
Agricultural Labor Laws

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Disclaimer: The following is intended for educational purposes only and is not legal advice.

Growing a farm business will usually require finding reliable and skilled workers to help both on and off the fields. Hiring farm workers hopefully means a thriving and productive farm operation, but it should not be done without an understanding of applicable labor laws. Labor laws cover issues like who is identified as an authorized worker, minimum wage and overtime standards, occupational health and safety standards, insurance requirements, child labor limitations, and more.

This chapter will outline the basics of the numerous federal and state laws applicable to farm businesses in Maryland. References to useful and detailed resources are included throughout for further reading on each topic. It is always advisable to seek legal advice when interpreting and applying laws.

Federal and State Labor Laws and Employment Standards

Federal laws establish the national baseline rules for wage and hours, health and safety protections, often require recordkeeping and reporting, and prohibit discrimination in the workplace. States are allowed to adopt stricter laws. Maryland's employment and labor laws do so by establishing further state level protections for employees.

Federal Fair Labor Standards Act (FLSA) and Maryland Minimum Wage and Hour Laws

The Fair Labor Standards Act (FLSA) is the federal act that establishes the maximum hours for a workweek, the national minimum wage, time-and-a-half overtime standard, and the child labor standards. FLSA applies to all businesses that have at least two employees and at least \$500,000 a year in gross sales. Employees working for smaller businesses may still be subject to FLSA protections if they are individually engaged in interstate commerce, in the production of goods for commerce, or in any closely-related process or occupation directly essential to such production. Whether a farmer is running a farm under a business entity or as a sole proprietorship, the FLSA will typically apply to some degree. A business or worker is subject to FLSA if either the enterprise coverage or the individual coverage applies.

Minimum Wage

The Federal government establishes the national minimum wage, but a state may adopt a higher minimum wage for its residents. Maryland's minimum wage is higher than the federal wage and is expected to increase annually. Localities may also choose to adopt a higher minimum wage, such as Prince George's and Montgomery counties. Unless an exemption applies, the higher minimum wage, whether it is state or local, is the wage employers must follow and pay their employees.

Various agricultural workers, however, are exempt from minimum wage requirements. Maryland's exemptions for agricultural workers largely mirror the federal exemptions. The following are specific types of agricultural employees that are excluded from federal and state minimum wage requirements:

- Agricultural employees who are an immediate family member of their employer,
- Those principally engaged on the range in the production of livestock,
- Hand harvest laborers who commute daily from their permanent residence, are paid on a piece rate basis in traditionally piece-rated occupations, and were engaged in agriculture fewer than 13 weeks during the preceding calendar year,
- Minors, 17 years of age or under, who are hand harvesters commuting daily from their permanent residence, paid on a piece-rate basis in traditionally piece-rated occupations, employed on the same farm as their parent, and paid the same piece rate as those over 17.

Maryland also excludes employees engaged in “canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, or horticultural commodities, poultry, or seafood” from the Maryland minimum wage requirements; these employees are still entitled to federal minimum wage payment. Additionally, Maryland allows employers to pay employees under 18 years of age a wage equal to 85% of the state minimum wage, regardless of their type of employment.

Small farm employers also benefit from what is known as the “500 Man-Day Exemption.” Basically, any farm employer that used less than 500 man-days of labor in any quarter of the previous calendar year is not required to pay agricultural workers either state or federal minimum wage. A “man-day” is defined as any day an employee performs “agricultural work” for at least one hour. In order to qualify for the exemption, however, employees must perform agricultural work as that term is defined by law.

Overtime

Under both the FLSA and Maryland law, agricultural workers who are exempt from minimum wage are also exempt from receiving overtime wages. Maryland, however, provides other farmworkers overtime pay after 60 hours/week. According to the U.S. Department of Labor (DOL), a common employer mistake is failing to pay overtime to employees whose jobs are related to agriculture but do not meet the FLSA's definition of agriculture.

To determine whether farm employees are eligible for the agricultural labor exemption, an employer must compare the work performed by the employee to the FLSA's definition of agriculture, broken down into either primary or secondary agriculture. Employers need to remember that each exemption needs to be examined and applied carefully to avoid underpayment of wages. If an employee in the same workweek performs work that is exempt (fits the definition of agricultural work described above) and work that is non-exempt, the employee is not exempt for the entire week and the minimum wage requirements of the law apply.

Child Labor Standards

The applicable rules for agricultural work hours and duties depend upon the age of the employed minor. Generally speaking, minors can be employed outside of school hours so long as they are not asked to perform hazardous duties and are limited to farm work that is performed on a farm. Minors 16 and younger may not be allowed to work in connection with cleaning or operating power-driven machinery (not including office machines), manufacturing, or in connection with hazardous chemicals. In the agricultural context, working in a yard, pen or stall occupied by a stud animal or a sow with suckling pigs, working inside a silo or manure pit, and handling or applying certain agricultural chemicals are considered hazardous duties that minors are prohibited from performing.

Occupational Safety and Health Act (OSHA)

Farmers must take steps to ensure their farms are safe and hygienic workplaces and free from recognized hazards that cause or are likely to cause death or serious physical harm to the employee. Maryland Occupational Safety and Health (MOSH), a division of the Maryland Department of Labor and Licensing Regulation (DLLR), sets and enforces standards for workplace safety and health. MOSH has adopted the federal Occupational Safety and Health Administration (OSHA) rules pertaining to agriculture, although some activities on a small farm are exempt. Regulations include provisions for cool, clean drinking water and well-stocked hand washing and toilet facilities, provided free of charge. Also included are safety measures for tractors and heavy machinery used in agriculture.

Migrant and Seasonal Agricultural Worker Protection Act (MSPA)

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) is the federal law that governs the employment of migrant and seasonal agricultural workers, creating employment standards related to wages, housing, transportation, disclosure, and recordkeeping. Farmers using farm labor contractors should be aware of the contractor's practices and use only licensed contractors to avoid joint liability for violations of federal and state laws.

In Maryland, the Maryland Department of Labor, Licensing and Regulation (DLLR) enforce protections for migrant and seasonal agricultural workers. Failing to fulfill the duties and responsibilities required by the laws can result in substantial civil and criminal penalties for the employer.

Healthy Working Families Act - Maryland Sick Leave Policy

Maryland's general policy requires employers to provide sick and safe leave to employees who are over 18 years old at the beginning of the year and work more than 12 hours/week. Although Maryland has a sick leave policy, employers are not required to provide sick leave to employees working in the agricultural sector on an agricultural operation. Although farm employers are not legally required to provide paid sick leave, there are many sound reasons to do so, including but not limited to, reducing the likelihood sick workers contaminate produce.

Federal Non-Discrimination Laws and Maryland Equal Pay for Equal Work

As a general rule, discrimination of any kind is prohibited in the workplace. Federal laws prohibiting discrimination include the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), the Genetic Information Nondiscrimination Act (GINA), and the Uniformed Services Employment and Reemployment Rights Act (USERRA). Maryland also prohibits sex and gender-based discrimination through the Equal Pay for Equal Work Act. These laws are particularly important to remember during the hiring process when interviewing applicants and when deciding to promote or terminate an employee.

Conclusion

Legally employing people involves careful consideration to ensure employees' rights are respected. Consult qualified tax, accounting, insurance and legal advisers who are familiar with farming operations to ensure the best planning and employment decisions are made to avoid unnecessary fines or other penalties for failing to comply with federal and state labor laws.

Agricultural Labor Laws Links

- Recent Decisions Emphasize the Need for Farmers to Understand Ag Overtime Exemptions - <http://agrisk.umd.edu/blog/jbey8pdiviokhn9wbmgv1ldxehhvq3?rq=flsa>
- Child Labor Laws in Agriculture: What You Need to Know, <http://agrisk.umd.edu/blog/child-labor-laws-in-agriculture-what-you-need-to-know?rq=flsa>
- Is My Farm Exempt? OSHA Confusion Continues - <http://agrisk.umd.edu/blog/is-my-farm-exempt-osha-confusion-continues?rq=osha>
- Sarah Everhart, Is Your Hand-Labor Operation Legal? - <http://agrisk.umd.edu/blog/is-your-hand-labor-operation-is-legal?rq=hand-washing>
- Faiza Hasan, Farmers, Are You Complying with MOSH Standards? - <http://agrisk.umd.edu/blog/farmers-are-you-complying-with-mosh-standards>
- Cultivating Compliance: An Agricultural Guide to Federal Labor Law - <https://www.dol.gov/whd/FLSAEmployeeCard/AgGuideEnglish.pdf>
- When is Workers' Compensation Coverage Required for Agricultural Workers? - <http://agrisk.umd.edu/blog/when-is-workers-compensation-coverage-required-for-agricultural-workers?rq=workers%20compensation..>