**Volunteers and Interns on Farms**

**For-Profit Businesses**

It is illegal for for-profit businesses (including farms) to use volunteer labor (whether long-term or for a couple of hours one time). For-profit organizations may have employees or unpaid interns (with strict requirements). Because of this, you could be sued by volunteers for back wages due, particularly in the case of injury. You are exempt from having workers’ compensation for people who are *not* employees, but volunteers may not be aware of that and if they get injured, their insurance companies could argue that they should be considered as employees (since for-profits can’t have volunteers) and require that you cover expenses.

For more information on unpaid interns, see the Department of Labor Fact Sheet #71, which includes the six criteria for evaluating whether someone is truly an intern. One note: the fourth criteria is that “the employer derives no immediate advantage from the activities of trainees or students, and on occasion the employer’s operations may actually be impeded.” One case decided by the 9th Circuit Court of Appeals offers a little insight here and seems to indicate that the intern can be helpful so long as they are truly the beneficiary in the relationship. If you do decide to offer an unpaid internship program, consider designing it as an educational program.

**Non-Profit Businesses**

Non-profit businesses (including farms) may have volunteers, employees, or unpaid interns. The Fair Labor Standards Act says that people must volunteer “without promise, expectation, or receipt of compensation for the services rendered, although a volunteer can be paid expenses, reasonable benefits, or a nominal fee to perform such services.” Compensation doesn’t have to be in the form of money; it can include produce or room and board. If someone is working for free on your farm with the expectation of getting paid or receiving free food, they likely will not meet the legal definition of a volunteer and may be considered an employee.

Nonprofits can give volunteers small gifts of appreciation, as long as the gifts are not tied to productivity and as long as they are worth 20% or less of what an employee doing the same work would earn. Volunteers can also be reimbursed for the expenses they undertake while volunteering (e.g., gas money or lunch).

Also, nonprofits cannot necessarily have volunteers across the board. “When… nonprofit organizations operate commercial enterprises which serve the general public (think farm stand or farmers’ market booth)… volunteers may not be utilized. If your farm is nonprofit, think about this when considering what types of tasks to offer to volunteers.

*Much of this information derived from resources developed by urbanaglaw.org and communitylaw.org. Gathered by the Community Food & Agriculture Coalition, missoulacfac.org.*

**Workers and employees: The legal issues in 5 minutes**

Regular Employees:

* Understand responsibilities for paying minimum wage and providing workers’ compensation. If relying on an agricultural labor exemption from either, make sure the tasks fit the definition of “agricultural labor.” Some types of marketing, delivery, and value‐added processing are not agricultural labor and will be regulated the same any other business.
* Even if exempt from providing workers’ compensation, make certain injuries will be covered by an insurance policy

Interns or Apprentices

* Generally speaking, interns and apprentices must receive minimum wage if they work for a for‐profit business. See the Department of Labor’s Fact Sheet #71 for more information on when a for‐profit business may pay less than minimum wage.
* Providing wages in the form of food and housing has OSHA, migrant worker law, and zoning implications.
* Interns and apprentices are likely employees for the purposes of workers’ compensation. Even if exempt from providing workers’ compensation, make certain injuries will be covered by an insurance policy

Volunteers

* If a for-profit farm compensates volunteers and the program looks similar to an actual employment position, the volunteers may be treated as employees and employment laws apply
* Get an insurance policy that covers volunteer injuries. If volunteers do off-farm labor or value added processing, a farm liability policy likely will not cover injuries.

Work Crews

* Even if the work crew is not comprised of migrant workers who move from location to location, migrant worker laws may apply. Know if they do, and know if the crew leader has the proper certification.
* The IRS scrutinizes independent contractor positions and serious penalties may be issued if a farm misclassifies workers as independent contractors.

This resource is meant to accompany Farm Commons’ Legal Issues with Workers and Employees webinar, and many other online farm employment law resources at www.farmcommons.org.

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