

Structuring Labor on the Small Farm

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Introduction

North Carolina’s agricultural economy is characterized by diversity; NC farmers produce a wider range of products than many other states in the nation, including both commodity and specialty products. In addition to holding the rank as North Carolina’s top industry, agriculture accounts for nearly a quarter of NC’s workforce as of the last agricultural census (2012). Farm workers range from migrant and seasonal laborers to live-in, year-round apprentices. This range in the nature of farm employment often comes with uneasiness among farmers about the best way to structure on-farm labor programs. Meanwhile, despite North Carolina’s top production numbers, the hard fact remains that NC is losing farms and farmers at a higher rate than any other state. As a result, many farmers see it as their duty to mentor future growers through on farm work experience in order to preserve the agricultural economy in NC. Unique apprentice programs on small farms are now becoming a popular way for farmers to fulfill labor needs while passing on the knowledge and passion that is necessary for future farmers to thrive. The purpose of this publication is to look at internship or apprenticeship programs on NC farms in the context of NC labor laws, in order to assist farmers in understanding how to structure and maintain successful labor programs within their farm operation.

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We will define an intern or apprentice (used interchangeably in this paper) as a person who agrees to trade labor on a farm in exchange for a learning experience in farm management. This agreement between farmer and worker is unique in that the farmer often trades the ultimate efficiency of a traditional paid worker for a (typically) more novice employee. In exchange, interns often work for less than a living wage, as their mentor relationship with their host farmer is considered to be a portion of their compensation. Interns often live with the host farmer and farm family, or in separate housing on the farm property. Other “in-kind” wages often include food or other products from the farm. While apprentice programs can include none or all of the above benefits in terms of the farmer-to-intern agreement, there are myriad ways in which farmers can structure their work programs to fit appropriately within their farm operation.

Worker Classification

To begin, farmers should understand the importance of worker classification. A common scenario among small farmers is for workers to be classified as contractors, working for a specific, seasonal period of the year, and then being issued a 1099 form at the end of the year. The farmer assumes no responsibility for deducting payroll taxes or insurance on that worker’s wages, and the worker is responsible for paying taxes on his or her income in the form of self-employment tax. While this is a popular and easy way for farmers to manage labor, it is often not legal, and farmers should be aware of the consequences that can accompany improper classification of laborers. If you classify an employee as an independent contractor

and you have no reasonable basis for doing so, you may be held liable for employment taxes for that worker.

The IRS uses a system of many factors to determine a worker's classification as either an independent contractor or an employee, and while no specific factors weigh more heavily than others in this classification process, there are factors that may make the determination easy for farmers to discern in their situation. For example, an independent contractor typically uses his or her own tools, requires little training, and is given the desired results at the end of the work as opposed to step by step instructions as to how to achieve the results. By contrast, an employee will use the equipment and tools belonging to his or her employer, and the employer will maintain control over the work of the employee. Using these and other classification factors, it is usually correct to classify farm workers as employees rather than independent contractors.

The exception to this generalization is a situation that the US department of labor calls "joint employment". Joint employment refers to farmers who employ farm labor contractors—people who for financial or other compensation recruit other workers for the farmer, and sometimes provide room, board, and transportation for those workers. This situation is typical on farms where migrant labor is employed. In these cases, the person serving as the farm labor contractor may be classified as an independent contractor. In most other farm labor situations, farm workers should be considered employees.

Becoming an Employer

Farmers who have never had employees on the farm will need to take appropriate steps to become an employer as recognized by federal and state authorities. The first step is to obtain an Employer Identification Number (EIN) from the IRS. This may be obtained online or by contacting the IRS directly. Once the EIN is issued, farmers will use it to identify their business on all employment related tax and insurance forms. Additionally, employers need an income-tax withholding number. This number (obtained using Form NC-BR found on the IRS website) is used to legally withhold taxes from employees. Additional steps to becoming an employer include obtaining the proper forms for workers' files. Each person employed with the state of NC should have a form W-4 filed on his or her behalf, and should also complete the Employee Eligibility Verification, or I-9. Please note that there is a new W4 template as of 2016. The W-4 is the form workers use to claim their exemptions, such as children, spouses, or other income. The number of exemptions they claim will directly effect how the farmer withholds taxes from the worker's paycheck. Once the W-4 is completed by the worker, farmer employers should file that form with the IRS. The I-9 form is used to verify that the employee is permitted to work in the US, and asks for specific forms of verification such as drivers license, passport, or social security card. This form, along with proper identification for each worker, should be kept on file with the farmer employer, in case the eligibility of a worker is ever questioned. Newly hired workers must also be registered with North Carolina's New Hire Reporting program within 45 days of the start of employment.

Ongoing work on the farmer's part to maintain employer status include obtaining and paying premiums on workers compensation insurance, filing taxes quarterly using the proper form 941, or if the farm's annual tax liability is \$1,000 or less, the farmer may pay taxes annually using form 943. Farmers must begin filing taxes annually as soon as they have paid \$2500 or more in wages to workers within a tax year, or as soon as at least one employee has been paid more than \$150 in cash wages. Farmers should also register for unemployment insurance tax, if they are paying more than \$20,000 in wages per calendar quarter, or if they are employing 10 or more worker(s) for 20 or more weeks in a calendar year.

Recordkeeping

Probably the most important thing about being an employer is recordkeeping, as it will make the process of paying taxes and having employees much easier for farmers. Also, proper recordkeeping will ensure that legal entanglements are avoided, should employees file complaints, or ever be found ineligible to work on a farm. In addition to copies of the aforementioned W4 and tax forms, farmers are encouraged to keep all of the following information on each employee for at least four years: full legal name, social security number, permanent residence, occupation (job description and application for that job), and dates of employment with the farm. Keep your I9 forms in a separate file, specifically kept separate for the United States Citizen and Immigration Services to be able to inspect if necessary. Please note at the end of a tax year you must provide a W2 for each of your employees. This document, which must be issued by January 31 of each calendar year, needs to include total wages for the previous year and total federal income tax, social security tax, and Medicare tax withheld. It also needs information on their Earned Income Credit (EIC) on the back of their W2 form. All of this record keeping will assist in the smooth creation of W2's during tax season.

In addition, accurate time sheets detailing hours of work and specific activities will assist the farmer with payroll, and with claiming agricultural exemptions (see page 4). A simple timesheet template is provided in appendix A. Farmers should always keep detailed payroll records, including dates, amounts, and forms of payment, and if applicable, the value of in-kind wages. A sample payroll spreadsheet is provided in Appendix B. It is also important to include periodic employee evaluations (that are shared and signed by the employee), notice of raises, and any disciplinary actions that were taken against the employee during their time of employment. Be sure to not keep any personal information on the employee pertaining to political or religious views, private life, or anything not directly pertaining to their employment with your farm.

The list of recordkeeping priorities may seem excessive, especially to growers with little experience employing workers. However, it is important to know and record detailed information about farm workers and the nature of their work because these facts tie in to how their labor is regulated. For example, an intern with a permanent residence that is out of state (this is common, as many interns still list their parents' address as their home address) may be considered a migrant worker, and as such, that intern's farmer employer may be subject to different rules than would seem intuitive.

Wage & Hour Laws, Agricultural Exemptions

Laws governing wages, hours, and other farm worker rights are dictated by two federal acts: the Fair Labor Standards Act (FLSA), and the Migrant and Seasonal Worker Protection Act (MSPA). The FLSA dictates that all US workers must be paid federal minimum wage (\$7.25/hour in 2016) as well as overtime pay (time-and-a-half) for any working hours above 40 in each week. These numbers, however, do not generally apply to farming operations. The MSPA dictates workplace rights of migrant and seasonal workers, including housing and transportation regulations, as well as laws governing the eligibility of farm labor contractors. Farmers should be familiar with both of these documents, as they govern standard practices for business owners, however, several exemptions to these standards may apply to agricultural employers.

Common exemptions are as follows:

- A. The 500 man-day exemption:
 - A "man-day" is defined as any day in which any one worker labors for at least one hour. If a farmer employs labor for fewer than 500 man-days in a year, that farmer is exempt from paying

minimum wage and overtime. In general, farmers who employ fewer than five workers annually will qualify for this exemption. However, if farmers employ more than five workers during a year, and fewer workers in other times of the year, the farmer will not qualify. Please keep in mind that these are federal, not state, standards. You are required to comply with your states standards, if different than what is listed above.

B. The Family Exemption:

- A farmer who employs his or her spouse, children, or other family members is exempt from wage and hour requirements with regard to family employees.

C. The 13 week/25 mile exemption:

- Farmers are exempt from wage and hour regulation regarding any worker whose permanent residence is within 25 miles of the farm workplace and who commutes to work for 13 weeks or fewer in a year.

D. Others

- Other exemptions apply to farmers who employ commuting, hand harvesters paid on a piece-rate basis and employed in agriculture for 13 weeks or fewer annually, farmers who employ minors for hand harvesting, with their parents, and pay on a piece-rate basis that is equal to that of non-minors in the same operation, and farmers who employ workers strictly in range livestock operations.

It is important to note that all of these exemptions require good recordkeeping (as defined above), and all of these exemptions specify the type of work that qualifies. Workers must be engaged in “agricultural labor” in order for the farmer employer to claim these exemptions. Agricultural labor is defined as labor related to the production and sale of commercial food and fiber products. Labor on behalf of a cooperative of growers or completed in a cooperatively owned facility does not qualify for the exemptions. If a farmer claims an exemption, he or she must be able to justify that the labor situation on the farm is compliant with the rules of that exemption. Thorough recordkeeping (as defined above) on each employee will assist if an exemption is ever called into question.

Payroll

Understanding the above exemptions will greatly assist farmers in structuring their payroll process. Payroll should occur on a consistent basis (such as every week or every two weeks). Each paycheck should take into account the hours an employee works, proper wage adjustments for social security and medicare, and unemployment insurance (if applicable). In order to legally withhold taxes, employers need an income-tax withholding number. This number can be obtained using Form NC-BR found on the IRS website. Federal social security and medicare deductions are updated every so often, so farmers should be sure to keep up with the latest percentages. As of 2016, social security withholdings are 6.2% from each employer and employees. Medicare withholdings are 1.45% from both employee and employer. When conducting payroll, it is helpful to set up a system that calculates these percentages automatically once the total hours worked and rate of pay are entered. The payroll spreadsheet provided in Appendix B is a good example. To calculate tax withholdings, farmers should reference the tax tables located in IRS Publication 51, also know as The Circular A Agricultural Employers Tax Guide. Withholdings will depend on the payroll schedule, and how many exemptions are claimed by the employee in question. Refer to form W4 for each employee to determine the number of exemptions that apply.

As with minimum wage and overtime, there are some exemptions to social security and Medicare withholdings that are worth mentioning. The IRS refers to this as the \$150 and \$2500 test. If a farmer pays less than \$150 to an employee in annual wages, those wages are not subject to social security, Medicare, or federal tax withholdings. If the farmer pays less than \$2500 in total wages to all employees,

those wages are also not subject to withholdings. Very few scenarios will qualify for exemption under these tests, but they are important to note because they make it easier for farmers to hire workers on a trial period, for example, or for a short-term project.

In-kind, or non-cash wages are also considered a part of payroll. Farmers should note in employee files the value of in-kind wages, as many of these count as fair compensation in agricultural employment. For example, many farmers provide housing to workers. As long as the housing is not valued over its fair market value, or as long as the farmer is not somehow also profiting from that housing, the farmer can include it as a portion of employee wages. With regard to housing, farmers should be aware of Federal Occupational Health and Safety (OSHA) regulations, and MSPA regulations, as these govern on-farm housing. Farmers qualifying for the “500 man-day exemption” are considered exempt from MSPA regulation with regard to housing requirements, but they will not be exempt from OSHA regulations unless they are housing fewer than 10 employees annually. The OSHA regulations dictate the condition and safety of the housing itself, and also require farmers to register their housing with the government within 45 days of occupancy.

Other in-kind wages include food or other products from the farm. Non-cash wages are not subject to withholdings, but their evaluation is factored in to the \$2500 test. In other words, if a farmer pays both cash and non-cash wages, and together the value of those wages exceeds \$2500, the cash wages paid are then subject to withholdings.

To date, the educational value of a farm work experience is not a recognized non-cash wage in NC unless the worker is also receiving college credit for the experience. In that case, the college or institution providing academic credit will dictate the educational value of the work. However, without an academic entity backing the work experience, farmers may not value their mentoring or the intern’s learning as part of in-kind or noncash wages.

Finding Workers

Many farmers may think the task of acquiring workers overwhelming, and in some cases it can be a long process. In North Carolina, there are several popular resources for advertising internship programs, and the state is well-known as a place where one can learn about agriculture through work trades. The Organic Growers School maintains an annually updated database of farmers seeking employees, called Apprentice Link. Farmers may apply to be listed on this database through the Organic Growers School website. The database is online, and therefore accessible to potential interns from all over the globe. Parties interested in NC farm work can search the database for farms that fit their interest area. Additional resources for advertising labor programs are the Appropriate Technology Transfer for Rural Areas (ATTRA) website, where a simple classified ad can be placed online for a wide audience to view. In western North Carolina, the Appalachian Sustainable Agriculture Project (ASAP) website has a classified section where users frequently post job-wanted and help-wanted ads. The resource list in Appendix C lists these websites for farmer reference.

As farmers in NC continue to build successful and rewarding labor programs, our state will gain even more recognition as a place where aspiring farmers will want to settle and learn the trade. Many workers spend several seasons on NC farms as they test out and learn about different management styles and types of farming operations. Word-of-mouth is a powerful tool for farmers seeking to find their first interns, and talking to fellow farmers will prove helpful in learning the details of structuring a labor program.

Conclusion

Finding workers, keeping workers, and untangling an understanding of NC labor laws can seem daunting for farmers hoping to set up meaningful and legal internship programs on their small farms. However, good recordkeeping and understanding agricultural tax exemptions are important in setting up successful employment situations. By being clear of the individual circumstances of each worker, you will formulate a system that you soon will find familiar. Farmers in NC wishing to receive assistance in structuring labor programs can contact the Organic Growers School, or refer to the contacts listed in Appendix C.

Appendix A: Resource List for Hiring Farm Workers.

1. IRS list of determining factors in Worker Classification:
<http://www.irs.gov/businesses/small/article/0,,id=99921,00.html>
2. Department of Labor Fact Sheet #12--The FLSA for Agricultural Employers:
<http://www.dol.gov/whd/regs/compliance/whdfs12.pdf>
3. Department of Labor Fact Sheet #49-- The Migrant and Seasonal Worker Protection Act:
<http://www.dol.gov/whd/regs/compliance/whdfs49.pdf>
4. Department of Labor Directory of Fact Sheets (including child labor on farms, OSHA regulation, piece--rate operations, and join employment, among others): <http://www.dol.gov/whd/fact--sheets--index.html>
5. Organic Growers School Apprentice Link: <http://www.organicgrowersschool.org/apprentice-link>
6. Organic Growers School Hiring Farm Labor resource page:
<http://www.organicgrowersschool.org/hiring-farm-labor>
7. Organic Growers School Labor Resources page:
<http://organicgrowersschool.org/organicfarming/laborresources/>
8. Appropriate Technology Transfer for Rural Areas (ATTRA) Database of Internships and Apprenticeships: <https://attra.ncat.org/attra-pub/internships>
9. Appalachian Sustainable Agriculture Project (ASAP) Classified Ads:
<http://www.fromhere.org/classifieds>
10. New England Small Farm Institute: Print and online resources for organizing mentorship on the small farm, as well as teacher training resources. Also, legal resources specifically oriented to farming in the North East. http://www.smallfarm.org/main/for_on_farm_mentors/
11. Meeting Prospective Apprentices: Guidelines for Farmers (Maine Organic Farmers & Gardeners Association):
<http://www.mofga.org/Portals/2/Education/interview%20checklist%20for%20farmers.pdf>

Appendix B: Sample Employee Time Sheet

Worker Name: _____ Week of: _____

Date	Start	Stop	Breaks?	Activities	Needs		

Appendix C: Sample Payroll Spreadsheet

Hours worked	Pay Rate	Gross Pay	SS Withheld	Medicare Withheld	Net Pay	Check Number	Date
EXAMPLE: 5	\$5.25	5x5.25= \$26.25	26.25x.062 (6.2%) = \$1.63	26.25x.0145 (1.45%) = \$.38	26.25 - \$2.01= \$24.24	1234	1/1/01