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Agricultural Employer's Checklist 2014

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Several government agencies administer laws and regulations pertaining to the employment of farm workers. The likelihood of your farm business being inspected by one or more regulatory agencies increases as the number of employees increase. Here is a check list to review important steps when you are hiring for the first time.

1) Assume interviewing and employee selection is completed.

Please review the IRS employee vs. contractor rules. Generally, you have more control over employees. If you provide the schedule and direct control over the work that is done, then the relationship is more of employer/employee. Contractors will set their own hours, have their own tools, work for others in a similar role, and take charge of the project process. They file for self-employment. Having a written contract will help describe the relationship.

2) Prior to hiring you should have in your workplace:

- _____ A. Employer Identification Number (EIN) SS-4 - Federal,
Pub 1635 -Understanding your EIN
- _____ B. Pub 583 Starting a Business and Keeping Records
- _____ C. Posters and Programs:
 - ☐ OSHA Job Safety and Health Protection – Federal - all employers;
remember, Form 200 Injury Report should be posted for the
previous month.
 - ☐ Right to Know – New York State - all employers
Plus state location of MSDS for all dangerous materials.
 - ☐ General Work Agreement for Agriculture Employees – NYSDOL LS-309 or
LS-309S. Show range of wages and hours.
 - ☐ Worker's Compensation poster and insurance
If wages exceed \$1200/yr. in agriculture
Insurance required for all non-agricultural, non-laborer employees
 - ☐ New York State Farm Minimum Wage poster
If wages exceed \$3000/year
@ \$8/hr. after 12/31/13, \$8.75 after 12/31/14, and \$9.00 after 12/31/15
Employer may allow \$1.70 per meal and rent value toward minimum
wage if earn over \$254 total
 - Unpaid Interns are usually illegal in NYS! (unless intern has an
education plan & receiving college credits – usually monitored by
faculty member).
 - ☐ Federal Minimum Wage poster –
If 500 man days of labor are used in a calendar quarter (this is
approximately 5.5 full-time equivalent in any 3 months)
Also exempt from overtime pay for agricultural workers
 - ☐ Unemployment Insurance poster

If wages exceed \$20,000 in any calendar quarter or
If have more than 10 employees in each of 20 weeks.

- ☐ Worker Protection Standard poster if you use or have pesticides on premise.
- ☐ Fair Labor Standards poster if you sell any of your production out of state.

WH 1386

- _____ D. Circular A – Pub 51 - Agricultural Employers Tax Guide – IRS
- _____ E. Circular E – Pub 15 Employer’s Tax Guide – IRS
- _____ F. WT-100 New York State Withholding Tax Guide
- _____ G. Publication NYS 50 – Employers Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax
- _____ H. For migrant and seasonal workers:
 - Migrant and Seasonal Worker Protection Act
 - Housing statement
 - Work conditions / agreement when recruiting
 - Wage statement: weekly hours & weekly summary of piecework & rates
 - Records: daily hours & daily piecework with rates
 - Inspection of vehicles transporting workers
 - Housing inspection even if only ONE migrant / worker (USDOL inspection)OSHA Field Sanitation Standards
 - Potable water - enough for each worker
 - field toilet (2 toilets if 20 or more workers)
- _____ I. Non- Agricultural workers (non-941) such as farm market, U-Pick, storage and packing house employees are subject to overtime after 40 hours per week. These worker also need to have Unemployment Insurance.

3) At hiring, the farm employer should make a folder for each employee and include:

- _____ A. Their job application form with name, address, and Social Security number
- _____ B. I-9 Employment Eligibility Verification
- _____ C. W-4 Federal Employee Withholding Certificate
- _____ D. IT-2104 New York State Employee’s Withholding Allowance
- _____ F. NYS LS-309 or LS-309S Pay Notice & Work Agreement for Farm Workers upon hire AND annually by February 1 of each year. Must be retained for 6 years.
- _____ G. Work Agreement and/or Job Description and/or H2A Work Order signed by both employee and employer with a copy for each including: rate of pay; overtime rate; if paid by hr., piece, or salary; the pay day; name and contact info for the employer; and any benefits that are used toward min. wage such as meals or lodging.
- _____ H. Signed authorization for any deduction other than those required by law. This must be for employee’s benefit and has a maximum of 10% of gross wages (payroll deductions for loan repayment to farm employers no longer allowed by NYS)
- _____ I. For Youth: Please note: employers must obtain permission to pay special training wages below the minimum wage and strictly follow the regulations.
 - ☐ Date of birth for youth employed at youth rate
 - ☐ Work Permit for youth under 16 yrs. is available from their school Growers must have a copy of the work permit on file. The work permit will list you as the student’s employer.
 - Under 16 yrs are prohibited from hazardous work (see 8)

- Under 16 yrs may work no more than 3 hours on a school day; 18 hours in a school week; 8 hours on a non-school day; or 40 hours in a non-school week. Pay strict attention to the regulated hours as they change based upon time of year.
 - 12 and 13 year olds are restricted to hand harvest of fruits and vegetables 4 hours or less per day usually between 9 am and 7 pm
 - ☐ New York and Fed under 20 yrs. of age training wage of \$4.25 per hour for the first 90 days of employment.
 - ☐ New York Student Minimum Wage - \$6.80 - Full-time high school or college students who work part-time may be paid 85% of the New York minimum wage (as little as \$6.80 per hour) for up to 20 hours of work in agriculture.
- _____ J. NYS Department of Taxation and Finance New Hire Report filed within 20 days.
Send in W-4 and IT 2104
- _____ K. Health Insurance Notice: Forms available from federal website – ALL employees must receive a notice that you DO or DO NOT provide health insurance (separate forms) upon hire regardless of the number of employees you hire.
If you have fewer than 50 Full Time Equivalents (FTEs) you are **required to notify the employee that they are required to obtain federally approved health insurance for themselves or face fines.** If you have over 50 FTE you are **required to provide Health Insurance.**
They may find Health insurance at <https://nystateofhealth.ny.gov/>

4) First Day Job Training and Orientation

- _____ A. Tell who supervise is. We recommend only one supervisor per person.
- _____ B. Show where the information is kept on:
☐ List of hazardous conditions (see 8).
☐ Location of Material Safety Data Sheets (MSDS) for all chemicals.
- _____ C. Show location and use of personal protective equipment required for use on the job
- _____ D. Keep a file on job training, especially as it relates to safety (when it was done, and what was taught). Have employees acknowledge that they understood the training on a training acknowledgement roster at the completion of training. We recommend that equipment operation training have a checklist of skill competencies, and check-off acknowledging that the employee is competent in that skill before the employee is allowed to operate tractors or specific pieces of equipment.
- _____ E. Procedures in the event of injury or illness. How to call the ambulance and location of the closest Hospital
- _____ F. Worker Protection training if they will be near pesticide applications, and higher level if they will be applying pesticides. We recommend that all employees applying chemicals are certified by NYS DEC as private applicators for the type of crop on which they will be apply pesticides
- _____ G. Notify all employees that NYS requires you to give employees a 30 minute lunch hour/break after 6 hours of work. All employees MUST take this break after working 6 hours (no working through the lunch hour break!).

5) Farm Employee Pay Issues – be sure to include for each payroll period:

- _____ A. *Employee Wage Statements*
☐ Name and address of employer

- ☐ Name of employee
 - ☐ Rates paid
 - ☐ Gross Wages
 - ☐ Deduction and allowances
 - ☐ Net wages
 - ☐ Number of hours worked (even if piece rate as must cover minimum wage no matter what). If a piece rate, you also need number of pieces produced, piece rate paid, and size or weight of piece rate units.
- If any of your production is sold out of state, you must also have the employee's address on the wage statement (under the federal Fair Labor Standards Act).

_____ B. *Payroll Records*

- ☐ Name and address of employee
 - ☐ Social Security number
 - ☐ Total hours worked daily and weekly
 - ☐ Gross wages, deductions, net wages
 - ☐ Allowances claimed as a part of minimum wage
 - ☐ Cash advanced
 - ☐ Wage rates
 - ☐ If piece rate, you keep record of units produced daily and weekly
- If any of your production is sold out of state, you must also keep records of daily start and end times for each employee (under the federal Fair Labor Standards Act).

6) Reporting and filing requirements

A. *Federal*

- _____ 1. Form 8109 Tax Deposit Coupon – deposit for Federal withholding and Social Security if you pay more than \$150/worker, or \$2500/year in salaries combined.
 - ♦ If deposits were less than \$50,000 file by 15th of the following month.
 - ♦ If deposits were greater than \$50,000 must make semi-weekly deposits.
 - ♦ Current deposits will include: Social Security @ 6.2% each from employer and employee on wages up to \$117,000 and for Medicare @ 1.45% each from employer on all wages, and any income taxes withheld.
- _____ 2. Form 943 Employers Annual Tax Return for Agriculture Employees – annually
- _____ 3. W- 2 Wage and Tax Statements for each employee and a W- 3 Transmittal of Income and Tax Statements – annually
- _____ 4. Form 940 Employers Annual Federal Unemployment (FUTA) Tax Return if you have over 10 employees or pay more than \$20,000 in a calendar quarter. You must start paying unemployment insurance at the end of the quarter in which you reach \$20,000 in gross payroll.
- _____ 5. Keep a list for 40 years of all employees that have worked with OSHA List Part Z substances
- _____ 6. Keep records of hazardous condition and job safety training (when done, who did it, and what was taught)

B. *New York State*

- _____ 1. Return of Tax Withheld

- ♦ If you withhold less than \$700 in calendar quarter, then you file quarterly; use form WT-4-AEZ
 - ♦ All others file within 3 days of collecting \$700 on form WT-1 You may sign up to deposit these funds electronically.
- _____ 2. Form IA-5 New York State Unemployment Insurance- deposit quarterly if eligible under Federal Rules
- _____ 3. Form WT-4-A Employers Quarterly Report of Wages paid to Each Employee – no payment, but must report all wages and Social Security number to New York State quarterly
- _____ 4. Form WT-4-B - Report annual wage and withholding information on Form WT-4-B with the final wage reporting return of the year.
- _____ 5. Report all-on-the-job injuries to Workers Compensation Board.

7. Termination

- ☐ Try to get written reason for leaving. If firing then document the reasons, and include in their file. Especially if you fall under Unemployment Insurance requirement
- ☐ Give employee a written summary of total gross and net earnings for the employment period and a listing of all deductions. This may be mailed.
- ☐ Get a forwarding address for their W-2
- ☐ Keep all farm payroll records at least 3 years

8. Hazardous Agricultural Jobs

- Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor;
- Operating or working with a corn picker, grain combine, hay mower, forage harvester, hay baler, potato digger, feed grinder, crop dryer, forage blower, auger conveyor, unloading mechanism of a non-gravity-type self-unloading wagon or trailer, power post-hole digger, power post driver, or non-walking-type rotary tiller;
- Operating or working with a trencher or earthmoving equipment, fork lift, potato combine, or power-driven circular, band or chain saw;
- Working in a yard, pen, or stall occupied by a bull, boar, or stud horse maintained for breeding purposes; a sow with suckling pigs; or a cow with a newborn calf (with umbilical cord present);
- Felling, bucking, skidding, loading, or unloading timber with a butt diameter or more than 6 inches;
- Working from a ladder or scaffold at a height of over 20 feet;
- Driving a bus, truck or automobile to transport passengers, or riding on a tractor as a passenger or helper;
- Working inside: a fruit, forage, or grain storage designed to retain an oxygen-deficient or toxic atmosphere; an upright silo within 2 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;
- Handling or applying toxic agricultural chemical identified by the words "danger," "poison," or "warning or a skull and crossbones on the label;
- Handling or using explosives; and
- Transporting, transferring, or applying anhydrous ammonia.

Farmers Tax Calendar – selected dates

Every 15th

- Deposit your monthly Payroll Tax: Social Security, Medicare and withheld income tax if the monthly deposit rule applies to you. Otherwise file weekly. Set up an electronic filing account at EFTPS.gov for BOTH 943 & 940

Every end of month or last day of month following the calendar quarter

- File form 940 - Federal Unemployment Tax if you are required to pay unemployment taxes.

January 15

- File your quarterly Estimated Income Tax using Form 1040-ES, unless paying in full on March 1.

January 31

- Give employees their copy of Form W-2.
- Give qualified vendors Form 1099.
- File Form 943 to report Social Security, Medicare taxes and withheld income tax for previous year. Deposit any un-deposited tax. (If your total tax liability is less than \$2,500, then you can pay it in full with a timely filed return.) If you deposited the tax for the quarter in full and on time, then you have until **February 10** to file the return.
- File Form 940 for previous calendar quarter if you are required to pay FUTA Taxes

February 28

- File Form W-3 (Transmittal of Wage and Tax Statements) along with Copy A of all the forms W-2 you issued.
- File form 1096 along with Copy A of all forms 1099. Annual Summary and Transmittal of U.S. Information Returns, with the IRS.

March 1

- Farmers – file your income tax return (Form 1040) and pay all taxes due. However, you have until April 15th to file if you paid quarterly estimated taxes.

April 15

- Farmers – File Form 1040 income tax return and pay any additional taxes due if you did not file by March 1.
- Partnerships – File Form 1065 and furnish a copy of Sch K-1 to all partners

April 30

- File NYS Form-45 for the first quarter of the year
- File Form 940 if you are required to pay Unemployment Taxes

June 15

File your quarterly Estimated Income Tax using Form 1040-ES,

July 31

- File Form 940 if required to pay FUTA tax
- File Form NYS-45 for the 2nd quarter of the year

September 15

- File your quarterly Estimated Income Tax using Form 1040-ES,

October 31

- File Form 940 if required to pay FUTA tax
- File Form NYS-45 for the 3rd quarter of the year

Source: IRS