SECURITY NO.	
EMPLOYER NAME			
EMPLOYER ADDRESS			
	TOTAL HOURS	RATE/HOUR	AMOUNT
REGULAR			
OVERTIME (1.5X)			
OVERTIME (2X)			
GROSS EARNINGS			
NUMBER OF EXEMPTIONS <input type="checkbox"/>	DEDUCTIONS		
FEDERAL INCOME TAX			
STATE INCOME TAX			
MEDICARE TAX			
SOCIAL SECURITY TAX			
INSURANCE			
CASH ADVANCE			
MERCHANDISE BOUGHT			
BONDS, ETC.			
OTHER:			
TOTAL DEDUCTIONS			
NET EARNINGS THIS PAY PERIOD			
<input type="checkbox"/> CASH <input type="checkbox"/> CHECK NUMBER:			



Workers' Comp Insurance

- **ALL** employers with one or more employee are required to carry workers' compensation insurance
- Workers' compensation strikes a deal between employers and employees:
 - In return for insuring employees for any harm that happens as a result of working for the employer, the employee agrees not to sue the employer.
- Can cost 10-20% of total wages paid
- **Risk Management Tip:** You might consider getting disability insurance even if you don't have employees



Workplace Safety

- State laws that require certain notices, plans, permits to ensure workplace safety
- Implement an Injury/Illness Prevention Plan
- Heat Illness regulations

Risk Management Tip: Talk to Cal-OSHA, they have resources and do consultations to support small businesses

Job Safety and Health
It's the law!

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

EMPLOYEES:

- You have the right to notify your employer or OSHA about workplace hazards. You may ask OSHA to keep your name confidential.
- You have the right to request an OSHA inspection if you believe that there are unsafe and unhealthful conditions in your workplace. You or your representative may participate in that inspection.
- You can file a complaint with OSHA within 30 days of retaliation or discrimination by your employer for making safety and health complaints or for exercising your rights under the OSH Act.
- You have the right to see OSHA citations issued to your employer. Your employer must post the citations at or near the place of the alleged violations.
- Your employer must correct workplace hazards by the date indicated on the citation and must certify that these hazards have been reduced or eliminated.
- You have the right to copies of your medical records and records of your exposures to toxic and harmful substances or conditions.
- Your employer must post this notice in your workplace.
- You must comply with all occupational safety and health standards issued under the OSH Act that apply to your own actions and conduct on the job.

EMPLOYERS:

- You must furnish your employees a place of employment free from recognized hazards.
- You must comply with the occupational safety and health standards issued under the OSH Act.

This free poster available from OSHA –
The Best Resource for Safety and Health

Free assistance in identifying and correcting hazards or complying with standards is available to employers, without citation or penalty, through OSHA-supported consultation programs in each state.

1-800-321-OSHA
www.osha.gov

OSHA 1904-10-08



Payroll Taxes

- Federal payroll taxes
 - Personal income
 - Social Security/Medicare
 - Federal Unemployment
- CA payroll taxes
 - Personal income
 - Unemployment Insurance
 - State Disability Insurance
 - Employment Training

Risk Management Tip: Consider using a professional payroll service if you have more than one employee, it's an extra line-item but it will likely save you a lot of time and ensure you are in compliance with detailed legal requirements



Recap

Obligations to an employee

- Minimum Wage
- Overtime
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Obligations to the government

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- Workers' Compensation
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- Payroll Taxes





So, are you an employer?

Again, assume yes and work back from there.

Non-Employee Worker Classifications

- Partner
- Independent Contractor
- Intern
- Apprentice
- Volunteer



Partners

- People working with each other for mutual gain are generally not employees
- Some of the factors in making this determination
 - Right to control operations
 - Exposure to liability
 - Right to profits/losses
- If you start a Partnership or LLC with other people to jointly manage and control a business, you are likely not employees.



Independent Contractors

- Independent contractors are not entitled to minimum wage, overtime, or workers compensation insurance
- Whether someone is an employee or independent contractor depends on several factors, all of which seek to determine the *hiring party's right to control the manner and means of production*.
- It's all about control!
- On a farm, it is difficult to show that workers are independent contractors, because work is highly routine, structured, and uses farmer's equipment



Interns

- Interns are defined using a set of criteria, including:
 1. The training, even though it includes actual operation of the employer's facilities, 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 observations;
 4. The **employer derives no immediate advantage from the activities of trainees** or students, and on **occasion the employer's operations may be actually impeded**;
 5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and
 6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.



Interns

Risk Management Tips for internships:

- The importance of being unhelpful
- Use an educational curriculum (see CASFS)
- Rotate interns through various areas of work, avoid repetition
- Develop a relationship with an educational institution



*"My intern has worked out wonderfully.
You really should consider getting one."*



Apprentices

- Apprentices are different than interns
- CA has a Registered Apprenticeship Program, operated by the Dept. of Apprenticeship Standards
 - requires parallel curriculum with an educational institution
 - most apprentices (in other industries) are paid above minimum wage
 - one registered farm apprenticeship paid apprentices slightly less than minimum wage, but eventually paid higher than minimum wage



Volunteers

- Farms organized as businesses (not nonprofit corporations) **cannot** legally use volunteer labor.
- U-picks and on-farm events that people pay admission to attend are okay. Check that your insurance covers those kinds of events
- Even WWOOFing is very risky!





Ownership & Employment laws

Owners are not employees.

- Whether employment laws will apply, depends on legal entity structure
 - Partnership/LLC: Can avoid classification as employee
 - Corporation: Presumption is that owner is employee
- Worker ownership subverts the “Master-Servant” paradigm - will redistribute wealth and power in society and reframe “agricultural exceptionalism”



Cooperative Farms

Examples

- Flying V Farm (California)
- Cloverleaf Farm (California)
- Our Harvest Cooperative (Ohio)
- GroOperative (New York)
- Tourne-Sol Cooperative (Canada)
- Our Table Cooperative (Oregon)





Two things to remember about cooperatives:

1. Board elected on a one-member, one-vote basis.
Capital investment doesn't determine voting power.



2. Profits distributed on the basis of patronage.
Capital investment doesn't determine profit share.





Nonprofits & Employment laws

Nonprofits, because of their charitable purposes, can host volunteers.

- Volunteers cannot replace employees, cannot engage in the general trade of the nonprofit
- Volunteers can be nominally compensated, but not in exchange for work

Risk Management tip: Use a volunteer agreement to clarify the responsibility and rights between your organization and the volunteer.



Resources

Legal Resources

- Guide to Labor Laws on Small Farms (CA FarmLink & NCAT)
- CommunityEnterpriseLaw.org
- UrbanAgLaw.org
- Farm Commons
- Nolo Press
- CA Dept. of Industrial Relations:
 - Wage Orders 13 & 14

