

Farm Labor Regulations

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Introduction

Farm labor employers must comply with a variety of federal and state labor regulations. In North Dakota there are few state regulations, and most of the federal laws contain exemptions that free most North Dakota farmers from compliance. However, it is important that North Dakota farmers be aware of these regulations, and know which ones apply to their particular farm operation. This publication discusses the major regulations and provides sources of information as a guide to farm employers. Since regulations are frequently changed, some of this material may be outdated within a few months of publication or later. Farmer employers should be alert and watch for any changes in state or federal regulations that may affect their farm operation.

NORTH DAKOTA WORKMEN'S COMPENSATION

Under North Dakota law, agricultural hired workers are exempt from the Workmen's Compensation provisions. Farm coverage may be obtained if the employer wishes to provide insurance coverage for his employees. The rate for such coverage is \$8.70 per \$100 of payroll with a minimum premium of \$48.60.

Workmen's Compensation is mandatory for custom farm operators as of April 1, 1978. According to an Attorney General's opinion, if a farmer performs his own operations and engages in custom operations for others on occasion, such an operation would fall within the agricultural exemption. However, if a majority of the custom operations are done for others for profit this would constitute a "separate and distinct" business, and would not be exempt.

The problem lies in determining if a majority of the farmer's, or his employee's, time is spent in custom operations, and if a substantial amount of their income is from custom work. Each case may have to be decided on an individual basis. Custom operators should examine the Workmen's Compensation coverage as it provides excellent protection from the amount invested.

Contact: North Dakota Workmen's Compensation Bureau
Russel Building - Hwy. 83 North
Bismarck, ND 58505
Telephone: (701) 224-2700

FEDERAL MINIMUM WAGE LAW

Agricultural employers who used more than 500 man-days of hired labor in any calendar quarter of the preceding year must pay at least the minimum wage as established in the Fair Labor Standards Act of 1938, as amended.

The minimum wage as of January 1, 1978 is \$2.65 per hour. Workers paid on a weekly, monthly or piece-rate are covered by the law.

500 Man-Day Test:

Employers who used more than 500 man-days of labor in any calendar quarter of the preceding year must pay the minimum wage. A "man-day" is any day during which an employee performs agricultural labor for at least one hour. Five hundred man-days is approximately equivalent to seven employees employed full time in a calendar quarter (7 employees x 5.5 days per week x 13 weeks = 500.5 days).

If the employer does not meet the 500 man-day test, his agricultural employees are exempt from the minimum wage provisions of the act for the entire following calendar year.

All employees except the following two groups are included in the 500 man-day test.

1. Members of the employer's immediate family.
2. Hand harvest workers who are paid on a piece-rate basis for work generally recognized as piece-rate work, commute daily from their permanent residence to the farm where employed, and were employed in agriculture less than 13 weeks during the preceding calendar year.

Exemptions:

- The minimum wage provisions of the act do not apply to certain exempt employees. They are
 1. Employees who are members of the employer's immediate family. If the employer is a corporation, there are no family exemptions.
 2. Hand harvest workers paid on a piece-rate basis as stated above.
 3. An employee who is 16 years of age or under, hired as a hand harvest laborer beyond commuting distance from his permanent home and paid at the same rate for piece-work as older employees.
 4. Employees principally engaged in the range production of livestock.

Perquisites

The value of housing, board, other facilities and items provided employees may be added to the cash wages paid a worker in determination of total compensation. Consequently, an employer would be in compliance with the act if cash wages were less than the minimum hourly requirement, but the difference was made up through perquisites.

The value placed on a perquisite is usually the reasonable cost to the employer providing it. The total value may include the cost of operation and maintenance, including depreciation and interest. Fair rental value can be used where housing or a garden plot is furnished.

The employee must receive the benefits of the facility for which he is being charged, and his acceptance of the facility must be voluntary. The perquisites must be offered for the benefit of the employee and not for the benefit or convenience of the employer.

Overtime Pay

The law does not require overtime pay for farm workers.

Student Wages

Full time students may be employed for not more than 20 hours a week while attending school at wage rates lower than the minimum rates required of other farm workers. The wage paid these full time students must be no less than 85 percent of the minimum wage. Employers must obtain a student employment certificate if student employees are to be paid less than the agricultural minimum wage. Certificates are available from regional offices of the U. S. Department of Labor.

Record Keeping

Payroll records containing the following information with respect to each worker subject to the minimum wage must be kept

1. Name in full and home address.
2. Sex and occupation in which employed.
3. Number of man-days worked each week or each month.
4. Time of day and day of week when work week begins.
5. Basis on which wages are paid (for example - per hour).
6. Hours worked each workday and each workweek.
7. Total daily or weekly earnings.
8. Total additions to or deductions from wages paid each pay period.
9. Total wages paid each pay period.
10. Date of payment and pay period covered by payment.

Only items (1) and (2) are required for employees who qualify for exemption from the minimum wage as members of the employer's immediate family or hand-harvest laborers. Only items (1) and (2) and (3) need be maintained for hand-harvest laborers.

No special form or record is prescribed. Records kept for other purposes will suffice if they contain the necessary information. These record-keeping requirements do not apply to employers not subject to the act as determined by the 500 man-day test. However, employers who nearly meet the 500 man-day test should keep records to provide a basis for proving they are not subject to the test.

North Dakota Minimum Wage

There is no North Dakota minimum wage law. Therefore, the Federal provisions apply where applicable.

Responsible Agency

The Wage and Hour and Public Contracts Division, U. S. Department of Labor, is responsible for the minimum wage law in North Dakota. The North Dakota office is located in the Federal Building, 657 2nd Avenue North, Fargo, ND 58102. Telephone: (701) 237-5771.

Basic Wage Standards

The basic minimum wage increases through 1981, as follows:

- Beginning January 1, 1978 - \$2.65 an hour
- Beginning January 1, 1979 - 2.90 an hour
- Beginning January 1, 1980 - 3.10 an hour
- Beginning January 1, 1981 - 3.35 an hour

UNEMPLOYMENT INSURANCE

Effective January 1, 1978 Federal legislation extended unemployment insurance coverage to agricultural labor for employers who (1) employ 10 or more workers in 20 weeks, or (2) who pay \$20,000 or more in cash wages in any calendar quarter.

Ten Workers in 20 Weeks

To determine if you meet this test, start at the beginning of January and count the number of weeks in which you have 10 or more eligible workers (part-time, full-time or seasonal) on any day within each week. If you get to 20 weeks before the end of the year, you are a liable employer retroactive to January 1 of that year. The 20 weeks need not be consecutive, and you need not employ the same workers to be liable. This provision applies to the current or previous year, so if you had 10 workers in 20 weeks in 1977 you would be liable for 1978.

\$20,000 Cash Wages in a Calendar Quarter

To be liable under this provision you must pay cash wages of \$20,000 or more in any calendar quarter. Only cash wages are considered, either in the current year or preceding year. If you met this requirement last year, you are liable for the current year.

Exemptions

Services not included when calculating the number of workers or payroll are:

1. Services performed by individual owners of a business and members of a partnership.
2. Services performed by an individual working for his or her son, daughter or spouse or for a partnership which is composed exclusively of sons, daughters, or husband and wife; or a son or daughter under 18 years of age working for one or both parents.
3. Services performed by students under 18, working after school hours or working during vacations if they return to school. Students under 18 working a full-time job while attending classes are *not* excluded.
4. Services performed by students who are under the age of 22 and the employment is part of the regular school curriculum such as a cooperative or work experience program.
5. Services performed by a registered crew leader and by members of the crew.

Responsible Agency

To obtain information, forms and instructions contact your nearest office of the Employment

Security Bureau of North Dakota. Offices are located in Bismarck, Devils Lake, Dickinson, Fargo, Grafton, Grand Forks, Jamestown, Mandan, Minot, New Town, Rolla, Valley City, Wahpeton and Williston.

Farmers who are not liable under the provisions of the act may voluntarily participate by contacting one of the offices listed above.

CHILD LABOR

Employment of minors in agriculture is subject to federal requirements under the Fair Labor Standards Act, most recently amended in 1974. North Dakota does not have a separate law. Federal provisions are designed to provide for the health, safety and welfare of employed youths.

I. 16 Years or Older

Youths 16 years and older may be employed in any agricultural job, whether hazardous or not, for unlimited hours.

II. 14 and 15 Years Old

Youths 14 and 15 may be employed in any non-hazardous job outside of school hours. Certain jobs in agriculture have been declared hazardous, and children under 16 are prohibited from employment unless they meet certain requirements.

The act does not apply to a child working for his parents on a farm owned or operated by the parents. Other youth may obtain exempt status by completing a tractor and farm machinery certification course conducted by Extension Agents or vocational agriculture instructors, or by enrolling in a vocational education training program in agriculture.

Employer Provisions - The employer is prohibited from hiring children under 16 years of age in those jobs declared hazardous by the U. S. Department of Labor unless they have met the conditions which give them exempt status as mentioned above. Jobs designated as hazardous to youth under 16 years of age include:

1. Operating a tractor of more than 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.
2. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact with the operation) any of the following machines:
 - (a) corn picker, grain combine, hay mower, forage harvester, hay baler, potato digger or mobile pea viner.
 - (b) feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a non-gravity-type self-unloading wagon or trailer.

- (c) power post hole digger, power post driver, or non-walking type rotary tiller.
3. Operating or assisting to operate any of the following machines: trencher or earthmoving equipment, fork lift, potato combine, or power circular, band or chain saw.
 4. Working on a farm in a yard, pen or stall occupied by a: bull, boar or stud horse maintained for breeding purposes, or sow with suckling pigs, or cow with newborn calf (with umbilical cord present).
 5. Filling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches.
 6. Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of more than 20 feet.
 7. Driving a bus, truck or automobile when transporting passengers, or riding on a tractor as a passenger or helper.
 8. Working inside a fruit, forage, or grain storage facility designed to retain an oxygen deficient or toxic atmosphere; an upright silo within two weeks after silage has been added or when a top unloading device is in operating position; a manure pit; or a horizontal silo while operating a tractor for packing purposes.
 9. Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act as Category I of toxicity identified by the word "poison" and the "skull and crossbones" on the label; or Category II of toxicity, identified by the word "warning" on the label.
 10. Handling or using a blasting agent, including but not limited to, dynamite, blasting caps and primer cord.
 11. Transporting, transferring or applying anhydrous ammonia.

Youth aged 14 and 15 having completed training and receiving certification in a bona-fide 4-H or FFA tractor operator course (Item 1 above) and machinery operator course (Item 2 above) can apply for and accept employment relating to these two areas in the spring.

NOTE: There are no certificate training programs for tasks listed in Items 3-11 and employment of youths under 16 years of age are prohibited for these jobs.

Employers are responsible for instructing employees on safe and proper operation of equipment. The employer is also required to supervise work where feasible and make midmorning and midafternoon checks where field work is involved. A copy of the certification is to be maintained by the employee and a copy also provided to the employer to keep on file.

Employee Provisions - Prospective employees, ages 14 and 15, must complete the specified training pro-

vided by Extension and/or vocational agriculture departments. Upon completion of the prescribed course work, written examination, and skill test, the certifying officials will issue a certificate to the youth indicating the level and type of farm employment possible. The employee must present the certificate to his employer prior to actual employment. The employee, aged 14 or 15, cannot be hired to perform tasks for which he is not certified. Youth under age 14 can take the prescribed training but cannot be certified for work until their 14th birthday.

III. Minors Under 14

1. Minors under 14 can only work outside regular school hours at irregular jobs not in the Hazardous Order. An irregular job is defined as one which:
 - (a) does not involve confinement.
 - (b) does not require continual physical strain.
 - (c) is interrupted with rest or recreation periods.
 - (d) does not require more than 4 hours of work in any day or 24 hours in any week.
2. All restrictions listed above for 14 and 15 year olds are applicable to children under 14.
3. Minors under 14 may be employed in agriculture if one or more of the following are met:
 - (a) If the child is 12 or 13 and is employed by his parents on the same farm with his parents, or with the consent of his parents outside school hours.
 - (b) If the child is less than 12 and is employed by his parents on a farm owned or operated by his parents, or is employed with his parent's consent and on a farm exempt from minimum wage and equal pay (farms not meeting the 500 man-day test)

Responsible Agency

This act is administered by the Wage and Hour Division, U. S. Department of Labor, with the North Dakota office located at 657 2nd Avenue North, Fargo, ND 58102.

References

Further information regarding the youth certification programs can be obtained from local county Extension agents and vocational agricultural instructors.

INCOME TAX AND SOCIAL SECURITY WITHHOLDING

Neither the Federal government nor the state of North Dakota require tax withholding on wages of agricultural employees. If the employee requests

that taxes be withheld, and the employer agrees, taxes may be withheld on either or both the Federal or State level.

Social Security taxes must be withheld from employees if they meet either of these two tests:

1. You pay the employee \$150 or more in wages during the year.
2. The employee works 20 or more days during the year for cash wages computed on a time basis.

Social Security taxes on wages paid to parents, or children over 21, must be withheld if they meet the requirements above. These rules do not apply to a spouse.

The rate of withholding has been established as follows:

Year	Wage Base	Tax Rate	(On employee and matched by the employer.)
1978	\$17,700	6.05%	
1979	22,900	6.13%	
1980	25,900	6.13%	
1981	29,700	6.65%	

When the undeposited taxes (from withholding and Social Security) accumulate to \$200 or more, a deposit must be made by the 15th of the following month. Form 511, Federal Tax Deposit is used to make such deposits with a commercial bank authorized to receive federal tax deposits, or with a Federal Reserve Bank.

For more information see the latest Farmers Tax Guide or your nearest Internal Revenue Service Office.

OSHA (Occupational Safety and Health Act of 1970)

NOTE: Farm employers with 10 or fewer employees are exempt from all OSHA regulations, unless this exemption is rescinded by further amendment to the act.

The OSHA regulations are very comprehensive and detailed. Farmers who employ any agricultural

workers should familiarize themselves with these regulations, since the exemption noted above may be lifted at the discretion of Congress. It is beyond the scope of this publication to discuss these regulations in detail. Only some general employer provisions are listed.

Employer Provisions

The employer has the duty under the act to provide working conditions free from recognized hazards that may cause death, serious injury or illness. He has the specific duty to:

1. Be familiar with OSHA standards as related to agricultural production.
2. Make sure employees know about OSHA.
3. Examine all work conditions on the farm to make sure they conform to applicable safety and health standards.
4. Remove or guard against all hazards.
5. Make sure employees have and use safe tools and equipment including required personal protective gear, and make sure that equipment is properly maintained.
6. Instruct employees in safe work practices.
7. Establish or update operating maintenance and servicing procedures and communicate them so that employees follow safety and health requirements for their own protection.
8. Report to the nearest OSHA office, within 48 hours, each work related accident that results in one or more fatalities or hospitalization of five or more employees.
9. Post, in a prominent place, the OSHA poster informing employees of their rights and responsibilities.
10. Comply with the specific OSHA standards for agriculture including proper use of the Slow Moving Vehicle (SMV) emblem; safe storage and use of anhydrous ammonia; adequate sanitation in temporary labor camps; installation and use of seat belts and rollover protection on tractors of over 20 horsepower.

Responsible Agency

For more information contact the Occupational Safety and Health Administration, U. S. Department of Labor, Bismarck, ND 58505. The telephone number is 800-342-2959.