



Steer Clear of Employment Law Issues During Harvest Season

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Foster Swift Agricultural Law Update

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Harvest time is often the busiest time of the season for Michigan's farms, orchards, vineyards and other agricultural operations. It's also peak employment season, requiring new workers and resources to keep up with the demands of the harvest, the proclivities of nature, and the nuances of the market.

Harvest season also raises employment law issues. Many state and federal laws come into play and must be considered by agricultural operations in order to remain in compliance and reduce risks. Among these are workers' compensation, wage law, labor law, and employee classification issues. We will touch upon some of these issues below, but remember that's it's a good idea to review and assess your specific employment practices and processes with an employment law attorney annually.

WORKERS' COMPENSATION

If an agricultural employer meets both of the following conditions, then the employer must comply with Michigan's Workers' Disability Compensation Act:

- It employs **three or more** regular employees paid hourly wages or salaries and not paid on a piecework basis, and
- The employees were employed 35 or more hours per week by that same employer for 13 or more consecutive weeks during the preceding 52 weeks.

Additionally, if an agricultural employer meets all of the following conditions, then the employer must pay the medical and hospital expenses for personal injuries suffered by an employee:

- It employs **one or more** employees.
- The employee was employed 35 or more hours per week by that same employer for 5 or more consecutive weeks.
- The personal injury arose out of and in the course of employment.

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PRACTICE AREAS

Agri-Business

Agricultural employers that meet these standards must provide workers' disability compensation insurance for all regular employees.

FEDERAL AND MICHIGAN WAGE LAWS

The federal wage law under the Fair Labor Standards Act applies to agricultural operations that employ enough workers - excluding the employer's immediate family and certain seasonal harvest workers - to have 500 worker days of hired work during any quarter of the preceding calendar year. Any employee who performs work for 1 hour or more on any day counts toward the 500 worker days.

The Michigan minimum wage law is even broader, and applies to some employers not required to comply with the federal law. It applies to any agricultural operation employing two or more employees at least 16 years old at any one time during the calendar year. The Michigan minimum wage is \$8.15 per hour (versus the \$7.25 federal minimum wage).

Michigan law also impacts the timing of payments to workers, including harvest workers. While wage workers must be paid no later than 15 days after the close of the pay period, hand harvesters must be paid at least once per week for wages earned on or before the second day following the workweek (unless another arrangement is agreed upon in a written contract).

WORKER CLASSIFICATION

The application of these and other statutes, rules and regulations differ depending on the proper classification of workers. While a law may apply to a full-time employee, it may not to an independent contractor or seasonal employee. While a discussion of all of the factors that need to be examined to determine proper worker classification is beyond the scope of this article, it's important to understand that the issue is one of legal and financial significance.

With the influx of workers that many agricultural operations experience during harvest season, it's critical to classify correctly. Some risks of not doing so include: unpaid federal income tax plus a penalty for failure to withhold; your share of FICA plus a substantial penalty for failure to withhold; state and federal unemployment tax, plus interest and penalties; worker's compensation liabilities to include a percentage of the worker's wages plus fines; Department of Labor penalties, fees and back wages, including overtime. Keep in mind that many agricultural operations can be designated a "seasonal employer" which can reduce unemployment costs.

There is much more to know about each of these issues - and more issues to consider than this space allows for. Please contact a Foster Swift attorney to review your employment law practices.