



## **Farm Labor Laws and Regulations in Minnesota -- 2009**

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This publication is to provide farm employers and others with a brief summary and update of current (2009) laws and regulations related to farm labor in Minnesota. For further information, contact the agencies listed. Rules and regulations change from time to time and keeping up to date is a responsibility of the employer.

Meeting the need for extra, non-family labor on Minnesota farms is becoming an increasingly complex issue. No longer can we depend on hiring local youth for part-time needs, or a local single man looking for work and a place to stay. Today farms are looking for people who are willing to work at very specific tasks, often for an entire working shift that might be overnight. Today's employees are part of a team that needs to understand each others' jobs, be able to work together on some tasks and quite independently on others. Regardless of the task, the employer wants quality work and is usually paying a much better than minimum wage for that work.

According to a 2005 survey conducted among Minnesota dairy farmers, 68% of the dairy farms have 1 or more employees on the farm<sup>1</sup>. Ten percent of the farms have nine or more employees. This creates the need for knowledge and better understanding of state and federal laws that apply to employers and their relationship to employees.

The purpose of this publication is to bring key issues to the forefront and help farmers stay in compliance with relevant laws and regulations. For further information, contact the agencies listed at the end of the section. These agencies have provided information which is current at the time of publication.

[Disclaimer: Because there are continual changes and updates at both state and federal levels please check with an attorney or the appropriate agencies noted for further information and/or a legal opinion.]

### **Becoming an Employer**

As an employer, you will be responsible for proper tax withholding and submission of social security deposits for your employees. In order to file these reports and make the deposits, an employer identification number (EIN) is required. This is requested with form SS-4, [Application for Employer Identification Number](#). The form

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<sup>1</sup> University of Minnesota Extension Service Survey of Dairy Producers and Affiliated Individuals - 2005

establishes the type of business you operate, the number of employees you expect to have in the next year, and your business structure. The SS-4 is available on-line at <http://www.irs.gov/pub/irs-pdf/fss4.pdf>. It can be printed, filled out and mailed, or it can be filed on-line for immediate assignment of an EIN

The state of Minnesota has a companion application, Form ABR, Application for Business Registration. The two forms are quite similar, but both must be filed to be in compliance. .

. The Form ABR is available on-line at [http://www.taxes.state.mn.us/forms/abr\\_07.pdf](http://www.taxes.state.mn.us/forms/abr_07.pdf). The ABR can also be filed directly on-line.

Alternatively, state and IRS forms can be ordered over the phone. Check your local phone directory for the closest office. They will usually be found under listings for the “State of Minnesota” or the “Federal Government”

Both these forms should be filed before anyone is employed

## The Employer – Employee Relationship

When a farmer hires a person to perform work for him/her, a legal relationship is established. The two most common relationships are that of employer-employee or independent contractor. It is important to determine the status of each person working on the farm for tax and liability purposes.

The IRS has developed a list of twenty factors that are to be "used as an aid in determining whether an individual is an employee under the common law rules." (Revenue Ruling 87-41.) More recently, these 20 factors have been narrowed down to three common criteria as follow:

<p><b><i>Behavior Control</i></b></p>	<p><i>Factors which illustrate whether there is a right to director or control how the worker performs the task for which he or she is engaged:</i></p> <p><b><i>Instructions</i></b> – Relating to when, where and how to accomplish the task; where to purchase necessary supplies</p> <p><b><i>Training</i></b> – As regards specific procedures to be followed, and methods to be used in completing the task.</p>
<p><b><i>Financial Control</i></b></p>	<p><i>Factors which illustrate whether there is a right to direct or control how the business aspects of the worker’s activities are conducted:</i></p> <p><b><i>Significant Investment</i></b> – Does the worker own the normal tools and equipment of their trade or profession? Do they maintain a separate office and are they responsible for all expenses of that office?</p> <p><b><i>Unreimbursed Expenses</i></b> – These would suggest and independence of business.</p> <p><b><i>Services Available to the Relevant Market</i></b> – Does the worker advertise and/or maintain a visible business location?</p>

<b>Financial Control (cont.)</b>	<p><b>Method of Payment</b> – Is there a flat fee or a per-job payment contract? (Workers paid on an hourly, daily, weekly or monthly basis would tend to indicate an employer-employee relationship.)</p> <p><b>Opportunity for Profit or Loss</b> – The ability to sustain a financial loss is one of the strongest indicators of independence.</p>
<b>Relationship of the Parties</b>	<p><i>Factors which illustrate how the parties perceive their relationship:</i></p> <p><b>Intent of the Parties/Written Contracts</b> – Usually supports a position of independence.</p> <p><b>Employee Benefits</b> – Providing a worker with benefits is generally evidence of an employer—employee relationship.</p> <p><b>Discharge/Termination</b> – Can the worker be terminated before the task is completed without becoming liable for non-performance under a contract or agreement?</p> <p><b>Regular Business Activity</b> – Are services performed as a key aspect of the regular business? If so, an employer—employee relationship may be indicated.</p>

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Although not a part of the formal standards, another factor often considered differentiating an independent contractor from an employer—employee relationship is who controls where the work is done, the hiring firm or the worker?

If a farm contracts an independent contractor for any services, the farm is not subject to withholding various taxes. In an employer – employee relationship, taxes, social security, workers compensation and other issues may enter into the operation.

In a few select situations, a farm labor contractor (sometimes called a crew leader) may be the contact person with the farmer. That contractor is paid by the farmer and the contractor then pays the workers. This does not shield the farm from his/her responsibilities. The agricultural employer and the crew leader may actually be considered co-employers so they would share joint liability for improper acts of the crew leader.

### **Employment Eligibility Verification: I-9**

As immigrant labor plays a larger role on many farms, knowing and following the rules becomes more important. The most important part of the process involves verifying new employees’ eligibility to work in the U.S.

**All** new employees (immigrant and native) must fill out an I-9 form for the employer and provide the necessary forms of identification to verify their employment eligibility. The I-9 must be completed within 3 days of hiring. Along with the I-9, the employee must provide to the employer certain documents verifying identity and right to work. The I-9

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<sup>2</sup> “Introduction to Employment Taxes and Employer Issues and Responsibilities Guide” revised January 2007, Minnesota Business Tax Education Partnership

lists acceptable forms of identification. Employers cannot tell the employee what to provide, and must accept documents from that approved list. Employees must present original documents. Photocopies are not acceptable. Employers are expected to make every reasonable effort to ensure documents are valid.

The completed I-9 form is kept on file at the place of employment. It must be available for any employment audit or investigation that might be performed by relevant agencies. Retain the Form I-9 for at least 3 years. If an employee stays for at least 3 years, you must retain the I-9 for at least one more year after their departure...

Failure to follow proper procedures leaves an employer open to significant fines and penalties

The I-9 form is available on-line at <http://www.uscis.gov/files/form/i-9.pdf>. A Spanish version is found at <http://www.uscis.gov/files/form/I-9Span.pdf>. There is also a Handbook for Employers that answers most commonly asked questions about the I-9 process. This handbook is available at <http://www.uscis.gov/files/nativedocuments/m-274.pdf>. If a hard copy of the handbook or a personal contact is necessary, questions should be directed to the U.S. Customs and Immigration Service Field Office, 2901 Metro Drive, Suite 100 Bloomington, MN 55425.

It is essential that social security numbers are correctly reported in order to properly credit all tax and social security deposits. Employers wishing to verify the correctness of social security numbers provided by employees can verify the numbers on line at <http://www.socialsecurity.gov/employer/ssnv.htm>. After a one-time registration, any number of employee social security numbers can be verified to avoid later filing problems. If social security numbers are not verified in this manner, and a discrepancy is discovered later, the employer will have to ask the employee to provide correct information in a timely manner or the employee may face dismissal.

## **Avoid Discriminatory Practices**

Employers of all kinds are subject to anti-discrimination laws. Federal law prohibits discrimination on the basis of race, religion, national origin, creed, color, sex, disability, age, veteran status, marital status or sexual orientation. These provisions must be followed in the hiring process as well as after a person is employed.

At the time of employee selection, employers must be very careful of the questions that are asked and how they are asked of the candidates. If there are legitimate requirements for performing tasks of the job, there can be questions asked or tests given to be sure the tasks can be safely performed and that can be part of the criteria for hiring or not hiring. All candidates must be given the same tests in order to avoid potential claims of discrimination.

The U.S. Equal Employment Opportunity Commission (EEOC) administers all laws related to potential discrimination. The EEOC website, <http://www.eeoc.gov/>, provides details for each type of potential discrimination. The specific link for small businesses provides excellent factsheets and education programs that are relevant to most farm employers. Most resources are available without charge.

If an employer has any question about hiring practices or situations in the workplace that might raise questions of discrimination or harassment, he/she should check with their attorney and/or the Minnesota Department of Human Rights at 651-296-5663.

## **Early Employer Filings:**

### **W-4**

In order to withhold the proper amount for taxes and file social security deposits against the proper account, employers must obtain a W-4 form from their employees. The W-4 provides the social security number and establishes the number of exemptions the employee wishes to claim for tax purposes. Employees can file new W-4's as circumstances change that might alter their tax liability. Most employers ask their employees to review their W-4 at the beginning of each year and make changes at that time if appropriate.

The W-4 form is available on-line at <http://www.irs.gov/pub/irs-pdf/fw4.pdf>. Instructions for employers and tax withholding tables are found in the IRS Publication 15 – Employer's Tax Guide. This publication is available on-line at <http://www.irs.gov/publications/p15/index.html>, or it can be ordered from any IRS service center.

## **New Hire Reporting**

A little-known requirement is for employers to report new hires to their state's department of human services. There is a coordinated, nation-wide network to insure court-ordered child and family support payments are being made by workers. This report must be filed within 20 days of all completed hiring. The report includes the employer's name, mailing address, federal ID number and the employee's name, address, social security number, date of hire, state of hire, and if possible, their birth date.

This report can be made on-line at [www.mn-newhire.com](http://www.mn-newhire.com) or a copy of the W-4 form can be sent to the New Hire Reporting Center, Box 64212, St. Paul, MN 55164-2012. Fines may be levied for failure to report new hires in a timely fashion.

## **Minimum Wage**

Minimum wage rates and overtime may be covered under federal or state laws, depending on the business conducted. Unless informed otherwise, it is usually safe to work on the basis of your business being covered by federal laws for agriculture. This is because most farm products enter into interstate commerce. In all cases, employers must follow the stricter of the rules, whether it is federal or state, that apply to their industry.

The minimum wage rate varies depending on the size of the business. Large employers (\$500,000 or greater gross sales per year or involved in production of products that may be part of interstate commerce) have a minimum rate of \$7.25 per hour. Small employers (under \$500,000 per year and) are subject to a minimum wage rate of \$5.25 per hour. These rates are subject to changes in state and federal law.

## Applicability July 24, 2009

▶ <b>Training wage</b> -- may be paid to new employees under the age of 20 during their first 90 days of employment	\$4.90
▶ <b>Small employers</b> -- annual sales volume of less than \$500,000 and not engaged in interstate commerce	\$5.25
▶ <b>Federally covered employers</b> -- businesses with annual dollar volume of business of \$500,000 or engaged in interstate commerce	\$7.25
Visit <a href="http://www.dol.gov">www.dol.gov</a> or call (612) 370-3341 if you have questions regarding the federal minimum wage law.	

For current federal information, employers should refer to <http://www.dol.gov/elaws/faq/esa/flsa/001.htm>, a Department of Labor information page on fair labor standards, and <http://www.dol.gov/elaws/faq/esa/flsa/001.htm> for state minimum wage rates. Take note there are different rates based on the size of the business and whether the business has products for interstate trade.

Employers may pay a ‘training rate’ to new employees, under the age of 20 years for their first 90 days of work. **That training rate is \$4.90 per hour.**

Under the law, employers must pay their employees at least the minimum wage for all hours worked. “Hours worked” includes training time, waiting time, travel time, rest periods of less the 20 minutes, and any other time the employees must be as work.

### Overtime

The Minnesota Fair Labor Standards Act requires employers to pay overtime for all hours worked in excess of 48 hours per work week. The overtime rate must be at least one and one-half the employee’s regular rate of pay. A work week is defined as any consecutive 7-day period. If an employee normally works a schedule that starts on a Tuesday and then has Sunday and Monday off, that would be their work week for purposes of calculating hours worked and eligible for overtime pay. Overtime calculations are on a single work week basis and cannot be averaged over a longer pay period.

Employees who are paid a salary (fixed pay for an expected number of hours on a routine basis) should also be paid overtime for hours worked over their normal hours scheduled. Their hourly pay rate is determined by dividing the normal hours worked into the pay for the time period.

Questions about minimum wage and overtime should be directed to:

**Minnesota Department of Labor and Industry**  
**Labor Standards Unit**  
**443 Lafayette Rd**  
**St Paul, MN 55155**  
**651-284-5005**  
<http://www.dli.mn.gov/main.asp>

## **Child Labor Laws**

Employers need to be aware of both federal and state labor laws pertaining to employing minors.

Youth under the age of 14 years cannot be employed in most industries. In agriculture youth at least 12 years of age can be employed with consent from parents or guardians. Employers should ask for proof of age in the form of a birth certificate, driver's license, school certificate of age or I-9.

There are several restrictions on the hours youth can work and tasks they can perform on a farm.

### A minor under the age of 16 may not work:

1. Before 7:00 a.m. or after 9:00 p.m.\* with the exception of a newspaper carrier.
2. For more than 40 hours per week\* or more than 8 hours per 24 hour period\* except in an agricultural operation.
3. On school days, during school hours, without an employment certificate issued by the appropriate school officials.

\*During the school year, federal law restricts hours to no later than 7:00 p.m., no more than 3 hours per day and not more than 18 hours per week.

### High school students 16 and 17 years of age may not work:

1. Before 5:00 a.m. on a school day.
2. After 11:00 p.m. on an evening before a school day. (They may work until 11:30 p.m. with written permission from the parent/guardian.)
3. Certain types of work are prohibited entirely for minors under age 16 years or significantly limited for minors under age 18 years. Some restrictions can be lifted by a written permission from a parent or guardian. Always check for the most current laws regarding youth employment.

### Agricultural Restrictions for Youth Under the Age of 16 Years

Youth between the ages of 14 and 16 years may be allowed additional employment if they have successfully completed an approved tractor and/or farm equipment safety training program offered by the Extension Service and vocational agricultural instructors.

Without this certificate, they are limited to operating tractors only less than 20 HP and there are very few pieces of equipment they can legally operate anywhere other than their home farm. There are two separate training programs available – one for tractor operation and one for other equipment. Youth must be able to show a signed certificate of completion from these programs. Ask a local extension educator or vo-ag instructor about training in your community.

Penalties for breaking these laws range from \$250 to \$1000 per occurrence.

Reference: <http://www.dol.gov/esa/whd/regs/compliance/childlabor102.pdf>

## Workers' Compensation

Workers' compensation insurance is intended to provide compensation to employees in the event they are injured while on the job and are unable to work for a period of time. Negligence is not a factor in whether one is due workers' compensation. The only criteria are whether the injury occurred in the course of their work for a covered employer. The insurance rate for this coverage is determined by the State of Minnesota and varies according to the industry involved and the history of the employer.

Agricultural employers have slightly different requirements from other employers. Farms have the option of whether or not they choose to cover family members who work on the farm or serve as corporate officers of a family corporate farm.

Minnesota statutes provide some degree of exemption from workers' compensation for farmers who employ a limited amount of non-family labor. Farms that pay less than \$8,000 per year for non-family labor are exempted from providing the insurance. Any farm with more than casual labor is a good candidate to pass that threshold, however.

There is one more exemption listed in statute. Farms with non-family labor paying less than the average state annual wage (approximately \$42,000 on October, 2007<sup>3</sup>), **and** carrying \$300,000 liability and \$5,000 medical insurance coverage, are not required to carry workers compensation insurance. If you believe your farm falls under this category, be sure the coverage includes coverage for employees.

While the second provision may not require a farm to carry workers compensation insurance, farms should carefully evaluate their total risk and ability to cover injured workers in the event there is a loss-claim. Today it takes only a small injury to reach \$5,000 in medical costs and the liability costs could run much higher than the coverage level as well.

This is good reason to visit with an insurance provider and consider the risk one wishes to carry on their own or insure with an outside carrier. It would also be wise to consider whether one should also provide coverage for family members. While coverage is not required, injuries to family members are no less of a cost and financial threat to the business than injuries to non-family members. It is all a matter of risk management on the farm

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<sup>3</sup> <http://www.doli.state.mn.us/xls/annladj7-08.xls>

## **Work breaks (rest periods)**

Minnesota state law requires employers to provide restroom time and sufficient time to eat a meal. If the break is less than 20 minutes in length, it must be counted as hours worked. Time to use the nearest restroom must be provided within each four consecutive hours of work. Meal time applies to employees who work eight or more consecutive hours

## **Wages Due Upon Separation**

When an employee leaves your employ, you are obligated to promptly pay all wages due.

A discharged employee can demand payment within 24 hours of discharge.

An employee who leaves voluntarily must be paid by the next payday. There may be specific exemptions for short-notice departure which may delay final pay to the next payday, but never more than 20 days after departure.<sup>4</sup>

## **Unemployment Taxes**

Farms may be subject to state and federal unemployment taxes. The two systems are independent of each other so employers need to check on both systems. This tax is paid only by the employer. Employees do not contribute to this tax.

A farm is subject to the Federal Unemployment Tax Act (FUTA) tax on cash wages paid to farm workers if in the past year it meets one of the following criteria:

Total cash wages paid for farm labor were \$20,000 or more in any calendar quarter, or

In each of 20 different calendar weeks of this or last year, there was at least one day in which you had 10 or more farm worker employees. The 20 weeks do not have to be consecutive, nor does it always have to be the same 10 employees.

The FUTA tax rate is 6.2% and applies to the first \$7,000 paid to each employee as wages. Part of this tax may be offset as a credit for state unemployment taxes paid. FUTA taxes are deposited with Form 8109, and may be held until at least \$500 is due at one time. You must report your FUTA tax paid each year on Form 940. This must be filed by January 31 of each year.

State unemployment tax criteria are essentially the same as the federal criteria except that farms with 4 employees (excluding family workers and workers under 16 years of age<sup>5</sup> for 20 weeks may be subject to the tax.

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<sup>4</sup> Minnesota Statute 181.55

<sup>5</sup> <http://www.uimn.org/tax/hdbook/ag.htm>

The easiest and most accurate method of determining whether your farm is subject to state unemployment tax is to register with the Department of Employment and Economic Development (DEED). This should be done right after your first payroll. There is an on-line registration process at [www.uimn.org](http://www.uimn.org). This is also where quarterly reports must be filed (or by touchtone phone at 651-296-6141).

## Required Posters at Employment Site

Minnesota law requires employers to display certain state-mandated posters in a location where employees can easily see them. The posters provide safety, wage and age-discrimination information. The state-required posters are:

- *Safety and Health Protection on the Job*
- *Minnesota Workers' Compensation*
- *Employee Rights and Responsibilities*
- *Minnesota Employees, You Are Entitled To ...*
- [\*Know Your Rights Under Minnesota and Federal Laws Prohibiting Age Discrimination\*](#)
- [\*Unemployed?\*](#)

There is no cost for the posters and they can be printed from <http://www.doli.state.mn.us/posters.html> or ordered as a packet from the Minnesota Department of Labor and Industry (DLI). Commercial sources offer these posters in a laminated form if that better fits your needs.

If you have non-English speaking employees, these posters are all available in several languages, all free of charge.

The federal government also requires certain posters be available in the workplace. They too can be printed from the website, <http://www.dol.gov/osbp/sbrefa/poster/matrix.htm>. There are two in particular related to agricultural employer:

- [\*NOTICE MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT\*](#)
- [\*FAIR LABOR STANDARDS ACT \(FLSA\) FOR AGRICULTURAL EMPLOYEES\*](#)

## Comprehensive Resource Booklet

The State of Minnesota offers educational seminars for employers on a periodic basis. They are an excellent place to get basic information for employers, and ask questions of the experts. Partners in these programs include the Minnesota Department of Revenue (MDOR), the Minnesota Unemployment Insurance Program (UIMN), the Minnesota Department of Employment and Economic Development (DEED) and the Internal Revenue Service (IRS). A schedule of courses can be found at [http://www.uimn.org/tax/tax\\_classes/employment\\_tax.pdf](http://www.uimn.org/tax/tax_classes/employment_tax.pdf) (as of July 2009).

At <http://www.uimn.org/tax/irs.htm> are a comprehensive course guide and other relevant resources for employers. This course guide can answer many common questions and provide guidance to the proper department for less common questions. In all cases it should be noted there may be special conditions and exemptions that apply to agricultural employers so be sure to ask that question as part of any inquiry.

## **Useful Contact Information**

### **Minnesota Department of Agriculture**

625 Robert Street North  
St. Paul, Minnesota 55155-2538  
651-201-6000 or 1-800-967-2474  
TTY: 1-800-627-3529  
<http://www.mda.state.mn.us/>

### **Minnesota Department of Employment and Economic Development**

1st National Bank Building  
332 Minnesota Street, Suite E200  
Saint Paul, MN 55101-1351  
651-259-7114  
800-657-3858 or 1.888.GET JOBS (1.888.438.5627)  
TTY/TDD: 651.296.3900  
<http://www.positivelyminnesota.com/>

### **Unemployment Insurance Minnesota Benefit Correspondence**

UI Customer Service  
P.O. Box 75576  
St. Paul, MN 55175-0576

### **Unemployment Insurance Minnesota Tax Correspondences**

Unemployment Insurance Program  
1st National Bank Building  
332 Minnesota Street, Suite E200  
St. Paul, MN 55101-1351  
<http://www.uimn.org/>

### **Minnesota Department of Labor and Industry**

443 Lafayette Road N., St. Paul, MN 55155  
Phone: 651-284-5005 or 1-800-DIAL-DLI (1-800-342-5354)  
TTY: 651-297-4198  
Office hours: 8 a.m. to 4:30 p.m  
<http://www.dli.mn.gov/main.asp>

**Minnesota Occupational Safety and Health Administration**

St. Paul office

Phone: 651-284-5050

Toll-free: 1-800-DIAL-DLI (1-800-342-5354)

**Minnesota Department of Revenue**

600 North Robert St.

St. Paul, MN 55101

[See local directories or the web page for phone numbers of specific divisions.]

<http://mndor.state.mn.us/>

**Minnesota Department of Health**

P.O. Box 64975

St. Paul, MN 55164-0975

651-201-5000

888-345-0823 - For Minnesota callers outside the metro area (toll-free)

651-201-5797 (TTY)

[There are also several locations around the state – check local directories or the webpage for specific locations.]

<http://www.health.state.mn.us/>

**Minnesota New Hire Reporting Center**

P.O. Box 64212

St. Paul, MN 55164-0212

800-672-4473 or 651-227-4661

**Fax:** 800-692-4473 or 651-227-499

[www.MN-NewHire.com](http://www.MN-NewHire.com)

**Social Security Administration**

[There are also several locations around the state – check local directories or the webpage for specific locations.]

<http://ssa.gov/>

**U.S. Citizenship and Immigration Services**

2901 Metro Drive, Suite 100

Bloomington, MN 55425.

<http://www.uscis.gov/portal/site/uscis>

**U.S. Department of Labor**

[There are several locations around Minnesota – check local directories or website for specific locations or types of assistance]

<http://www.dol.gov/>

**U.S. Equal Employment Opportunity Commission**

Towle Building  
330 South Second Avenue, Suite 430  
Minneapolis, MN 55401-2224  
1-800-669-4000  
Fax: 612-335-4044  
TTY: 1-800-669-6820  
<http://www.eeoc.gov/>

**U.S. Internal Revenue Service**

[There are several offices in Minnesota -- check local directories or website for specific locations or types of assistance]  
<http://www.irs.gov/localcontacts/article/0,,id=98289,00.html>  
[www.irs.gov](http://www.irs.gov) for general IRS information

Find more University of Minnesota Extension educational information at  
**[www.extension.umn.edu](http://www.extension.umn.edu)** on the World Wide Web.

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