



Farmers' Guide to Farm Internships

Federal and Minnesota Labor and Employment Law

A PUBLICATION OF FARMERS' LEGAL ACTION GROUP, INC.

FEBRUARY 2013



Farmers' Guide to Farm Internships

Federal and Minnesota Labor and Employment Law

February 2013

A Publication of
Farmers' Legal Action Group, Inc.

Written by
Jennifer Jambor-Delgado
Amanda N. Heyman

Edited by
Karen R. Krub



FARMERS' LEGAL
ACTION GROUP,
INCORPORATED

Farmers' Legal Action Group, Inc.
6 West Fifth Street, Suite 650
St. Paul, Minnesota 55102-1404

Phone: 651-223-5400
Fax: 651-223-5335
Toll-Free in Minnesota: 877-860-4349

Email: lawyers@flaginc.org
Website: www.flaginc.org
Twitter: @farmerslegal



*This guide was funded through a grant from the USDA National Institute of
Food and Agriculture Beginning Farmers and Ranchers Development Program.*

PUBLISHED BY

Farmers' Legal Action Group, Inc.
6 West Fifth Street, Suite 650
Saint Paul, Minnesota 55102-1404
lawyers@flaginc.org
www.flaginc.org

Text © Copyright 2013, Farmers' Legal Action Group, Inc.

This publication may be reprinted for educational purposes only so long as Farmers' Legal Action Group, Inc. (FLAG), is credited when reprinting.

Cover photos: "Gardening Blog Photo1" © USDAgov on flickr.com;
"Swooping Swallows in the Field" © CaptPiper on flickr.com; "26 July 2011
CSA haul" © Jzimbabwe on flickr.com

This material is based upon work supported by the National Institute of Food and Agriculture, U.S. Department of Agriculture, under Agreement No. 2009-49400-05898. Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author and do not necessarily reflect the view of the U.S. Department of Agriculture.

Publisher's Cataloging-in-Publication
(Provided by Quality Books, Inc.)

Jambor-Delgado, Jennifer A.

Farmers' guide to farm internships : federal and
Minnesota labor and employment law / written by Jennifer
A. Jambor-Delgado, Amanda N. Heyman ; edited by Karen R.
Krub.

p. cm.

ISBN-13: 978-1-890508-16-6

ISBN-10: 1-890508-16-0

1. Agricultural laborers--Legal status, laws, etc.--
Minnesota--Popular works. 2. Farm law--Minnesota--
Popular works. 3. Labor laws and legislation--Minnesota
--Popular works. 4. Internship programs. I. Heyman,
Amanda N. II. Krub, Karen R. III. Title.

KFM5738.A4J36 2012

344.77601'763

QBI12-600162

ACKNOWLEDGMENTS

Farmers' Legal Action Group (FLAG) is proud to be publishing the *Farmers' Guide to Farm Internships: Federal and Minnesota Labor and Employment Law*, a comprehensive resource for small-scale family farm operations with farm internship programs.

As always with FLAG publications, this guide represents a true collaborative effort. The guide was written by FLAG attorneys Jennifer Jambor-Delgado and Amanda N. Heyman and edited by Senior Staff Attorney Karen R. Krub. Rita Gorman Capes copyedited and formatted the guide and provided publishing support, and Elizabeth N. Heyman designed the cover. FLAG law clerks Jennifer Kalyuzhny, Jared Rudolph, and Brian Jacobson provided helpful research assistance, and Jennifer Kalyuzhny cite-checked the guide.

This guide was funded through a grant from the USDA National Institute of Food and Agriculture Beginning Farmers and Ranchers Development Program.

We are inspired by a new generation of family farmers who are passionate and committed to producing our nation's food, even in the face of daunting challenges. Because many in this new generation were not raised on farms, or they want to farm differently than the previous generation, they are discovering that internships are critical to the training and development of their skills. We hope this guide will be useful to those who are working to foster a new crop of farmers who will join the timeless and indispensable tradition of raising good food as their chosen livelihood.

Susan E. Stokes
Executive Director and Attorney at Law

Farmers' Guide to Farm Internships: Federal and Minnesota Labor and Employment Law can be downloaded for no charge from FLAG's website at www.flaginc.org. Hard copies can be purchased online through FLAG's website or by contacting FLAG by telephone at 651-223-5400; by fax at 651-223-5335; by mail at 6 West Fifth Street, Suite 650, Saint Paul, MN 55102-1404; or by email at lawyers@flaginc.org.

TABLE OF CONTENTS

Quick Q&A

CHAPTER 1:	Introduction and How to Use This Guide
CHAPTER 2:	Farm Interns Must Be Treated Like Regular Employees
CHAPTER 3:	The General Rules for Paying Farm Interns
CHAPTER 4:	Exemptions from Minimum Wage and Overtime Rules
CHAPTER 5:	Paying Your Interns: Handling the Cost of Meals and Lodging
CHAPTER 6:	Paying Your Interns: Timing and Manner of Payment
CHAPTER 7:	Meal and Rest Breaks
CHAPTER 8:	Protecting Temporary Farmworkers: The Migrant and Seasonal Agricultural Worker Protection Act (MSPA)
CHAPTER 9:	Farmers Must Create a Safe Work Environment
CHAPTER 10:	Housing: If Interns Live on Your Farm...
CHAPTER 11:	Workers' Compensation Insurance
CHAPTER 12:	Payroll Taxes and Withholding
CHAPTER 13:	Anti-Discrimination Laws Apply to Farmers
CHAPTER 14:	Employer Posting Requirements
CHAPTER 15:	Employer Recordkeeping and Reporting Requirements

Quick Q & A

Typical farm interns who work on the farm full time on a temporary basis, and who often live on the farm, are generally considered to be “employees” under both federal and state laws. Interns may even be considered employees if they are completing the internship for credit at an educational institution. In most cases, this means that interns must be paid and cannot be compensated with room and board alone.

However, figuring out exactly how labor and employment laws apply to your interns can be difficult—especially because so much misinformation exists on the subject. Additionally, both federal and Minnesota laws have special exemptions that may mean you do not have to comply with a particular law. Whether you can take advantage of one or more of these exemptions is largely determined by the size of your farming operation, including how many employees you have, and the total amount of wages you pay them. Below is a general overview of how these laws and exceptions fit together and are likely to apply to farm operations that gross less than \$500,000 per year.

Note, however, that this overview gives a very condensed synopsis of the complicated laws related to the employment of farm interns. For a more complete description, you will need to read the remainder of this guide.

WHAT AM I REQUIRED TO PAY INTERNS, FAMILY MEMBERS, AND FRIENDS WHO WORK ON MY FARM?

The amount of money that must be paid to those who work on your farm is set by a federal law called the Fair Labor Standards Act (FLSA) and by a similar state law called the Minnesota Fair Labor Standards Act (MFLSA). These two laws set the minimum hourly pay rate that interns and other employees must be paid.

There are three possible pay rates that might apply to your farming operation: the federal rate of \$7.25 per hour, the state rate of \$5.25 per hour, and a youth training rate of \$4.90 per hour. The state hourly rate of \$5.25 and the \$4.90 hourly training rate are the rates most likely to apply to the farm operations this guide is geared toward.

The federal minimum wage requirements generally DO apply to farm interns unless you qualify for an exemption called the “**500 Man-Day Exemption**.” Many smaller-scale farm operations can qualify for this exemption.

- Farmers who employ the equivalent of seven or fewer employees (outside of immediate family) working five days a week should generally qualify for the 500 Man-Day Exemption if their employees ONLY do “agricultural work.” This exemption is described in Chapter 4 of this guide, and a worksheet is provided in Appendix B.
- Agricultural work generally includes hands-on work related to planting, maintaining, and harvesting crops, and raising animals. It also generally includes packing produce and loading the vehicle used to deliver the produce, deliveries to a market or an off-farm community-supported agriculture (CSA) distribution drop point, and on-farm sales of the farmer’s products such as at a roadside stand located on your farm. Office work and maintenance of farm equipment may also be considered agricultural work, provided these duties are not an intern’s primary duties.
- Farmers should generally assume that off-farm sales by their interns—for example, at the farmers’ market—do NOT fit within the definition of agricultural work. Additionally, processing, packaging, or delivery of another farmer’s crops generally does NOT fall within the definition of agricultural work.

Note that the federal minimum wage requirements DO NOT apply to a farmer’s immediate family. Nor is immediate family counted when determining if the 500 Man-Day Exemption applies to your farm. Under the FLSA, “immediate family” includes only:

- legal spouse,
- children (biological, step, adopted, foster), and
- parents (biological, step, adopted, foster).

Immediate family does not include brothers, sisters, aunts, uncles, grandparents, grandchildren, nieces, nephews, cousins, in-laws, or any other extended family members. These family members are not exempt from the FLSA. For more information about labor and employment laws as they relate to family member farm workers, please see FLAG’s

Farmers' Guide to Farm Employees: Federal and Minnesota Labor and Employment Laws for Small-Scale Family Farms.

Even if you qualify for the 500 Man-Day Exemption, the state minimum wage rates DO still generally apply to those working on your farm, including interns and your immediate family. This means that farmers must generally pay interns and all other workers the state minimum wage of \$5.25 per hour.

Farmers should therefore plan to pay all workers, including interns and immediate family, at least the state minimum wage of \$5.25 per hour. Workers under the age of 20 may be paid the youth training rate of \$4.90 per hour for the first 90 days they work on your farm.

See Chapters 3 and 4 of the guide for more detailed information.

DO HEALTH AND SAFETY LAWS APPLY TO MY FARMING OPERATION?

Workplace safety laws are set by a federal law called the Occupational Health and Safety Act and by a similar state law called the Minnesota Occupational Health and Safety Act.

Most farm businesses with a small number of employees will be exempt from the federal health and safety laws, but will still be required to comply with state health and safety laws. Specifically, if you had ten or fewer employees at all times during the prior year, your farm is exempt from the federal government's enforcement of the federal workplace safety laws. You should not count the members of your immediate family (parents, children, legal spouse) as employees when you are determining the number of employees you had for purposes of federal OSHA.

- If you have interns or other workers living on your farm, the federal exemption described above might not apply, and you may be expected to follow the federal workplace safety rules. These rules are described in Chapter 9 of this guide.

Farmers who are required to follow the federal workplace safety rules should note that federal safety rules do NOT apply to the farmer's immediate family.

All Minnesota farmers must follow state safety laws (Minnesota OSHA laws). Generally speaking, the Minnesota Health and Safety Act requires farmers to:

- keep the workplace free from recognized hazards;
- develop and follow a written safety plan (an AWAIR plan);
- follow state workplace safety standards and labeling requirements;
- be subject to inspection;
- make available information dealing with injury reports, general safety records, and other required records; and
- provide employees with an initial training and annual refresher training regarding harmful physical agents, infectious agents, and hazardous substances.

More detail on state safety laws can be found in Chapter 9 of this guide.

DO I HAVE TO PURCHASE A WORKERS' COMPENSATION POLICY?

Farmers DO generally need to obtain workers' compensation coverage for their interns and any other individuals working on their farms, except immediate family.

Note that an exception to this rule exists for farms that meet the legal definition of "family farm." If your farm qualifies as a "family farm," you are not required to obtain workers' compensation for individuals working on your farm. The workers' compensation laws have a specific definition of "family farm." To fit within this definition, you must be able to show either:

- (1) That, adding up all worker wages, your farm paid total cash wages of less than \$8,000 to all non-immediate family labor during the previous calendar year; or
- (2) That, adding up all worker wages, your farm paid total cash wages of less than the average state annual wage (currently, approximately \$26,000) to all non-immediate family labor during the previous calendar year, AND currently has \$300,000 liability and \$5,000 medical insurance coverage.

In any case, farmers DO NOT need to obtain workers' compensation coverage for their legal spouse, parents, and children. See Chapter 11 of the guide for more detailed information.

AM I SUPPOSED TO FOLLOW EMPLOYMENT TAX LAWS FOR INTERNS WHO ARE PAID TO WORK ON MY FARM?

Farmers have several federal and state tax withholding, reporting, and depositing responsibilities related to farm employees, including for interns. Generally speaking, employers are required to withhold portions of workers' salaries and deposit the funds with the federal government for the federal Medicare and Social Security programs, as well as to meet workers' federal income tax obligations. Farmer employers must also withhold portions of intern and other workers' salaries and deposit the funds with the state government to meet workers' state income tax obligations.

More details on employment-related tax responsibilities can be found in Chapter 12, and Appendix C of this guide.

AM I REQUIRED TO KEEP EMPLOYMENT RECORDS?

All farmers must keep some employment records. The types of records you have to keep depend in part on the number of employees you have.

Farmers should generally keep the following information about each person working on their farm, including interns and family members:

- **Hiring Records** (for example, federal Form I-9, Minnesota New Hire Report, Proof of Age for Minors), and income tax withholding forms (such as Federal Form W-4).
- **Hours and Pay Records** (for example, employee name, address, Social Security number, occupation, rate of pay, deductions, wages, timesheets, total hours worked, and meals accepted).

Farmers may also be required to keep or submit to the state or federal government: payroll tax records, unemployment insurance records, and workers' compensation records.

It's best to keep employee records for at least five years. They can be handwritten and saved in a file or can be typed into a computer and saved there.

If representatives of the state or federal government ask to see your employment records, you are required to provide the requested records to them.

See Chapter 15 of the guide for more detailed information.

**WHAT HAPPENS IF I DO NOT COMPLY WITH THE
FEDERAL OR STATE LAWS?**

If you do not comply with labor and employment laws that apply to your farm, you may be fined by the state and federal government agencies that enforce these laws. Fines for violating labor and employment laws can quickly reach thousands of dollars.

TABLE OF CONTENTS

QUICK Q & A

CHAPTER 1

INTRODUCTION AND HOW TO USE THIS GUIDE.....1-1

All Farm Employers Have Legal Responsibilities..... 1-1

How to Use This Guide..... 1-2

CHAPTER 2

FARM INTERNS MUST BE TREATED LIKE REGULAR FARM EMPLOYEES 2-1

Typical Farm Interns Are Employees Who Must Be Paid .. 2-1

A Typical Farm Intern Is an Employee Under Federal and State Law..... 2-2

Farm Interns Will Generally Not Qualify as Volunteers, Trainees, or Independent Contractors 2-2

Farm Interns Generally Cannot Meet the Federal Definition of a “Volunteer” 2-3

Farm Interns Generally Cannot Meet the Federal Definition of a “Trainee”..... 2-4

Farm Interns Cannot Be Classified as “Independent Contractors” 2-5

CHAPTER 3

THE GENERAL RULES FOR PAYING FARM INTERNS..... 3-1

The Federal Fair Labor Standards Act and the Minnesota Fair Labor Standards Act 3-2

Federal and State Minimum Wage Requirements..... 3-2

General Federal Minimum Wage Requirements (FLSA) 3-2

<i>General State Minimum Wage Requirements (MFLSA)</i>	3-3
Federal and State Overtime Pay Requirements	3-4
<i>Federal Overtime Pay (FLSA)</i>	3-4
<i>State Overtime Pay (MFLSA)</i>	3-4
Important Definitions Related to Minimum Wage Rates and Overtime Pay	3-4
<i>"Hours Worked"</i>	3-4
<i>"Workweek"</i>	3-6

CHAPTER 4

EXEMPTIONS FROM THE MINIMUM WAGE AND OVERTIME RULES.....4-1

Exemptions From Federal (FLSA) Minimum Wage and Overtime Rules	4-1
<i>Federal Minimum Wage and Overtime Exemption for Farms Using 500 or Fewer Man-Days of Agricultural Labor</i>	4-3
<i>Federal Agricultural Overtime Exemption for Agricultural Workers</i>	4-8
Exemptions from Minnesota Minimum Wage and Overtime Rules	4-8
<i>The Two-Worker, \$386/Week Minnesota Exemption</i>	4-8
<i>Summary of Exemptions and Likelihood of Applicability to Your Farm</i>	4-10

CHAPTER 5

PAYING YOUR INTERNS: HANDLING THE COST OF MEALS AND LODGING.....5-1

Federal Meal and Lodging Deduction Rules	5-1
Minnesota Meal and Lodging Deduction Rules	5-2
<i>Minnesota Meal Allowance: Maximum of \$3.15 per Meal</i>	5-3

<i>Minnesota Lodging Allowance: Maximum of \$3.93 per Day.....</i>	<i>5-3</i>
------------------------------------------------------------------------	------------

CHAPTER 6

PAYING YOUR INTERNS: TIMING AND MANNER OF PAYMENT 6-1

Timing of Payment While an Intern Is Working	6-1
Timing of Payment When an Intern Is Terminated or Resigns	6-1
Manner of Payment	6-1

CHAPTER 7

MEAL AND REST BREAKS..... 7-1

Meal Breaks	7-1
<i>Length.....</i>	<i>7-1</i>
<i>Compensation</i>	<i>7-2</i>
Rest Breaks	7-2
<i>Length.....</i>	<i>7-2</i>
<i>Compensation</i>	<i>7-2</i>
<i>Unauthorized Breaks.....</i>	<i>7-2</i>

CHAPTER 8

PROTECTING TEMPORARY FARMWORKERS: THE MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT (MSPA) 8-1

Interns Are Likely to Be Classified as “Migrant” or “Seasonal” Workers	8-1
<i>Is the intern doing agricultural work of a seasonal or temporary nature?.....</i>	<i>8-2</i>
<i>Is the intern required to live on (or near) the farm and be absent overnight from his or her permanent place of residence?.....</i>	<i>8-2</i>
MSPA Rules Govern Pay, Hiring, and Disclosure.....	8-2

<i>Compensation</i>	<i>8-2</i>
<i>Required Disclosures</i>	<i>8-3</i>
MSPA Exemptions	8-4
<i>500 Man-Day Exemption</i>	<i>8-4</i>
<i>Family Business Exemption</i>	<i>8-4</i>

CHAPTER 9

FARMERS ARE REQUIRED TO CREATE AND MAINTAIN A SAFE WORK ENVIRONMENT.....9-1

Federal Work Safety	9-2
<i>Farm-Related OSHA Exemptions</i>	<i>9-2</i>
<i>If Not Exempt, Farmers Must Comply with Farm-Specific Safety Rules</i>	<i>9-3</i>
<i>Important Definition for Determining Whether Federal and State OSHA Rules Apply: "Temporary Labor Camp"</i>	<i>9-4</i>
Minnesota Work Safety	9-4
<i>Minnesota's OSHA Program</i>	<i>9-5</i>
<i>Overview of Minnesota OSHA Requirements</i>	<i>9-6</i>

CHAPTER 10

HOUSING: IF INTERNS LIVE ON YOUR FARM, YOU MAY BECOME SUBJECT TO FEDERAL AND STATE WORKER HOUSING REGULATIONS 10-1

Migrant and Seasonal Worker Protection Act (MSPA)	
Worker Housing Rules	10-1
<i>Inspection Required.....</i>	<i>10-1</i>
<i>Exemption for Commercial Housing</i>	<i>10-2</i>
<i>General MSPA Exemptions</i>	<i>10-2</i>
OSHA Worker Housing Rules	10-2
Zoning Rules Affect Housing.....	10-2

CHAPTER 11**WORKERS' COMPENSATION INSURANCE 11-1**

Workers' Compensation Laws Apply to Farm Interns 11-1

Immediate Family Members Are Exempted From

Workers' Compensation Insurance Requirements.....11-2

Farms That Meet the Definition of a "Family Farm" Are

Exempted from Workers' Compensation Insurance

Requirements.....11-2

CHAPTER 12**PAYROLL TAXES AND WITHHOLDING: SOCIAL
SECURITY, MEDICARE, INCOME TAXES, AND
UNEMPLOYMENT TAXES.....12-1**

Explanation of How Payroll Withholding and Payroll

Taxes Are Used 12-1

*Medicare..... 12-1**Social Security 12-2**Federal and State Income Taxes..... 12-2**Federal and State Unemployment Taxes..... 12-2*

Getting Required Employer Identification Numbers 12-4

*Federal Employer ID Number 12-4**Minnesota Employer ID Number..... 12-4*

Collecting and Paying Federal Payroll Taxes 12-4

*Social Security, Medicare, and Federal Income Tax**Rules..... 12-5*

Federal Unemployment Tax Requirements 12-6

Collecting and Paying Minnesota Payroll Taxes 12-6

*Minnesota Income Tax Withholding.....12-7**Minnesota Unemployment Taxes12-7***CHAPTER 13****ANTI-DISCRIMINATION LAWS APPLY TO
FARMERS13-1**

Federal Anti-Discrimination Laws	13-2
<i>Civil Rights Act</i>	13-2
<i>Equal Pay Act</i>	13-2
<i>Age Discrimination in Employment Act</i>	13-2
<i>Americans with Disabilities Act</i>	13-2
<i>Genetic Information Nondiscrimination Act</i>	13-3
Minnesota Anti-Discrimination Laws	13-3
<i>Minnesota Human Rights Act</i>	13-3
<i>Minnesota Equal Pay for Equal Work Law</i>	13-4

CHAPTER 14

EMPLOYER POSTING REQUIREMENTS..... 14-1

Federal Requirements	14-1
Minnesota Requirements	14-1

CHAPTER 15

EMPLOYER RECORDKEEPING AND REPORTING REQUIREMENTS..... 15-1

Hiring Records.....	15-1
<i>Federal Form I-9 — Identity and Employment Eligibility</i>	15-1
<i>Minnesota New Hire Report</i>	15-2
<i>Proof of Age for Children Under Age 18</i>	15-3
<i>Income Tax Withholding Forms</i>	15-3
Hours and Pay Records	15-4
Workplace Safety Records	15-4
Payroll Tax Records	15-5
Unemployment Tax Records	15-5
Workers' Compensation Insurance Records.....	15-6

APPENDIX A**WORKSHEET: 500 MAN-DAY EXEMPTIONA-1**

The FLSA 500 Man-Day Exemption for Federal Minimum
Wage and Federal OvertimeA-1

Chart for Recording Man-Days Worked By Employees A-4

APPENDIX B**WORKSHEET: ARE YOUR WORKERS
PERFORMING AGRICULTURAL WORK?.....B-1****APPENDIX C****TAX RESOURCES..... C-1**

General..... C-1

Federal Taxes C-1

State TaxesC-2

ENDNOTES

1

Introduction & How to Use This Guide

1-1 All Farm Employers Have Legal Responsibilities

1-2 How to Use This Guide

CHAPTER 1

Introduction and How to Use This Guide

This guide is intended for small-scale, family-run farm operations that gross less than \$500,000 per year and rely to some extent on farm intern labor. Internships are an increasingly popular way for aspiring farmers who lack the practical experience needed to start their own farming operations to gain needed skills and knowledge. In exchange for hands-on training with an experienced farmer, an intern provides labor for the farming operation.

Because participation in a farm internship tends to be motivated by this expectation of mutual benefit, the parties involved—both the host farmer and the intern—typically do not stop to consider whether there could be legal obligations that affect the arrangement. Most critically, many farmers are not aware that, in most cases, federal and state laws require interns to be treated like any other employee. This means that farmers who host interns are subject to federal and state labor and employment laws and must be prepared to comply with those laws or risk significant penalties.

All Farm Employers Have Legal Responsibilities

The position of “employer” carries significant legal responsibilities. Those responsibilities include compliance with federal and state labor and employment laws. Farm employers must be prepared to comply with these laws or risk significant penalties. Failure to comply with labor and employment laws may open a farmer up to being sued by an intern-employee or cited and fined by the state and federal government agencies that enforce these laws. Fines for violating labor and employment laws can quickly reach thousands of dollars.

IMPORTANT NOTE:

Farmers whose operations are not small-scale, family-run farm operations that gross less than \$500,000 per year and use farm intern labor should not rely on the information in this guide because the guide may omit important information related to your operation.

Even if your farm operation meets the description given above, this guide is not meant to be a substitute for legal advice from an attorney licensed to practice in your state.

How to Use This Guide

This guide is intended to introduce you to federal and state labor and employment laws and give you an idea of how they might apply to your farming operation. Generally speaking, the federal laws are enforced by federal agencies and the state laws are enforced by Minnesota state agencies.

The federal and state laws discussed in this guide cover topics such as:

- minimum wage and overtime laws;
- labor standards specific to agricultural workers;
- workplace safety laws;
- mandatory workers' compensation insurance;
- employment (payroll) tax and withholding laws;
- anti-discrimination laws;
- workplace posting requirements; and
- recordkeeping requirements.

Although these laws are often very complex, this guide can give you an idea about which laws are likely to apply to your farming operation and the individuals who work on your farm. However, the guide does not discuss every law that affects agricultural employers. **Farmers should not rely on this guide to determine whether a farm operation's employment relationships are in full compliance with all**

applicable laws. Farmers with questions about compliance with labor and employment laws should refer to the resources listed in the appendices to this guide and may also wish to contact the agencies responsible for enforcing these laws.

The federal laws discussed in this guide apply to labor and employment in every state. **State laws discussed in this guide are the laws of Minnesota.** Farmers outside Minnesota will need to consult an attorney licensed in their state, local regulatory agencies, or other resources to determine the state-specific requirements applicable to farmers' relationships with individuals who perform work on their farms.

Finally, in some places, the guide will refer you to other resources that can help you arrive at more concrete answers to the on-the-ground questions that may occur regarding how to treat your workers in compliance with federal and state law. Again, this guide is not a substitute for obtaining advice on your particular farm situation from an attorney licensed to practice in your state.

2

Farm Interns Must Be Treated Like Regular Employees

- 2-1 Typical Farm Interns Are Employees Who Must Be Paid**
- 2-2 A Typical Farm Intern Is an Employee Under Federal and State Law**
- 2-2 Farm Interns Will Generally Not Qualify as Volunteers, Trainees, or Independent Contractors**

CHAPTER 2

Farm Interns Must Be Treated Like Regular Farm Employees

Typical Farm Interns Are Employees Who Must Be Paid

Quite a bit of misinformation exists about whether farm interns are employees who must therefore be paid like regular farm employees. Many farmers mistakenly believe they do not have to pay farm interns because interns can be compensated with some combination of lodging, meals, and education. This belief is almost always incorrect.

The truth is: Typical farm interns are employees who often must be paid at least the state minimum wage—and sometimes more.

IMPORTANT NOTE ON INTERNSHIPS FOR CREDIT:

Even if farm interns are completing farm internships for credit at an educational institution, farmers may have to pay and treat them like regular employees. This means farmers must follow federal and state labor and employment laws regarding payment and treatment of interns, regardless of whether the internship is for credit.

The bottom line is that farmers should not assume they are exempted from paying their intern simply because the intern is doing the internship for credit. See Chapters 3 and 4 for laws regarding payment of farm interns.

Chapter 3 and Chapter 4 of this guide explain how to determine whether farm interns must be paid federal and/or state minimum wage and overtime. Chapters 5 through 15 include other information about the

treatment of farm interns, including information about meals, lodging, breaks, employee safety, workers' compensation, taxes, and required recordkeeping.

A Typical Farm Intern Is an Employee Under Federal and State Law

Generally speaking, federal and state workplace laws apply to all people classified as employees. Although the host farmer and intern may not think of the intern as an “employee,” in most cases an intern will be considered an employee under applicable laws. These laws define employment very broadly, and generally reach “any individual”¹ who is “suffer[ed] or permit[ted] to work.”²

This means that a typical farm intern—someone who is working and possibly living on a farm for several weeks or months in order to receive training and education from a farmer—is an employee and must therefore generally be paid like any other farm employee (though room and board may be a part of the compensation). It also means that a farmer who employs interns must follow workplace laws that govern the employer-employee relationship, such as health and safety, workers' compensation, recordkeeping, and tax laws.

Farm Interns Will Generally Not Qualify as Volunteers, Trainees, or Independent Contractors

Volunteers, trainees, and independent contractors are not employees. Individuals who fall into these three categories are not covered by the federal and state workplace laws discussed in this guide. However, typical farm interns will NOT fall into the volunteer, trainee, or independent contractor categories, as explained below. Host farmers and farm interns alike may believe that farm interns fit into one of these categories, but in most farm internship arrangements, interns are employees who must be paid.

Note that while a farmer and an intern may agree between themselves that an intern is a volunteer, trainee, or independent contractor, that agreement is not legally controlling.³ In all cases, to determine the appropriate legal classification, the courts and agencies that enforce these laws will look to the reality of the work arrangement rather than the title

or label used for the worker. Regardless of the title given, if a person appears to be an employee, that person will be considered an employee under the law.⁴

The bottom line is that farmers should generally expect their intern to be classified as an employee under all of the laws discussed in this guide if the intern cannot be classified as a volunteer, trainee, or independent contractor under the definitions described below.⁵

Farm Interns Generally Cannot Meet the Federal Definition of a “Volunteer”

Courts examine a number of factors to determine whether a worker is a volunteer or an employee. These factors are:

- (a) receipt of any benefits (including food and lodging) from those for whom the services are performed;
- (b) whether the activity is a less than full-time occupation;
- (c) whether the services are of the kind typically associated with volunteer work, such as work assisting the sick, elderly, indigent, infirm, handicapped, or disadvantaged youth; and
- (d) the length of time the individual is dependent on the employer.⁶

Under these factors, the typical farm intern is unlikely to be classified as a volunteer. In most cases, the food and lodging an intern receives from the farmer show a degree of economic dependence that would weigh against the intern being considered a volunteer. The fact that interns generally work full time for several weeks or months also makes it unlikely that they would be considered volunteers. In addition, farm work is not typically associated with volunteer work. For example, in one case, individuals volunteering at hog farms and other businesses who were compensated with food, clothing, shelter, and other benefits were considered employees.⁷

Generally speaking, shorter work stints are less likely to indicate economic dependence on the farmer. Therefore, an intern who works at the farm periodically for short periods of time (for example, one day per week) is more likely to be categorized as a volunteer under the law because the internship does not resemble a full-time occupation, nor is the intern dependent on the farmer for an extended period of time.

Interns who work intermittently and also provide their own room and board and receive no monetary payment from the farmer are also more likely to be categorized as volunteers, even if they provide services to the farm over a longer period of time (for example, one day a week for several months).

However, where interns receive payment from the farmer, they should be considered employees. This is true even if the interns work at the farm only sporadically and provide their own room and board.

Farm Interns Generally Cannot Meet the Federal Definition of a “Trainee”

Trainees are distinguished from employees under federal law by a six-factor test.⁸ According to the U.S. Department of Labor (DOL), all six of the following factors must be present in order for an individual to be classified as a trainee and exempt from federal minimum wage and overtime laws:⁹

- (a) The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
- (b) The training is for the benefit of the trainee;
- (c) The trainees do not displace regular employees, but work under close observation;
- (d) The employer who provides the training derives no immediate advantage from the activities of the trainees, and, on occasion, the employer's operations may actually be impeded;
- (e) The trainees are not necessarily entitled to a job at the completion of the training period; and
- (f) The employer and the trainee understand that the trainees are not entitled to wages for the time spent in training.¹⁰

Most farmers do benefit from and depend on the work of interns. Indeed, in most instances, hiring interns allows a farmer to hire fewer regular employees. Because farm interns displace regular employees and their work is to the benefit of the farmer, farmers should generally assume that any interns working on their farm are unlikely to be classified as

trainees—even if they are completing the internship for credit at an educational institution.¹¹

Farm Interns Cannot Be Classified as “Independent Contractors”

Labor and employment laws do not apply to persons classified as independent contractors. Generally speaking, workers who have control over the manner and means by which their work is accomplished are considered to be independent contractors.¹² In considering whether someone is an independent contractor, the courts analyze a number of factors, including, but not limited to the following:

- (a) skill required;
- (b) source of the instrumentalities and tools necessary for the work;
- (c) location of the work;
- (d) duration of the relationship between the parties;
- (e) whether the hiring party has the right to assign additional projects to the hired party;
- (f) the extent of the hired party’s discretion over when and how long to work; and
- (g) method of payment.¹³

Farm interns are not likely to be classified as independent contractors based on these factors. Interns generally learn from the experienced host farmer a range of skills and knowledge that the intern lacks, and then use the farmer-taught skills and knowledge to complete their farm tasks. Interns generally do not come to the farm with sufficient skill to complete their tasks independently.

Interns will also use the farmer’s tools, will often live on the farmer’s land, and will be subject to direction by the farmer as to the tasks to be performed. Accordingly, they are very likely to be classified as employees.

Quick Take Away Points:

Farmers should anticipate that their interns will generally be classified as employees, and will not be classified as volunteers, trainees, or independent contractors.

However, interns who work sporadically or only a few hours a week for no compensation could possibly be classified as volunteers—especially if they do not live in farm-provided housing.

3

The General Rules for Paying Farm Interns

**3-2 The Federal Fair Labor Standards Act and the
Minnesota Fair Labor Standards Act**

**3-2 Federal and State Minimum Wage
Requirements**

3-4 Federal and State Overtime Pay Requirements

**3-4 Important Definitions Related to Minimum
Wage Rates and Overtime Pay**

CHAPTER 3

The General Rules For Paying Farm Interns

This chapter explains the federal and state minimum wage and overtime rules, as well as other regulations regarding payment of farm interns and other farm employees. These are the rules that apply in the absence of any “exemptions” for farm operations that meet certain requirements (see box below).

Put another way, if you comply with the rules outlined in this chapter, you should generally be in compliance with federal and state labor and employment laws regarding payment of interns and other employees. It can be helpful to think about these rules as the baseline requirements, and then apply any labor and employment exemptions your farm might qualify for.

The Term “Exemption” Explained:

Many of the laws discussed in this guide provide an “exemption” from some or all of the legal requirements regarding employees if a farm operation meets specific criteria. In general, the exemptions applicable to farm interns will be the same exemptions that apply to other farm employees.

Exemptions that might apply to farm interns are discussed in detail throughout this guide, and are largely based on the size of your farm operation and the type of work your interns and other employees perform. Exemptions related to payment of farm interns (minimum wage and overtime) are discussed in Chapter 4.

Farmers should be aware that if a claimed exemption is challenged by the state or federal agency enforcing the law, the farmer as employer will bear the burden of proving that the exemption applies.

The Federal Fair Labor Standards Act and the Minnesota Fair Labor Standards Act

The federal Fair Labor Standards Act (FLSA)¹⁴ and the Minnesota Fair Labor Standards Act (MFLSA)¹⁵ are the laws that cover the basic rules for payment of farm interns and other farm employees.¹⁶ Most interns and other farm employees are very likely covered by the state labor law (MFLSA) regulating wages and hours. They may also be covered by the federal wage and hour law (FLSA).¹⁷

Farmers Must Apply the Most Protective Standard

Where federal and state employment laws both apply, the employer must comply with the law that provides the worker with the greater protection or benefit.

Thus, if both the federal and state minimum wage and overtime standards apply to your operation, the federal standards would apply in most situations because they are more beneficial to the farm worker.

Both the FLSA and MFLSA contain exemptions that excuse farmers from complying with some parts of the laws, depending on the characteristics of the particular farm. These exemptions are discussed in the next chapter, Chapter 4.

Federal and State Minimum Wage Requirements

For the sake of clarity, the discussion below includes the federal and state minimum wage rates that were in place at the time this guide was printed. It is important to note, however, that the federal and state legislatures set the minimum wage rates, and the rates change from time to time.

General Federal Minimum Wage Requirements (FLSA)

The general federal minimum wage rules under the FLSA are as follows:

Adults: Currently, the federal minimum wage is \$7.25 per hour.¹⁸

Youth Age 20 and Under: A federal minimum youth wage of \$4.25 per hour applies to workers who are under the age of 20 for the first 90 consecutive days of their employment.¹⁹ An employer may not intentionally displace other employees in order to hire employees under the age of 20.

Full-Time Students (DOL Certificate Required): Full-time students may be paid 85 percent of the federal minimum wage if certain requirements are met, primarily ensuring that the student-worker is not displacing a worker who would be paid minimum wage.²⁰ As noted above, because farm interns do hands-on work that would otherwise be performed by regular employees, the student-learner exception is unlikely to be a good fit for farm interns.

To pay the reduced rate to student-learners, the employer must first obtain a certificate from the U.S. Department of Labor (DOL).²¹ Full-time student-workers cannot work more than eight hours per day or 20 hours per week when school is in session. They may work up to 40 hours per week when school is out.

General State Minimum Wage Requirements (MFLSA)

Minnesota law requires a “small employer” with annual gross sales below \$625,000 to pay a minimum wage rate of \$5.25 per hour.²²

Like federal law, Minnesota law also provides for a lower minimum wage for youth workers.

Youth Age 20 and Under: Employers may pay a youth minimum wage of \$4.90 per hour to employees under the age of 20 for the first 90 consecutive days of their employment.²³

Note: This is higher than the federal youth minimum wage of \$4.25. An employer must always pay the higher state youth wage unless exempt from state minimum wage requirements.

LIKELY APPLICABLE MINIMUM WAGE RATES
<ul style="list-style-type: none"> • \$7.25 per hour unless an exemption from the federal minimum wage rate applies. • If a federal exemption applies, the applicable minimum wage rate is \$5.25 per hour. • Youth wage (\$4.90 per hour) may be paid to workers age 20 and under for their first 90 days of employment. • Farmers exempt from the federal requirements must pay either the \$5.25 state minimum wage or the \$4.90 youth wage.

Federal and State Overtime Pay Requirements

Federal Overtime Pay (FLSA)

Unless an exemption applies, federal law requires employers to pay overtime to employees who work more than 40 hours within a workweek.²⁴

Under both federal and Minnesota law, the overtime rate is one and one-half times the employee's regular hourly rate of pay.²⁵

State Overtime Pay (MFLSA)

Unless an exemption applies, Minnesota law requires employers to pay overtime to employees who work more than 48 hours within a workweek.²⁶

As explained in the next chapter, although many farmers will be exempt from federal overtime requirements, they will probably still be required to comply with Minnesota overtime requirements.

Important Definitions Related to Minimum Wage Rates and Overtime Pay

"Hours Worked"

Unless an exemption applies, the minimum wage must be paid for all "hours worked" by an employee. In addition, all time considered "hours worked" must be included when counting hours to determine if an employee must be paid for overtime.

In General, “Hours Worked” Includes All Time Performing Duties or Required to Be on the Premises

Federal and Minnesota state law both generally define “hours worked” to mean any time when the employee must be on the employer’s premises or performing work duties.²⁷ Minnesota law specifically includes training time, waiting time, and cleaning time in the definition of “hours worked.”²⁸ That means you must generally pay your interns for time you spend training them.

Time Spent in Unauthorized Work Generally Counts as “Hours Worked”

Time an employee spends on unauthorized work is considered “hours worked” if the employer “knows or has reason to believe that the work is being performed.”²⁹ This means that, even if an intern does unauthorized work, you will have to pay the intern for the time spent doing that work if you knew the work was performed or you should have noticed the work was done.

Rule for Employees Who Live on the Farm

Under federal law, an employee who lives at the employer’s premises can make any “reasonable” agreement with the employer about the times of day when the employee will work and/or the maximum number of hours the employee will work each day.³⁰

In cases arising under the FLSA, the courts have ruled that agreements stating employees may not exceed a set amount of hours without prior approval are “reasonable” agreements. As a result, the courts have not held the employer responsible for paying time worked in excess of the amount stated in the agreement. Note that such agreements may only be used with respect to employees living on the employer’s premises or working from home.³¹

Quick Take Away Point:

Farmers whose interns live on the farm premises may wish to include a written provision in their intern agreements stating that the intern will work no more than a specified number of hours per day or per workweek without prior written approval from the farmer.

Applying “Hours Worked” to Meal and Rest Breaks

Meal breaks of 30 minutes or more are not generally considered “hours worked.” Thus, this time does not need to be paid or counted toward the number of hours worked by an employee for purposes of determining whether overtime is due in a given workweek.

Employees who are required to perform any work during their meal break should typically be paid for the meal break, and the time should be counted toward the number of hours worked by the employee during that workweek.³² Should it later be determined that a meal break was not a genuine one—for example, because of frequent interruptions—the meal break would be counted toward the hours worked by the employee and could trigger the need to reimburse the employee for any overtime that was owed for that week.

Rest periods are considered “hours worked,” so farmers must pay interns for time spent on rest breaks.³³

Meal and rest breaks are discussed in more detail in Chapter 7 of this guide.

“Workweek”

Because the overtime requirements are triggered when an employee works over a certain number of hours within the workweek, it is important to understand how a workweek is defined.

Federal and Minnesota state law both define the workweek as a “fixed and regularly recurring period of 168 hours” within seven consecutive 24-hour periods.³⁴ The workweek does not have to correspond to the calendar week; but once an employer sets the workweek, it cannot be reset to avoid paying overtime.³⁵ An employer can have one set workweek for all employees or may set different workweeks for different employees.

Quick Take Away Points:

- Unless an exemption applies, farmers must pay their interns the federal minimum wage of \$7.25 per hour (or 85 percent of that for DOL-certified student-learners); the Minnesota state minimum wage of \$5.25 per hour; or the youth training wage of \$4.90 per hour.
- Unless an exemption applies, farmers must also pay overtime to interns. Federal law requires overtime for interns working over 40 hours per week; state law requires overtime for those working more than 48 hours in a workweek.
- The minimum wage must be paid for all “hours worked,” and all “hours worked” must be counted when determining if an intern is owed overtime pay.
- “Hours worked” generally means all time an intern is performing work duties or is required to be on the farm. It includes waiting, training, and cleaning time and rest breaks. Time spent doing unauthorized work may also count as “hours worked” if the farmer knew or should have known about the work being done.

4

Exemptions from Minimum Wage and Overtime Rules

- 4-1 Exemptions From Federal (FLSA) Minimum Wage and Overtime Rules**
- 4-8 Exemptions from Minnesota (MFLSA) Minimum Wage and Overtime Rules**
- 4-10 Summary of Exemptions and Likelihood of Applicability to Your Farm**

CHAPTER 4

Exemptions From the Minimum Wage and Overtime Rules

This chapter explains how your operation can be exempt from the minimum wage and overtime rules for paying farm workers described in the previous chapter, Chapter 3. Both the federal and state minimum wage and overtime laws contain exemptions that may excuse some farming operations from having to comply with their requirements.³⁶

Also, keep in mind that the exemptions discussed in this chapter are only applicable to the minimum wage and overtime rules; they do not apply to the federal or state rules for workplace safety, payroll taxes, workers' compensation, anti-discrimination, posting, or recordkeeping. Put another way, even if your farm or farm worker is exempt under the rules discussed in this chapter, they may not be exempt from other rules. You must look separately at whether your workers are exempt from rules other than minimum wage or overtime.

Exemptions From Federal (FLSA) Minimum Wage and Overtime Rules

You must generally pay your interns and other workers (except immediate family) at least the federal minimum wage of \$7.25 per hour and follow federal overtime rules unless you qualify for one of the exemptions described below.

The three federal FLSA exemptions most likely to apply to the farmers using this guide include:

500 Man-Day Exemption: an exemption from both minimum wage and overtime requirements for smaller-scale farming operations with a limited number of employees (for example, approximately seven employees working five days a week).³⁷

IMPORTANT NOTE:

Work performed by the farmer and the farmer's immediate family does NOT count for purposes of calculating the number of man-days worked.

Hand Harvest Laborer Minimum Wage and Overtime

Exemption: an exemption from federal minimum wage and overtime requirements for temporary farm workers who harvest by hand soil-grown crops—such as fruits and vegetables—if they are paid on a piece-rate basis.

Agricultural Overtime Exemption: a broad federal exemption excluding agricultural workers from receiving federal overtime pay, regardless of farm size.

The 500 Man-Day Exemption exempts farmers with a small number of employees from paying federal minimum wage and overtime. The Hand Harvest Laborer Exemption applies only to certain types of employees, but can be used even at farms with many workers. The Agricultural Overtime Exemption applies only to federal overtime, but can be used even at farms with many workers.

It is important to remember that qualifying for exemption from the federal minimum wage or overtime requirements does NOT excuse compliance with state requirements unless you are ALSO exempt under the state rules.

For example, a family farmer who employs only a few workers who do only agricultural work might be allowed to pay employees less than the federal minimum wage (\$7.25/hr), but will still probably have to pay employees the lower state minimum wage (\$5.25/hr).

To determine whether your farm meets the requirements for the 500 Man-Day Exemption, you may wish to use the worksheets available in Appendices A and B. Note that calculating man-days and determining whether a worker is doing agricultural work can be complicated, even for experienced labor and employment law attorneys.

If you have questions about these exemptions, you may contact FLAG, or the federal Department of Labor's Wage and Hour Division at 1-866-487-9243.

Federal Minimum Wage and Overtime Exemption for Farms Using 500 or Fewer Man-Days of Agricultural Labor

Farm employers that used 500 or fewer man-days of agricultural labor during each calendar quarter of the preceding year and earn less than \$10,000,000 annually are exempt from both federal minimum wage and overtime requirements.³⁸ To prove that you qualify for the exemption, you must have records showing the number of hours worked by each of your employees during the preceding year.

As a general guideline, the 500 man-day exception usually permits approximately seven full-time employees.³⁹ Note that a farmer who hires temporary or part-time employees during part of the year might exceed the man-day test even though the farmer may have only a few full-time employees. Work performed by the farmer and the farmer's immediate family does not count for purposes of calculating the number of man-days worked.⁴⁰

“Man-Day” Defined

A “man-day” is any day on which any employee performs one hour or more of agricultural work.⁴¹ Put another way, one man-day equals at least one hour of agricultural work in one day by one employee.

Non-agricultural work is not included in the man-day count as the exemption only applies to employees who do agricultural work. The FLSA definition of agricultural work is discussed in detail below.

When counting man-days of agricultural work, all of the farmer's employees must be counted separately, except for immediate family members.⁴²

If a farmer owns and operates more than one farm, it is the total number of man-days used on all farms and not on each individual farm that determines whether the farmer meets the 500 man-day test.⁴³

Calendar Quarter (Time Frame For Counting Man-Days)⁴⁴

If an agricultural operation exceeds 500 man-days during any of the preceding year's calendar quarters, the farmer must pay each employee the federal minimum wage in the current year.⁴⁵

This means you have to know what happened during last year's calendar quarters to determine whether you are exempt during the entirety of this year. Note that if your farm has more than 500 man-days in any of last

year's calendar quarters, you cannot use the exemption for the entirety of the current year.

The 500 Man-Day Test Excludes Work Done by Immediate Family

Work performed by the farmer or the farmer's immediate family does not count for purposes of calculating the number of man-days worked.⁴⁶ "Immediate family" is defined to include a farmer's legal spouse, parents (biological, step, adopted, foster), and children (biological, step, adopted, foster).⁴⁷ This definition of immediate family does NOT include brothers, sisters, grandparents, grandchildren, in-laws, or other extended family members.

The 500 Man-Day Test Excludes Work Done by Some Neighboring Farmers

When neighboring farmers help one another with harvesting a crop, and there is no money paid for these services, neither farmer is considered an employee of the other.⁴⁸ However, if the farmers bring their employees along to help out, those employees would be counted toward the number of man-days used by the farming operation where the work was done. If the employees did an hour or more of work for their farm employer and the neighboring farmer on the same day, both farms should count the employees' work toward their man-days total.⁴⁹

The 500 Man-Day Test Excludes Work Done by Some Temporary Employees Who Work as Hand Harvest Laborers

Work done by temporary employees who work as hand harvest laborers and are paid on a piece-rate basis is not counted toward the 500 man-day total.⁵⁰ The hand harvest laborer exemption applies to local workers who work on a farm on a temporary basis during the harvest season to harvest crops. The exemption is not intended to apply to a full-time farm worker who earns a livelihood at farming.⁵¹

Local hand harvest laborers who: (1) commute daily from their permanent residence; (2) are paid on a piece-rate basis in traditionally piece-rated occupations; and (3) were engaged in agriculture less than 13 weeks during the preceding calendar year, do not have to be paid the federal minimum wage or overtime.⁵² In addition, the man-days worked by this category of farm workers are not counted toward a farmer's man-days total.⁵³

Note that the hand harvesting exemption applies only to the actual harvest of soil-grown crops. Pre- and post-harvest work is outside of the exemption.⁵⁴ As mentioned, to qualify for the exemption, hand harvesters must be paid on a piece-rate basis, not an hourly basis. However, if the piece-rate basis level leaves the worker earning less than \$5.25 per hour, the farmer could be violating state minimum wage laws.⁵⁵

Because farm interns typically live on the farm and have a broad range of duties in addition to harvesting crops, this exemption is unlikely to apply to them.

The 500 Man-Day Exemption Only Applies If Workers Are Doing Solely “Agricultural Labor”

The 500 Man-Day Exemption only applies to employees who do agricultural work.⁵⁶ This determination is made week-by-week. Thus, if any work performed by a worker falls outside of the FLSA definition of agricultural labor, the 500 Man-Day Exemption does not apply for that employee for the workweek in which the non-agricultural work was done.⁵⁷

Consequently, if your interns (or other workers) do any non-agricultural work in a workweek, you must pay them at least the federal minimum wage of \$7.25 per hour for all hours worked during that workweek. You are free to take advantage of the exemption for those workers during any following workweeks provided they only do agricultural work in those weeks (and your farm meets all the other 500 Man-Day Exemption requirements).

IMPORTANT NOTE:

If a farm employee performs any non-agricultural work during a workweek, neither the 500 Man-Day Exemption nor the Agricultural Overtime Exemption apply for that week.

Instead, the employee must be paid the federal minimum wage and any overtime for all of the time worked during that week. This is true even if most of the work performed during that workweek was agricultural in nature.

“Agricultural Labor” Defined

Whether or not work is considered “agriculture” depends on the task performed.

Primary Agriculture

Under the FLSA, agriculture includes “primary agriculture” and “secondary agriculture.” Primary agriculture is defined as “farming in all its branches,” which encompasses “the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities . . . [and] the raising of livestock, bees, fur-bearing animals, or poultry.”⁵⁸ Generally speaking, hands-on work related to planting, maintaining, and harvesting crops, and raising animals fits within the definition of primary agriculture.

Secondary Agriculture

The agricultural work definition also extends to “secondary agriculture,” which includes any practices, whether or not themselves farming practices, which are “performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.”⁵⁹

To qualify as secondary agriculture, a practice must be performed either by a farmer or on a farm. It must also be performed in connection with the farmer’s own farming operations.⁶⁰ Note that the term “farmer” includes the farmer’s employees.⁶¹ This means that employees can perform certain off-farm activities that fit within the definition of secondary agriculture.

- On-farm sales of the farmer’s products by an intern—for example, at a roadside stand—is considered secondary agriculture, provided the roadside stand is part of the farming operation and not a separate business.⁶² Office work and maintenance of farm equipment, may also be considered agricultural work, provided these duties are not the intern’s primary duties, but are performed to support the agricultural work of the farming operation.⁶³
- Work that is performed off of the farm is generally not considered agricultural work when performed by someone other than the

farmer.⁶⁴ Given that the term “farmer” is interpreted to include employees of the farmer, interns should be able to perform certain off-farm activities and still be engaged in “agricultural” work.

These activities include: (1) preparing the farmer’s products for market; and (2) the initial delivery from the farm to a storage facility, or to market, or to carriers for transportation to market.⁶⁵ The term “market” typically means “the wholesaler, processor, or distributing agency to which the farmer delivers his products.” “Preparation for market” refers to activities preceding the delivery to market (for example, packing produce and loading the delivery truck).⁶⁶ Therefore, intern deliveries to a market or an off-farm CSA distribution drop point may be considered “agricultural” work.

- Farmers should generally assume farmers’ market sales by their farm workers do not fit within the definition of agricultural work. The FLSA regulations list several types of sales arrangements that may be considered as agricultural work (including roadside stands, mail order, and “house to house” sales).⁶⁷ Farmers’ market sales are not included in this list. Although we spoke with representatives from the federal Department of Labor’s Wage and Hour Division and the Minnesota Department of Labor and Industry to obtain clarification about whether farmers’ market sales are defined as agricultural work, the representatives could not provide an answer to that question. Because the regulations are unclear on this issue and there is no interpretive guidance from the enforcing agencies, farmers should assume such activities are not included within the definition of agriculture. Thus, to keep interns within any exemptions that require workers to do only agricultural work, farmers may wish to ensure that interns are not assigned to off-farm sales work like selling at a farmers’ market.
- Processing, packaging, or delivery of another farmer’s crops generally do not fall within the definition of agriculture.⁶⁸ Note that the regulations do allow neighboring farmers and their employees to periodically help one another harvest their crops while remaining within the definition of agriculture.⁶⁹

To help determine whether your interns are doing only “agricultural” work in a particular workweek, you can use the “Are Your Workers Performing Agricultural Work?” Worksheet in Appendix B.

Federal Agricultural Overtime Exemption for Agricultural Workers

The FLSA's overtime provisions do not apply to "any employee employed in agriculture."⁷⁰ This means that if your interns are doing work that falls within the FLSA definition of agriculture (discussed above), you do not have to pay them overtime. If, however, your intern has performed any non-agricultural work in a workweek, you must follow federal overtime rules for that workweek.

This Agricultural Overtime Exemption applies even if you had more than 500 man-days of work in one or more quarters of the previous year and therefore do not qualify for a federal minimum wage exemption.

Exemptions from Minnesota (MFLSA) Minimum Wage and Overtime Rules

Even if you qualify for the federal exemptions described above, you must still pay your interns and other employees at least the Minnesota minimum wage and follow Minnesota overtime pay rules—unless a state exemption applies.

The Minnesota minimum wage is \$5.25 per hour for a small employer (those with annual gross sales below \$625,000) or \$4.90 per hour if the youth minimum wage applies. Minnesota overtime rules require farmers to pay one and one-half times the applicable minimum wage rate for each hour the employee works over 48 hours in a workweek.

The Two-Worker, \$386/Week Minnesota Exemption

According to the Minnesota Department of Labor and Industry (DLI), a farmer may select two farm workers to be exempt from state minimum wage and overtime rules if they are paid a salary of at least \$386 per week.⁷¹ A salary must be a fixed amount of money determined in advance of the workweek in which the salary is to be paid.⁷² Note that the \$386 weekly salary is for small employers and is based on the state minimum wage of \$5.25 per hour that applies to those employers.⁷³

Thus, if your farm designates one or two interns who do work that qualifies as agriculture, and you pay them a salary of at least \$386 per week, you are exempt from Minnesota minimum wage and overtime requirements with respect to those interns. All other interns and employees must be paid according to the regular state minimum wage and overtime rules (or federal if those rules apply).

In practice, the Two-Worker, \$386/Week Exemption is unlikely to be cost-effective for most farmers because an intern would need to consistently work more than 65 hours per week for the minimum weekly salary of \$386 to provide any cost savings to the farmer.⁷⁴

Quick Take Away Point:

Because the state minimum wage and overtime exemptions are unlikely to be cost-effective unless an intern regularly works more than 65 hours per week, Minnesota farmers should generally plan to at least:

- Pay interns the state minimum wage of \$5.25 per hour (or the youth wage of \$4.90 per hour if applicable); and
- Pay overtime for all hours worked over 48 hours in the workweek.

Minnesota Exemption Only Applies to “Agricultural Labor”

Like the federal exemptions, the Minnesota “Two-Worker, \$386/Week” minimum wage and overtime exemption discussed here only applies if your interns are doing “agricultural” work. Minnesota law defines “agriculture” similarly to the FLSA as “farming in all its branches.”⁷⁵

The Minnesota definition of agriculture is a bit narrower than the FLSA definition in that it specifically excludes greenhouse work from the definition of agriculture.⁷⁶ Thus, while your interns can do greenhouse work and still fit within the federal 500 Man-Day Exemption, you cannot take advantage of the Minnesota exemption if you have your interns do greenhouse work. Note that greenhouses and hoop houses (also known as high tunnels) are not the same kind of structure.⁷⁷ Therefore, you may be able to consider work done in a hoop house as agricultural work.

As noted above, the state exemption, as interpreted by the DLI, is unlikely to be a cost-effective option for most farmers, so this distinction may not make much of a practical difference.

**Summary of Exemptions and Likelihood of
Applicability to Your Farm**

MINIMUM WAGE AND OVERTIME RULES	WHO DO THE RULES GENERALLY APPLY TO?	LIKELIHOOD OF EXEMPTION
<p>Federal Minimum Wage: \$7.25 per hour</p>	<p>APPLIES TO farming operations that used more than 500 man-days of agricultural labor in any calendar quarter of the preceding year.</p> <p>DOES NOT APPLY TO farms using 500 or fewer man-days of agricultural labor during all calendar quarters of the preceding year, BUT interns must generally be paid the \$7.25 minimum wage rate for any workweeks in which they do any non-agricultural work.</p> <p>DOES NOT APPLY TO workers/interns under the age of 20 who may be paid the lower youth wage of \$4.90 per hour for their first 90 consecutive days of employment.</p> <p>DOES NOT APPLY TO DOL-certified student-learners who may be paid 85 percent of the federal minimum wage with authorization from the U.S. DOL.</p>	<p>HIGH</p> <p>If workers/interns only do agricultural work and the farm has a small number of employees throughout the year, a farm employer is likely to meet 500 Man-Day Exemption criteria, especially with immediate family work excluded from the man-day count.</p>
<p>Minnesota Minimum Wage: \$5.25 per hour</p>	<p>APPLIES TO farmers who do not have to pay the federal minimum wage because they qualify for the 500 Man-Day Exemption.</p> <p>DOES NOT APPLY TO workers/interns under the age of 20 who may be paid the lower youth wage of \$4.90 per hour for their first 90 consecutive days of employment.</p> <p>DOES NOT APPLY TO one or two designated workers/interns paid a fixed weekly salary of at least \$386.</p>	<p>MEDIUM</p> <p>Some farmers may find the \$386 weekly salary exemption to be a cost-effective alternative to paying the \$5.25 minimum wage rate, if up to two workers/interns regularly work more than 65 hours per week.</p> <p>A maximum of two employees can be exempt under current Minnesota policy.</p>

**Summary of Exemptions and Likelihood of
Applicability to Your Farm**

MINIMUM WAGE AND OVERTIME RULES	WHO DO THE RULES GENERALLY APPLY TO?	LIKELIHOOD OF EXEMPTION
<p>Federal Overtime:</p> <p>One and one-half times the regular rate of pay after 40 hours within the workweek</p>	<p>APPLIES TO any worker/intern doing any non-agricultural work during the workweek unless another exemption applies.</p> <p>DOES NOT APPLY TO any worker/intern performing exclusively agricultural work.</p> <p>DOES NOT APPLY TO farms using 500 or fewer man-days of agricultural labor during all calendar quarters of the preceding year. Note that workers/interns doing non-agricultural work are not covered by the exception for the workweeks in which they do non-agricultural work.</p>	<p>HIGH</p> <p>Provided workers/interns are only doing agricultural work, the federal overtime exemption should apply.</p>
<p>Minnesota Overtime:</p> <p>One and one-half times the regular rate of pay for each hour worked over 48 hours within the workweek</p>	<p>APPLIES TO all farmers who do not have to pay federal overtime because they qualify for the 500 Man-Day Exemption.</p> <p>DOES NOT APPLY TO one or two designated employees paid a fixed weekly salary of at least \$386.</p>	<p>MEDIUM</p> <p>Some farmers may find the \$386 weekly salary exemption to be a cost-effective alternative to paying the \$5.25 minimum wage rate, if up to two workers regularly work more than 65 hours per week.</p> <p>A maximum of two employees can be exempt under current Minnesota policy.</p>

5

Paying Your Interns: Determining How to Handle the Cost of Meals and Lodging

- 5-1 Federal Meal and Lodging Deduction Rules**
- 5-2 Minnesota Meal and Lodging Deduction Rules**

CHAPTER 5

Paying Your Interns: Handling the Cost of Meals and Lodging

Many farm interns live on the farm during the growing season. Room and board are typically part of their compensation package. Both federal and Minnesota laws allow farmers to deduct some portion of meal and lodging costs from a farm intern's pay. Farmers are allowed to make these deductions for meals and lodging even if the deductions bring an intern's take-home pay below the minimum wage.

Federal Meal and Lodging Deduction Rules

The federal rules for deducting meal and lodging costs apply in cases where:

- (1) the employer does not qualify for the 500 Man-Day Exemption and is required to pay the federal minimum wage; AND
- (2) the deductions for meals and lodging will cause an intern's wages to fall below the minimum hourly wage rate.⁷⁸

Where both of the above criteria are met, farmers may subtract from an employee's wages the actual cost of providing the employee with meals and lodging.⁷⁹ It is illegal under these rules for a farmer to furnish room and board to an intern at a profit to the farmer if deductions for these bring the intern's pay below minimum wage.⁸⁰

Also, in order to legally subtract the actual cost of meals and lodging, farmers must keep records that show the cost incurred in furnishing meals and lodging.⁸¹ Such records must include:

- Itemized statements showing how the cost of food and lodging was computed;⁸²
- Records showing the costs of maintenance, utilities, and repairs;⁸³ and

- Records showing weekly additions or deductions from wages paid for meals and lodging.⁸⁴
- All of the above records must be preserved for three years.⁸⁵

Farmers should obtain written authorization from interns stating that they agree to have deductions for meals and lodging taken from their pay.

Note that where the deductions for meals and lodging do not cause an intern's wage rate to go below the federal minimum hourly wage rate, a farmer is free to handle deductions in whatever way the farmer wishes.⁸⁶

Additionally, if you are exempt from federal minimum wage and overtime rules because you meet the 500 Man-Day Exemption, you can handle pay, meals, and lodging according to state rules. In all cases, however (even if you are exempt from federal minimum wage and overtime rules), every meal and lodging deduction taken must be shown on the intern's wage statement. It is also generally a good practice for farmers to maintain records substantiating the deductions.

Minnesota Meal and Lodging Deduction Rules

The Minnesota rules for meal and lodging deductions apply to employers who are exempt from paying the federal minimum wage but are not exempt from paying the state minimum wage.

In contrast to the federal meal and lodging rules, which allow farmers to deduct the actual cost of meals and lodging, Minnesota law provides that farmers may subtract only specified allowances from employee wages for meals and lodging.⁸⁷

Interaction with the Minnesota Two-Worker, \$386/Week Exemption:

Note that where an intern is exempt from the Minnesota minimum wage because the intern is paid the minimum weekly salary applicable to a small employer (\$386/workweek), deductions for food and lodging may not take the weekly salary below the minimum weekly amount of \$386.00. If the deductions result in the intern being paid less than the minimum weekly salary, the farmer will lose the benefit of the state minimum wage and overtime exemptions, and will therefore have to pay the \$5.25 minimum wage and state overtime.⁸⁸

Minnesota Meal Allowance: Maximum of \$3.15 per Meal

A maximum meal allowance for small employers of \$3.15 per meal may be deducted from the state minimum wage, but only if the employee voluntarily accepts the meal.⁸⁹ In addition, meals must be consistent with the employee's work shift, meaning that a meal allowance cannot be deducted if the meals were provided outside of an employee's regular work hours. Finally, the employer must keep a record of each meal accepted by the employee before any meal allowance can be deducted.⁹⁰

Minnesota Lodging Allowance: Maximum of \$3.93 per Day

A maximum lodging allowance of \$3.93 per day may be deducted from the state minimum wage if the lodging provided is "adequate, decent, and sanitary according to usual and customary standards."⁹¹

Minnesota deductions for both meals and lodging must be shown on intern paychecks.⁹² State law requires farmers to preserve all payroll records for three years, including records related to deductions for intern meals and lodging.

Quick Take Away Points:

- Federal and state deduction rules for meals and lodging only come into play if the deduction causes an intern's wages to go below the required minimum wage.
- Farmers covered by the federal FLSA may subtract the actual cost of providing employees with meals and lodging from the intern's wages; no profit to the farmer is allowed.
- Small farmers covered by the state MFLSA may subtract a maximum of the state specified allowances of \$3.15 per meal and \$3.93 for each day of lodging provided (not the actual cost of meals and lodging).
- Farmers must itemize and record deductions on the intern's paychecks.
- Farmers must keep records showing the deductions taken. These records must be preserved for three years.
- Farmers should be very careful to accurately account for and record all deductions from an intern's wages. Farmers should ensure the amount of each deduction is documented. In addition, farmers covered by the federal FLSA should be able to show how they calculated the deduction amount and be able to prove that they subtracted no more than the actual cost of food and lodging from an intern's pay.
- Farmers should obtain signed written acknowledgements from interns affirming the interns' understanding that deductions for room and board will be taken out of their pay.

6

Paying Your Interns: Timing and Manner of Payment

- 6-1 Timing of Payment While an Intern Is Working**
- 6-1 Timing of Payment When an Intern Is
Terminated or Resigns**
- 6-1 Manner of Payment**

CHAPTER 6

Paying Your Interns: Timing and Manner of Payment

The issue of when and how farmers pay farm interns is largely governed by state law. The Minnesota Payment of Wages Act governs these issues and imposes penalties for the failure to promptly pay wages.

Timing of Payment While an Intern Is Working

In general, farmers must pay intern wages at least once every 31 days.⁹³ This remains true even if the intern requests longer intervals between payments. Wages must be paid on a regular payday, designated in advance by the farmer.⁹⁴

Timing of Payment When an Intern Is Terminated or Resigns

If a farmer terminates an intern, the farmer must pay the intern all earned wages within 24 hours after the intern demands payment.⁹⁵

Interns who resign must receive their wages by the next scheduled payday.⁹⁶ If the next regularly scheduled payday is less than five days after the intern's last day of employment, the full payment may be delayed until the next regular payday. However, the intern must be paid no later than 20 days from the last day of employment.⁹⁷

Manner of Payment

Intern wages may be paid in any of the following ways:

- (a) cash;
- (b) check;

- (c) direct deposit (unless the intern objects in writing); or
- (d) an electronic fund transfer to a payroll card account.”⁹⁸

Farmers are also required to provide interns with a written earnings statement at the end of each pay period. This statement must be issued at the end of each pay period and must include the following information:

- The name of the intern.
- The hourly rate of pay, if applicable.
- The total hours worked.
- The gross pay.
- A list of all deductions (such as taxes, room and board, and other).
- The net pay.
- The pay period ending date.
- The farmer or farm’s legal name (and d/b/a, if different).⁹⁹

This earnings statement can be in printed or electronic form. If the statement is in electronic form, farmers must provide interns with access to a computer owned by the farmer. Access must be provided during regular working hours. In addition, if an intern requests statements in printed form, the farmer must comply with that request and provide printed statements to the intern on an ongoing basis.¹⁰⁰

Quick Take Away Points:

- Farmers must establish a regular payday schedule and pay their interns on the scheduled paydays. Paydays must fall at least once every 31 days.
- If a farmer terminates an intern, the farmer must pay the intern all earned wages within 24 hours after the intern demands payment.
- Interns who resign must receive their wages by the next scheduled payday.
- Farmers are required to provide interns with a written earnings statement containing specified information at the end of each pay period.

7

Meal and Rest Breaks

7-1 Meal Breaks

7-2 Rest Breaks

CHAPTER 7

Meal and Rest Breaks

Both federal law and Minnesota law apply to meal and rest breaks. These requirements generally cover:

- (1) whether and when breaks must be offered;
- (2) which type of employees must receive these breaks; and
- (3) whether the breaks must be paid or may be unpaid.

Federal law does not require employers to provide meal or rest breaks.¹⁰¹ In contrast, Minnesota state law does require employers to provide meal and rest breaks.¹⁰² Thus, although federal law does not require breaks, Minnesota farmers must provide them because state law requires breaks, and the most protective standard must be applied.

However, state meal and rest break requirements do not appear to apply to those employees who are exempt from the Minnesota minimum wage and overtime requirements. Thus, if you are paying one or two interns the minimum weekly salary of \$386.00, you should not have to comply with meal and rest break requirements for those particular interns.

Meal Breaks

Minnesota law requires employers to provide to each employee who works for eight or more consecutive hours “sufficient time to eat a meal.”¹⁰³

Length

Under federal and Minnesota law, 30 minutes or more is generally considered an adequate period of time for a meal. A shorter meal break might be appropriate under “special conditions.”¹⁰⁴

Note, however, that the rules do not define what circumstances might qualify as “special conditions.” Additionally, the courts in Minnesota are split on whether the rules require a 30-minute meal break, or whether an employer must simply provide employees with sufficient time to eat a meal.¹⁰⁵

In practice, the approach most likely to comply with the law is for farmers to provide their employees with a 30-minute meal break when the employees work for eight or more consecutive hours.

Compensation

Under federal law, meal breaks are not considered work time and do not need to be paid.¹⁰⁶ Minnesota law states that meal breaks of more than 20 minutes do not need to be paid provided the employee is completely relieved of work duties during the meal break.¹⁰⁷ If an employee’s meal break is frequently interrupted for work-related duties or inquiries, the meal break must be compensated as working time.

Rest Breaks

Length

Minnesota law requires employers to allow employees an “adequate” rest break every four hours to use the nearest convenient restroom.¹⁰⁸ The statute does not define “adequate” or state a minimum rest break time requirement.

Compensation

Minnesota law requires that employers pay employees for any break (rest or meal) of less than 20 minutes.¹⁰⁹ Federal law contains a similar provision.¹¹⁰

Unauthorized Breaks

The issue here is whether, if an intern takes a longer break than the intern is entitled to take, must the unauthorized portion of the break be paid? Under federal law, the unauthorized portion of the break need not be paid in those cases where the employer has expressly and unambiguously communicated to the employee that the break may only last for a specific period of time and informed the employee that any extension of the break is against the employer’s workplace rules and will be punished.

Minnesota law does NOT allow an employer to deduct time spent on an unauthorized break from employees' pay if the total break time is less than 20 minutes.

Quick Take Away Points:

To comply with both Minnesota and federal law:

- Farmers should provide meal breaks to all employees working eight or more consecutive hours.
- Rest breaks should be provided every four hours.
- Uninterrupted meal breaks of at least 30 minutes in length may be unpaid and do not count toward the number of hours worked during the workweek in which the meal breaks occurred.
- Rest breaks of 20 minutes or less should be paid and counted toward hours worked for the workweek in which they occur.

8

Protecting Temporary Farmworkers: The Migrant and Seasonal Agricultural Worker Protection Act (MSPA)

- 8-1 Interns Are Likely to Be Classified as “Migrant”
or “Seasonal” Workers**
- 8-2 MSPA Rules Govern Pay, Hiring, and Disclosure**
- 8-4 MSPA Exemptions**

CHAPTER 8

Protecting Temporary Farmworkers: The Migrant and Seasonal Agricultural Worker Protection Act (MSPA)

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) is a federal law that specifically applies to farmers. It was enacted to protect migrant and seasonal workers on matters related to pay, housing, and other working conditions. Although farmers may not think of farm interns as “migrant workers,” interns are very likely to qualify as migrant workers under this law.

Generally speaking, the MSPA sets the minimum work conditions and standards that employers of migrant and seasonal agricultural workers must follow. The MSPA requires employers to:

- compensate workers sufficiently;
- disclose and post specified information;
- keep certain records; and,
- if they provide housing, meet safety and health standards.¹¹¹

Interns Are Likely to Be Classified as “Migrant” or “Seasonal” Workers

In considering whether an intern qualifies as a “migrant” worker, there are two key factors:

- (1) whether the intern is doing agricultural work of a seasonal or temporary nature; and
- (2) whether the intern is required to be absent overnight from his or her “permanent place of residence.”¹¹²

If the answer to either question is yes, the intern will generally be protected under the MSPA.

Is the intern doing agricultural work of a seasonal or temporary nature?

Interns most often do temporary agricultural work—for a summer or a semester, etc. If an intern is short-term, the intern meets the first factor listed above.

To be considered a “migrant” worker under the MSPA, the intern also has to meet the second factor listed above. However, even if your intern does not meet the second factor because the intern is not required to be absent overnight from his or her permanent place of residence, your intern may be protected under the MSPA as a “seasonal” worker.

Is the intern required to live on (or near) the farm and be absent overnight from his or her permanent place of residence?

If your intern stays away from his or her home in private housing provided only during the internship period—and there are few other inexpensive housing options nearby, thus making it a practical necessity for workers to live in the employer-provided housing—the intern meets the second factor.¹¹³

Most farm interns will likely meet both factors and be considered migrant agricultural workers under the MSPA.

If your intern lives at his or her own home, the intern will not be considered a migrant worker, but may be protected under the MSPA as a “seasonal” worker. Seasonal workers include temporary workers who plant, maintain, or harvest field crops.¹¹⁴ Most interns do some hands-on field work and will be considered seasonal workers under the MSPA. If your intern meets the MSPA definitions for migrant or seasonal workers, you must follow the MSPA rules unless you qualify for an exemption.¹¹⁵

MSPA Rules Govern Pay, Hiring, and Disclosure

Compensation

Farmers covered by the MSPA are prohibited from withholding wages, forcing interns to purchase goods or services from the farm, or violating the terms of a working arrangement.¹¹⁶

Additionally, each employee must be provided an itemized written statement showing the following pay-related information:

- (1) the basis on which wages are paid;
- (2) number of piecework units earned, if paid on a piecework basis;
- (3) number of hours worked;
- (4) total earnings;
- (5) specific sums withheld and the purpose of each sum withheld;
and
- (6) total pay.¹¹⁷

Required Disclosures

Farmers who are not exempt from the MSPA must disclose, at the time of an intern's recruitment (that is, at the farmer's first contact with the intern), information about the internship arrangement.¹¹⁸ This information must be written.¹¹⁹ It must also be provided in a language that can be understood by workers who are not fluent or literate in English.¹²⁰

The following information must be disclosed:

- The place of employment.
- The wage rates to be paid.
- The crops and kinds of activities in which the worker may be employed.
- The period of employment.
- The transportation, housing, and any other employee benefit to be provided and any costs to be charged for each of them.
- The existence of any strike or other concerted work stoppage, slowdown, or interruption of operations by employees at the place of employment.
- Whether anyone is paid a commission for items that may be sold to workers while they are employed.¹²¹
- Workers' compensation information.¹²²

MSPA Exemptions

The MSPA does not apply to: (1) farms that use fewer than 500 man-days of agricultural labor; or (2) family businesses.¹²³

500 Man-Day Exemption

The 500 Man-Day Exemption is described in detail in Chapter 4 of this guide. You may also refer to the 500 Man-Day Worksheet in Appendix A. If your farm qualifies for the 500 Man-Day Exemption, you are exempt from all of the MSPA requirements.

Family Business Exemption

The family business exemption in the MSPA applies to farms owned or operated exclusively by the farmer or the farmer's immediate family, provided that only the farmer or members of the farmer's immediate family recruit,¹²⁴ solicit, hire, employ, furnish, or transport the intern to that farm.¹²⁵ If your farm qualifies for the family business exemption, you are exempt from all of the MSPA requirements.

Quick Take Away Points:

- Interns are likely to be classified as “migrant” workers if they live on the farm.
- Interns not living on the farm are likely to be classified as “seasonal” workers.
- If an intern is classified as either a “migrant” worker or a “seasonal” worker, MSPA requirements will apply unless the farm qualifies for an exemption.
- Farms that qualify for the 500 Man-Day Exemption from federal minimum wage and overtime requirements are also exempt from all of the MSPA requirements.
- If all recruitment and hiring activities are done by the farmer or members of the farmer's immediate family, the farm is exempt from all of the MSPA requirements.

9

Farmers Must Create a Safe Work Environment

9-2 Federal Work Safety

9-4 Minnesota Work Safety

CHAPTER 9

Farmers Are Required to Create and Maintain a Safe Work Environment

Farm work safety is regulated at both the federal and state levels, but many small farms are exempt from federal work safety regulations. In contrast, all employers are covered by the Minnesota work safety regulations. As a result, your farm will almost certainly be required to comply with some state-level work safety regulations, and might be required to comply with federal work safety laws. This means that you are required to create a safe work environment for the people working on your farm, and you can be fined or even criminally charged by the federal or state government if you fail to do so.

An overview of the federal and state workplace safety requirements is set forth below. A full explanation of the federal and Minnesota safety requirements for farmers is beyond the scope of this guide. The following is simply an overview of the federal and state requirements. Farmers may also wish to follow up with the appropriate federal and state agencies to obtain details about the safety rules you are required to follow.

Note on Pesticides and Farm Safety:

- This guide does not cover safety rules related to the application of pesticides. Information regarding the federal law that governs the use of pesticides (the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)) can be obtained through the U.S. Environmental Protection Agency's (EPA) website, <http://www.epa.gov/agriculture/lfra.html>.
- The part of FIFRA that applies to farm workers is the Worker Protection Standard (WPS). The Minnesota Department of Agriculture (MDA) implements and monitors WPS compliance within the state of Minnesota. More information about the WPS and pesticides can be found through MDA's website, <http://www.mda.state.mn.us/news/publications/chemfert/workprotstand.pdf>.

Federal Work Safety

The Occupational Safety and Health Administration (OSHA) is the federal agency generally authorized to enforce federal work safety rules through workplace inspections and investigations.¹²⁶ OSHA penalties vary depending on the seriousness of a violation, but can include both civil penalties (fines) and criminal penalties (fines or jail time).

Under OSHA rules, a farmer's general duty is to furnish each employee with a workplace free from recognized hazards that cause or are likely to cause death or serious harm.¹²⁷ Farmers covered by the OSHA rules are also responsible for complying with farm-specific occupational safety and health rules (discussed below).

Farm-Related OSHA Exemptions

Many small farms will be exempt from OSHA in the following situations:

By size of farm workforce: Farms employing ten or fewer workers and having had no "temporary labor camps" (that is, temporary worker housing) in the last 12 months are generally exempt from OSHA enforcement.¹²⁸ Immediate family members are not counted when determining the size of a farm operation's workforce.

By employee: Members of the immediate family of a farm employer are not considered employees and are excluded from OSHA coverage.¹²⁹

So far, OSHA has not defined “immediate family,” but the FLSA definition is a helpful guideline. Under the FLSA, a farmer’s legal spouse, parents (biological, step, adopted, foster), and children (biological, step, adopted, foster) are exempt.¹³⁰ Thus, while farm interns are covered employees under OSHA, farmers do not have to comply with federal OSHA regulations for immediate family.

If Not Exempt, Farmers Must Comply with Farm-Specific Safety Rules

In addition to providing farm employees with a workplace free from recognized hazards causing or likely to cause death or serious harm, non-exempt farmers must comply with the federal OSHA rules specific to the farm operation.¹³¹ The federal OSHA standards that most commonly apply to farming operations are designed to protect against the potential hazards associated with:

- Temporary labor camps (housing);¹³²
- Storage and handling of anhydrous ammonia;¹³³
- Pulpwood logging;¹³⁴
- Slow-moving vehicles (tractors, etc.);¹³⁵
- Tractors and other vehicles with the potential to roll over;¹³⁶
- Moving machinery parts of farm field equipment, farmstead equipment, and cotton gins;¹³⁷
- Toxic and hazardous substances involved in exposure to cotton dust;¹³⁸
- Toxic and hazardous substances in general; and¹³⁹
- Improper field sanitation.¹⁴⁰

These standards call for very specific safety and training requirements. For example, the field sanitation standard requires employers to provide toilets, potable drinking water, and handwashing facilities to hand laborers in the field; provide employees with “reasonable use” of the

above facilities; and inform each employee of the importance of good hygiene practices.¹⁴¹

More information about specific required federal safety practices can be obtained from fact sheets available on OSHA's website, located at <http://www.osha.gov>.

In addition, farmers with questions about federal work safety issues may wish to review OSHA's web page regarding agricultural operations, located at <http://www.osha.gov/SLTC/agriculturaloperations/index.html>.

Important Definition for Determining Whether Federal and State OSHA Rules Apply: "Temporary Labor Camp"

If a farmer provides worker housing that qualifies as a "temporary labor camp" under OSHA rules, the housing will be subject to inspection to ensure compliance with OSHA's Temporary Labor Camp standards.¹⁴² Note that even farmers who are just providing interns with a room in their own home may technically have a "temporary labor camp."

Under federal and state law, worker housing is generally considered a "temporary labor camp" if farm policy or practice requires the workers to live in the farmer-provided housing as a condition of their employment.¹⁴³ Even if a farmer does not explicitly require employees to live in the farmer-provided housing, the housing will likely be deemed a temporary labor camp if the isolation of the worksite or a lack of economically comparable alternative housing makes it a practical necessity to live there.

See Chapter 10 of this guide for more information about the legal requirements related to worker housing.

Minnesota Work Safety

As mentioned above, all Minnesota farms are covered by at least some of Minnesota's OSHA rules, even if the farm is exempt from federal OSHA rules because the farmer has fewer than ten employees and no temporary housing or employs only immediate family members (legal spouse, parents, and children).

Minnesota's Workplace Safety Program

Federal OSHA authorizes the states to develop and operate their own job safety and health programs.¹⁴⁴ Minnesota has a state workplace safety program that generally applies to all businesses in the state (including farms).¹⁴⁵

The Minnesota Department of Labor and Industry's Occupational Health and Safety Administration is the agency authorized to enforce Minnesota's state-level workplace safety (Minnesota OSHA) program. Minnesota OSHA, similar to Federal OSHA, issues citations for safety violations.

Employers who violate the Minnesota OSHA rules may be required to pay fines ranging from \$5,000 to \$70,000.¹⁴⁶ Criminal penalties may also apply in cases where an individual knowingly makes false statements, gives an employer advance notice of a scheduled inspection, or willfully or repeatedly violates the rules.¹⁴⁷

For more information about how Minnesota OSHA workplace inspections and enforcement are conducted, see the Minnesota OSHA's educational publication, "Minnesota OSHA Workplace Inspections," available at <http://www.dli.mn.gov/OSHA/PDF/inspectionbooklet.pdf>.

Free Safety Consultation Service

Minnesota farmers who want help with federal and Minnesota OSHA compliance can contact the Minnesota OSHA Workplace Safety Consultation Division for a free safety consultation. The agency seeks to help employers identify what steps they must take to come into compliance with OSHA requirements.

No citations are issued during consultations, nor is information about consultation activities typically provided to OSHA's enforcement division. Farmers should note, however, that in those cases where a serious violation of program rules and regulations is found during a visit, the farmer must agree in writing to remedy that violation during a set period of time. If the violation is not remedied, the matter is typically referred for enforcement.

Farmers can reach the OSHA Workplace Safety Consultation Division at 651-284-5060. Farmers may also call 651-284-5050 with general questions.

Farmers can also view the Workplace Safety Consultation Division's online brochure at:
http://www.doli.state.mn.us/WSC/PDF/servicesbrochure_legalsize.pdf.

Overview of Minnesota OSHA Requirements

Generally speaking, the Minnesota OSHA program requires employers to:

- keep the workplace free from recognized hazards;
- develop and follow a written safety plan (AWAIR plan—see below);
- follow state OSHA standards and labeling requirements;
- be subject to inspection;
- make available information dealing with injury reports, general safety records, and other required records; and
- provide employees with an initial training and annual refresher training regarding harmful physical agents, infectious agents, and hazardous substances (see below).¹⁴⁸

- All Minnesota farmer-employers must comply with these basic Minnesota OSHA regulations.

AWAIR Plan: Minnesota Farmers Must Create a Written Safety Plan

The required written safety plan, called an AWAIR plan, is a critical part of the Minnesota OSHA program. All Minnesota farmer-employers are required to create an AWAIR plan.¹⁴⁹ The plan must be written, and it must establish an accident and injury reduction program that promotes safe and healthful working conditions and is based on clearly stated goals and objectives for meeting those goals.¹⁵⁰

For more information about how to create an AWAIR plan, see the Minnesota OSHA educational publication, “An Employer’s Guide to Developing A Workplace Accident and Injury Reduction (AWAIR) Program,” available at <http://www.dli.mn.gov/OSHA/PDF/awair.pdf>. Farmers can also contact Minnesota OSHA at 651-284-5060 for help creating an AWAIR plan.

Minnesota OSHA also recommends that farmers interested in learning about good safety practices look for local agricultural safety training classes often held at extension offices or vocational training schools.

Farm Operation Training Required for Non-Exempt Farms

Farmers with more than ten employees must provide employees with farming operation training regarding “hazardous substances” and “harmful physical agents.”¹⁵¹

Farmers with a temporary labor camp are also required to provide farm workers with farming operation training, regardless of how many workers they employ.¹⁵²

Farmers can call Minnesota OSHA at 651-284-5050 with questions about training.

Quick Take Away Points:

- Some farms will be exempt from the federal OSHA regulations (farms with fewer than ten employees that do not temporarily house employees).
- A farmer's immediate family members (legal spouse, parents, and children) are not covered by the federal OSHA rules. However, they are covered by some of the Minnesota OSHA rules.
- All Minnesota farmers must comply with the basic Minnesota OSHA regulations: Keep the workplace free from recognized hazards; develop a written safety plan (AWAIR plan); follow Minnesota OSHA standards and labeling requirements; be subject to inspection; and make available information dealing with injury reports, general safety records, and other required records.

10

Housing: If Interns Live on Your Farm...

- 10-1 Migrant and Seasonal Worker Protection Act (MSPA) Worker Housing Rules**
- 10-2 OSHA Worker Housing Rules**
- 10-2 Zoning Rules Affect Housing**

CHAPTER 10

Housing: If Interns Live on Your Farm, You May Become Subject to Federal and State Worker Housing Regulations

One of the ways farmers may compensate interns is with on-farm housing. While the offered housing may be perfectly acceptable to most interns, it may not conform to the federal and/or state regulations that govern farm employee housing.

Farmers who permit or require interns or other workers to live away from their regular home in order to be near the farm may become subject to certain laws regarding worker housing, including the Migrant and Seasonal Worker Protection Act (MSPA), federal and state OSHA rules, and local zoning regulations. If you provide housing to interns or other workers, you could become subject to certain federal and state laws regulating worker housing.

Migrant and Seasonal Worker Protection Act (MSPA) **Worker Housing Rules**

Inspection Required

Any housing that is to be occupied by migrant agricultural workers (as discussed in Chapter 8, your farm intern likely qualifies as a migrant worker) must be inspected by the appropriate state or local agency.¹⁵³ If the state or local agency certifies that the housing meets safety and health standards, it may be occupied.¹⁵⁴

Farmers with questions about the housing inspection requirements should contact the Minnesota Department of Labor and Industry at 1-800-342-5354.

Exemption for Commercial Housing

If the housing is available on a commercial basis to the general public, and the housing provided to migrant agricultural workers (that is, your intern) is of the same character and on the same or comparable terms as that provided to the general public, the MSPA does not apply.¹⁵⁵

General MSPA Exemptions

Farms qualifying for the 500 Man-Day Exemption (see Chapter 4, pages 4-1 through 4-4) or the family business exemption (see Chapter 8, page 8-4) under the MSPA should generally be exempt from its housing requirements. Note, however, that while an employer may not have to comply with MSPA housing requirements, the OSHA requirements regarding housing would likely still apply.

OSHA Worker Housing Rules

Farms with temporary labor camps are never exempt from federal OSHA rules—even if they had 10 or fewer employees within the last year.

Consequently, farmers who provide housing to their interns must comply with the OSHA standards related to housing if the housing meets the definition of a “temporary labor camp.”

As noted above, worker housing is considered a temporary labor camp if farm policy or practice requires the workers to live in the housing as a condition of their employment.¹⁵⁶ The OSHA standard for temporary labor camps includes requirements regarding site drainage, shelter, water supply, toilet, laundry, handwashing, bathing and first aid facilities, and refuse disposal.¹⁵⁷

The state of Minnesota has adopted the federal OSHA regulations on temporary labor camps, so there are no state housing rules in addition to the federal regulations.¹⁵⁸

Zoning Rules Affect Housing

Farmers providing housing to workers should note that local zoning rules may also apply. These rules may restrict the uses to which your land may be put, regulate certain characteristics such as building height or lot coverage, or mandate building inspections. Farmers should review their local zoning ordinances and/or consult with an attorney licensed to

practice in their state to determine whether their intern housing complies with local zoning rules.

Copies of zoning ordinances for many Minnesota counties, townships, and cities can be obtained through the Minnesota State Law Library and are available at <http://www.lawlibrary.state.mn.us/ordinance.html>.

Quick Take Away Points:

- If you require your interns to live on the farm or if they have to live on the farm because there is no other available nearby housing, the housing you provide to your interns may be considered a temporary labor camp.
- If you have a temporary labor camp on your farm, you will have to comply with the MSPA and OSHA rules governing temporary labor camps. In this case, you may wish to consider whether compliance with these requirements is cost-prohibitive and, if so, whether alternative housing arrangements are available for your interns.

11

Workers' Compensation Insurance

- 11-1 Workers' Compensation Laws Apply to Farm Interns**
- 11-2 Immediate Family Members Are Exempted From Workers' Compensation Insurance Requirements**
- 11-2 Farms That Meet the Definition of a "Family Farm" Are Exempted from Workers' Compensation Insurance Requirements**

CHAPTER 11

Workers' Compensation Insurance

Minnesota law requires employers to obtain and pay for workers' compensation insurance for employees. Workers' compensation insurance provides important financial benefits to workers who are injured on the job. Generally speaking, workers' compensation covers medical payments when a worker gets hurt or becomes ill as a result of work activities. Workers' compensation is a no-fault system, meaning that a worker does not have to prove that an employer was "at fault" for his or her injury or illness.

Workers' compensation insurance laws are state-based. The cost to employers for this required insurance is generally based on the total amount of wages an employer pays employees (payroll amount), the type of job (farming), and the employer's experience rating (how many years the employer has been an employer and past claims, if any). Consequently, premiums are likely to be higher for new employers with no track record than for those who have a good record of employee safety.

To find out more about workers' compensation insurance, including more information about insurance companies from which you can purchase workers' compensation insurance, visit the Minnesota Department of Labor and Industry (DLI) website:

<http://www.dli.mn.gov/workcomp.asp>. The DLI Workers' Compensation Hotline number is 1-800-342-5354, press 2.

Workers' Compensation Laws Apply to Farm Interns

Minnesota's workers' compensation law requires employers to maintain workers' compensation policies for all of their non-exempt employees.¹⁵⁹ The law defines employee to mean "any person who performs services for another for hire."¹⁶⁰ The Minnesota courts have found interns to be employees under the state workers' compensation statute.¹⁶¹

Immediate Family Members Are Exempted From Workers' Compensation Insurance Requirements

The legal spouse, parents, and children of a farmer are excluded from the workers' compensation insurance requirements.¹⁶² However, farmers may still choose to obtain workers' compensation insurance for immediate family members in case those individuals are injured on the job. Workers' compensation insurance covers medical payments for injured workers, so this insurance could possibly save farmers money if their immediate family member is injured during farm work.

Farms That Meet the Definition of a "Family Farm" Are Exempted from Workers' Compensation Insurance Requirements

The Minnesota workers' compensation statute explicitly excludes from its requirements farming operations that meet the definition of a family farm. The workers' compensation statute defines a family farm as a farm that, adding up all worker wages, paid total cash wages to non-immediate family farmworkers during the previous calendar year in an amount that is either:

- i. less than \$8,000;

OR

- ii. less than the average state annual wage (roughly \$26,000).

The farm must also currently carry at least \$300,000 liability and \$5,000 medical insurance coverage if it is relying on the average state annual wage piece of the family farm definition.¹⁶³

Wages paid to the farmer's legal spouse, parents, or children are not counted when determining if the family farm exemption applies.¹⁶⁴

Farmers whose operations meet either of the above definitions of "family farm" under the workers' compensation statute are not required to obtain coverage for their interns. However, if your farm operation does not meet either of the family farm definitions above, you must obtain workers' compensation insurance for farm interns. In addition, if you have other workers who are not immediate family members (legal spouses, parents, and children are excluded from workers' compensation requirements), you must generally obtain workers' compensation insurance for those workers as well.¹⁶⁵

Quick Take Away Points:

- Workers' compensation requirements will typically apply to farm interns. Farmers should generally plan to obtain workers' compensation coverage for interns.
- Farmers are not legally required to obtain workers' compensation coverage for members of their immediate family (which only includes a legal spouse, parents, and children), but should consider whether it could be wise to do so anyway.
- Certain small-scale farming operations are exempt from the workers' compensation requirements and will not need to obtain coverage for their interns and other workers. These include:
 - (1) farms that paid less than \$8,000 in total cash wages to all non-immediate family workers during the previous calendar year; and
 - (2) farms that paid less than the average state annual wage (currently, approximately \$26,000) in total cash wages to all non-immediate family workers during the previous calendar year, provided they carry at least \$300,000 liability and \$5,000 medical insurance coverage.

12

Payroll Taxes and Withholding

- 12-1 Explanation of How Payroll Withholding and Payroll Taxes Are Used**
- 12-4 Getting Required Employer Identification Numbers**
- 12-4 Collecting and Paying Federal Payroll Taxes**
- 12-6 Federal Unemployment Tax Requirements**
- 12-6 Collecting and Paying Minnesota Payroll Taxes**

CHAPTER 12

Payroll Taxes and Withholding: Social Security, Medicare, Income Taxes, and Unemployment Taxes

Farmers have several federal and state tax withholding, reporting, and depositing responsibilities related to interns and other farm workers. The full tax implications of being an employer are beyond the scope of this guide. The guide will simply cover the basic payroll tax responsibilities and exemptions likely to apply to most small-scale farms relying on intern labor. Farmers may also wish to contact an accountant to help ensure they understand their tax responsibilities.

Payroll responsibilities fall into two main categories:

- (1) Withholding portions of worker wages (income) and depositing the withheld funds with the correct government tax agency; and
- (2) Paying taxes related to each of your workers.

In the labor and employment context, “tax withholding” generally refers to income tax deducted from an employee’s wages and paid directly to the government by the employer.

Explanation of How Payroll Withholding and Payroll Taxes Are Used

Payroll withholding and payroll taxes fund four main benefits that are intended for employees:

Medicare

Medicare is a federal social insurance program that pays for access to health insurance for Americans age 65 and older.¹⁶⁶ The program also pays for access to health insurance for younger people with disabilities.

A large portion of Medicare is funded by a payroll tax on both employers and workers (currently the employer and the employee each pay a tax of 1.45 percent on the employee's wages).¹⁶⁷ The portion of the tax that the worker is responsible to pay is collected mainly by the employer withholding the appropriate amount of employee wages and depositing that amount with the appropriate federal agency on behalf of the employee.

Social Security

Social Security is a federal program designed to protect Americans and their families from loss of earnings due to retirement, disability, or death. Social Security is a major source of income for half of the U.S. population over age 65.¹⁶⁸ Like Medicare, Social Security is funded by a payroll tax on both employers and workers (starting in 2013, 6.2 percent for employers and 6.2 percent for workers). The portion of the tax the worker is responsible to pay is collected mainly by the employer withholding the appropriate amount of employee wages and depositing it with the appropriate federal agency on behalf of the employee.

Federal and State Income Taxes

Income taxes are taxes on the income (wages) of individual workers. Both the federal government and the Minnesota state government collect income taxes. The tax percentage varies based on the amount of income an individual earns. Employers do not pay federal or state income taxes on employee wages; the employer's only responsibility is to withhold the tax from the employee's pay and deposit it with the appropriate federal agency (Internal Revenue Service (IRS)) or state agency (Minnesota Department of Revenue).

Federal and State Unemployment Taxes

Federal and state unemployment taxes paid by employers are put into a fund that provides unemployment payments to eligible workers who have lost their jobs.¹⁶⁹ Only the employer pays unemployment tax; it is not withheld from the employees' wages.

In summary, employers are required to withhold portions of worker wages and deposit the funds with the federal government for the federal Medicare and Social Security programs, as well as to meet workers' federal income tax obligations. Employers must also withhold portions of

worker wages and deposit the funds with the state government to meet workers' state income tax obligations.

Employers must use their own funds to pay the required employer contributions for the federal Medicare and Social Security programs, as well as to pay federal and state unemployment taxes. The chart below lists general federal and state payroll responsibilities for employers.

General Federal Payroll Withholding and Tax Responsibilities Overview	General Minnesota Payroll Withholding and Tax Responsibilities Overview
<ul style="list-style-type: none"> • Obtain Federal Employer ID Number • Medicare Tax Employee <u>Withholding</u> and Employer Contribution • Social Security Tax Employee <u>Withholding</u> and Employer Contribution • Federal Income Tax <u>Withholding</u> • Federal Unemployment Tax Payment 	<ul style="list-style-type: none"> • Obtain State Employer ID Number • State Income Tax <u>Withholding</u> • State Unemployment Tax Payment

Note that farmers are exempt from certain tax and withholding requirements for the farmer's children under the age of 18. Additionally, farm employers do not have to pay Minnesota unemployment tax for officers and/or stockholders of a family farm corporation. These exemptions are described in more detail in FLAG's publication, *Farmers' Guide to Farm Employees: Federal and Minnesota Labor and Employment Law for Small-Scale Family Farms*, which is available on FLAG's website at <http://www.flaginc.org/topics/pubs/MILEguide.pdf>. Also, farmers who pay only a very small amount in wages may qualify for payroll tax exemptions (discussed below).

Although the discussion below contains more information about farm employers' tax and withholding responsibilities, farmers should consult with a tax professional to ensure they understand and comply with federal

and state payroll tax requirements for employers. Additionally, please see Appendix C for a list of helpful tax publications and online resources.

Getting Required Employer Identification Numbers

Farm employers must obtain both federal and state identification numbers. These numbers are unique to each farm and help the government identify your operation in its tax databases. You will need these identification numbers to complete federal and state tax forms.

Federal Employer ID Number

In order to file required reports and make required deposits, farmers with employees must obtain a federal Employer Identification Number (EIN).

¹⁷⁰ This number is requested through Form SS-4, *Application for Employer Identification Number*. Farmers must obtain this number even if they have only one worker.¹⁷¹

Minnesota Employer ID Number

Minnesota requires new employers to obtain an ID number by filing Form ABR, *Application for Business Registration*. This form is similar to the federal Form SS-4, but both forms must be filled out and filed.¹⁷²

Collecting and Paying Federal Payroll Taxes

The United States Internal Revenue Service (IRS) administers and enforces federal tax regulations. All IRS forms and publications are available online at <http://www.irs.gov>.

Federal law generally requires all employers to:¹⁷³

- Obtain a completed and signed Form W-4 from each new employee. This form is used to determine how much the employer should withhold from the employee's paychecks for federal income tax.¹⁷⁴
- Withhold from each employee paycheck the employee's portion of Social Security and Medicare taxes due. Add the employer portion of Social Security and Medicare taxes due for each pay period to the amount withheld from employee paychecks and timely deposit with the Federal Reserve Bank.

- Withhold federal income taxes from each employee paycheck based on the employee's filing status and exemptions and timely deposit with the Federal Reserve Bank.
- Timely pay federal unemployment insurance taxes (employer only, employees do not contribute to unemployment insurance taxes) to the Federal Reserve Bank.¹⁷⁵
- Timely file annual payroll tax returns. For farmers, these will typically be Form 943, "Employer's Annual Federal Tax Return for Agricultural Employees"; Form 940, "Employer's Annual Federal Unemployment (FUTA) Tax Return"; and Form W-3, "Transmittal of Wage and Tax Statements."
- Timely provide a Form W-2 to each employee after the end of each calendar year.

Social Security, Medicare, and Federal Income Tax Rules

Social Security and Medicare payroll taxes are applicable to almost all farm employers. Generally, farm employers must pay an employer share of Social Security and Medicare taxes on the wages of every employee (other than the farmer's children under the age of 18).¹⁷⁶ Farmers must also withhold from each employee's earnings the employee's share of those taxes or pay the amount that should have been withheld.

Wages that are subject to Social Security and Medicare taxes are also subject to federal income tax withholding.¹⁷⁷ Put another way, the same standards (set forth below) apply to all three types of federal payroll tax.

There are two tests for whether an employer must pay and/or withhold Social Security, Medicare, and federal income taxes:

- **\$150 or More per Worker Test:** Farm employers are required to pay Social Security and Medicare taxes and withhold federal income taxes for any worker paid \$150 or more during a year. The \$150 test applies separately to each worker employed by a farmer, and does not include the value of food (and lodging, if any) provided by the employer.¹⁷⁸
- **\$2,500 or More For Everyone Test:** Farm employers are required to pay Social Security and Medicare taxes and withhold federal income taxes for all workers if the total paid to all farm workers is \$2,500 or more during a year.¹⁷⁹ The \$2,500 test does

include the value of food (and lodging, if any) provided by the employer.¹⁸⁰

In summary, you must pay and/or withhold Social Security, Medicare, and federal income tax for your interns unless you meet one of the two tests described above. Because farmers rarely meet either the \$150/worker or the \$2,500/everyone test described above, you should generally assume you will pay and/or withhold Social Security, Medicare, and federal income taxes for your interns.

Federal Unemployment Tax Requirements¹⁸¹

There are no individual exemptions from federal unemployment tax requirements. However, an entire farm operation will be exempt from federal unemployment tax requirements unless it falls into one of the two categories discussed below.

Farmers must pay federal unemployment tax if:

- (1) The farm employer pays a total of \$20,000 or more to all employees during any calendar quarter of the current or preceding calendar year; or
- (2) The farmer employed ten or more workers during at least some part of a day during any 20 different weeks of the current or preceding calendar year.¹⁸²

Note that a farmer's spouse and any of a farmer's children under age 21 are not considered in determining whether the \$20,000 cash wages or ten-employee tests are met.

Farmers who must pay federal unemployment taxes must also pay Minnesota unemployment taxes.

Collecting and Paying Minnesota Payroll Taxes

The Minnesota Department of Revenue administers and enforces state payroll tax regulations. All of its forms are available online at http://taxes.state.mn.us/pages/current_forms.aspx.

Minnesota Income Tax Withholding

Farmers who are required to withhold federal income tax under the test discussed above are, in most cases, also required to withhold Minnesota income tax. The reverse is also true: Farmers who are not required to withhold federal income tax are generally not required to withhold Minnesota income tax.¹⁸³

There are a few state law provisions that do require farmers who are not required to withhold federal income tax to withhold state income tax. However, it is very unlikely that these state law provisions will apply to most farmers. Therefore, most farmers can assume that if they do not have to withhold federal income tax, they also do not have to withhold state income tax.¹⁸⁴

Minnesota Unemployment Taxes

There are two individual exemptions from Minnesota unemployment tax requirements. The first individual exemption is for any child under age 16. The second exemption is for any officer or shareholder of a family farm corporation within the third degree of kindred. Because these exemptions are unlikely to apply to farm interns, they are not described in detail here. Farmers who want more information about these exemptions should consult FLAG's publication, *Farmers' Guide to Farm Employees: Federal and Minnesota Labor and Employment Law for Small-Scale Family Farms*, which is available on FLAG's website at <http://www.flaginc.org/topics/pubs/MILEguide.pdf>.

Additionally, an entire farm operation will be exempt from Minnesota unemployment tax requirements unless it falls into one of the three categories discussed below.

Farmers who fall into any of the three categories listed below must register for the Minnesota Unemployment Insurance program, pay state unemployment taxes, and file quarterly reports. Work performed by workers 16 years old and younger and by officers or shareholders of a family farm corporation is not counted when determining if a farming operation fits within these categories.¹⁸⁵

For purposes of the state unemployment statutes, a "family farm corporation" means a farm founded for the purposes of farming and owning agricultural land, with at least one related member living on or actively operating the farm, and where the majority of the stockholders

are related to each other within the third degree of kindred.¹⁸⁶ Kindred includes the following family relationships: parents and children (relatives in the first degree of kindred); grandparents, grandchildren, brothers, and sisters (relatives in the second degree of kindred); uncles, aunts, nephews, nieces, great-grandchildren, and great-grandparents (relatives in the third degree of kindred).

- Farmers who must pay federal employment taxes must also pay Minnesota unemployment tax. Thus, a farm employer must pay both federal and state unemployment taxes if the farmer meets the federal criteria discussed above (that is, the farmer pays wages of \$20,000 or more to employees during any calendar quarter of the current or preceding calendar year, or the farmer employed ten or more farm workers during at least some part of a day during any 20 different weeks of a single calendar year—not including a farmer's spouse or children under age 21 as employees in either category);
- Farm employers who pay a total of \$20,000 or more in cash and non-cash (non-cash means, for example, providing meals and lodging) wages to farm workers in any calendar quarter must pay Minnesota unemployment tax; and
- Farm employers who pay four farm workers for at least 20 weeks within a calendar year must pay Minnesota unemployment tax.¹⁸⁷

Note that the last two categories apply to farmers who are not required to pay federal unemployment tax. Thus, even if farm employers are not required to pay federal unemployment tax, they may still be required to pay state unemployment tax if they fall within either of the last two categories.

If you fall within any of the three categories listed above, you must:

- **Register:** Employers must register with the Minnesota Unemployment Insurance Program (UIMN), listing wages paid to all employees.¹⁸⁸ Employers can register online at www.uimn.org or by phone at 651-296-6141.
- **Pay the unemployment tax:** The amount of the tax owed by the employer will generally be equal to the state's average cost rate and specified assessments and fees.¹⁸⁹

- **File quarterly reports:** Employers must file quarterly reports with UIMN and pay unemployment insurance within one month after the end of each calendar quarter (i.e., on or before April 30, July 31, October 31, and January 31).¹⁹⁰ The reports are used to determine entitlement to unemployment insurance benefits should an employee or former employee apply for them.¹⁹¹

13

Anti-Discrimination Laws Apply to Farmers

13-2 Federal Anti-Discrimination Laws

13-3 Minnesota Anti-Discrimination Laws

CHAPTER 13

Anti-Discrimination Laws Apply to Farmers

Farmers should be aware that they must generally comply with federal and state laws prohibiting discrimination on the basis of certain worker characteristics.

A full description of employment-related anti-discrimination laws is beyond the scope of this guide. The following is an extremely simplified overview of the anti-discrimination laws that may apply to farmers and farm workers. Note that every law discussed in this section makes it illegal to retaliate against employees who complain about discrimination.

Farms with fewer than 20 employees may be exempt from some of the anti-discrimination laws discussed below.

Gender Discrimination Is Always Prohibited

Farmers are never exempt from the federal Equal Pay Act or the Minnesota Equal Pay for Equal Work Law (discussed below). This means that all family farmers must always pay men and women the same wages for the same work. Put another way, farmers cannot pay women less than men for doing the same kind of job.

Male and female workers must always be treated equally with respect to pay.

Minnesota farmers are also never exempt from the general anti-discrimination requirements of the Minnesota Human Rights Act (discussed below).

Federal Anti-Discrimination Laws

Civil Rights Act

Title VII of the federal Civil Rights Act of 1964 makes it illegal for employers to discriminate against someone on the basis of race, color, religion, national origin, or sex.¹⁹²

This law also makes it illegal for employers to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.¹⁹³

Exemption: Employers are exempt if they had fewer than 15 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.¹⁹⁴

Equal Pay Act

The federal Equal Pay Act of 1963 (EPA) makes it illegal to pay different wages to men and women because of their sex if they perform equal work in the same workplace.¹⁹⁵

No Exemption: All employers must comply with the federal Equal Pay Act.

Age Discrimination in Employment Act

The federal Age Discrimination in Employment Act of 1967 (ADEA) protects applicants or employees who are age 40 or older from discrimination because of age.¹⁹⁶

Exemption: Employers are exempt from the ADEA if they had fewer than 20 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.¹⁹⁷

NOTE: Under the federal Fair Labor Standards Act, it is also illegal for farmers to seek to hire employees who are 20 years old or younger just so that the farmers can pay the lower youth wage (for the first 90 days of employment).¹⁹⁸

Americans with Disabilities Act

Title I of the federal Americans with Disabilities Act of 1990 (ADA) makes it illegal for an employer to discriminate against a person with a disability who is otherwise qualified for the job.¹⁹⁹ A person with a disability is

someone who is substantially limited in performing a major life activity, even when using a mitigating measure.²⁰⁰

The ADA further requires employers to provide “reasonable accommodations” for the employee’s disability, unless providing the reasonable accommodation would cause “undue hardship” to the employer’s business.²⁰¹

Exemption: Employers are exempt from Title I of the ADA if they had fewer than 15 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.²⁰²

Genetic Information Nondiscrimination Act

The federal Genetic Information Nondiscrimination Act of 2008 (GINA) makes it illegal for employers to discriminate against employees or applicants because of genetic information.²⁰³ Genetic information includes information about an individual’s genetic tests and the genetic tests of an individual’s family members, as well as information about any disease, disorder, or condition of an individual’s family members.

Exemption: Employers are exempt from GINA if they had fewer than 15 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.²⁰⁴

Minnesota Anti-Discrimination Laws

Minnesota Human Rights Act

The Minnesota Human Rights Act (MHRA) prohibits employers from refusing to hire, discharging, or establishing unfair terms, conditions, or privileges of employment for an employee due to an employee’s protected class status.²⁰⁵ Protected classes include:

- race,
- color,
- creed,
- religion,
- national origin,
- sex,

- marital status,
- status with regard to public assistance,
- membership or activity in a local commission,
- disability,
- sexual orientation, and
- age.

The MHRA further prohibits employers from requiring, seeking, or obtaining information that pertains to any protected characteristic listed above, or:

- advertising a job opening with preferences, quotas, limitations, or specifications regarding a protected characteristic;
- failing to make reasonable accommodation for an employee's disability, unless providing the reasonable accommodation would cause "undue hardship" to the employer's business; or
- failing to treat a woman affected by pregnancy or childbirth, or disabilities related to pregnancy or childbirth, the same as other persons with similar abilities or inabilities to work who are not so affected—including making reasonable accommodations.

Exemption: Employers are exempt from the MHRA requirement to make reasonable accommodation for an employee or applicant with a disability if they had fewer than 15 employees working 20 or more weeks in both the past and current calendar years.²⁰⁶

Note that this exemption only applies to the requirement to make accommodation for disability. **All employers must comply with the general anti-discrimination requirements of the MHRA.**

Minnesota Equal Pay for Equal Work Law

The Minnesota Equal Pay for Equal Work Law (MEPA) prohibits employers from paying men and women different wages based on their sex for equal work on jobs requiring equal skill, effort, and responsibility and performed under similar working conditions.²⁰⁷

14

Employer Posting Requirements

14-1 Federal Requirements

14-1 Minnesota Requirements

CHAPTER 14

Employer Posting Requirements

Both federal and Minnesota laws require employers to display certain employment-related posters describing employees' legal rights. These must be posted in a conspicuous place at the worksite. The federal and state governments will send you these posters for free, but you generally have to contact the appropriate government agency to request them.

Federal Requirements

Workplace posters specific to agricultural employers that are required under federal law are:

- *Employee Rights Under the Fair Labor Standards Act: Agricultural Employees*
- *Notice—Migrant and Seasonal Worker Protection Act*

Additional federal posters not specific to agricultural employers may also be required. A complete list of federal workplace posters and an explanation of who must post them is available online at <http://www.dol.gov/oasam/programs/osdbu/sbrefa/poster/matrix.htm>. Free posters can be obtained through the same website.

Farmers who want additional information regarding posting requirements may also call the U.S. Department of Labor toll-free at 1-866-487-2365.

Minnesota Requirements

Minnesota law requires employers to also display the following workplace posters:

- *Safety and Health Protection on the Job*
- *Minnesota Workers' Compensation—Employee Rights and Responsibilities*
- *Minnesota Employees, You Are Entitled To . . .* (describing employee rights under minimum wage and overtime laws)
- *Know Your Rights Under Minnesota and Federal Law Prohibiting Age Discrimination*
- *Unemployed?*

Free posters may be obtained through the Minnesota Department of Labor and Industry's website at <http://www.doli.state.mn.us/lis/Posters.asp> or by calling 1-800-342-5354. Farmers located in the Twin Cities metro area may call 651-284-5042 to obtain posters.

15

Employer Recordkeeping & Reporting Requirements

15-1 Hiring Records

15-4 Hours and Pay Records

15-4 Workplace Safety Records

15-5 Payroll Tax Records

15-5 Unemployment Tax Records

15-6 Workers' Compensation Insurance Records

CHAPTER 15

Employer Recordkeeping and Reporting Requirements

In addition to the various laws discussed in this guide concerning how employers must treat their employees, there are several federal and state requirements regarding the records that an employer must maintain and, in some cases, report to the proper federal or state agency. Some of the information in these records must be obtained from employees at the time of hiring. Other records should be created by the employer over the course of the employment relationship.

As a general rule, employers should keep all of the records described in this section for at least three years. Records must be kept in or near the premises where the employee works and be available for inspection.²⁰⁸ Farmers should create a file for each employee and keep the required information in the file.

Note that the information in this chapter is not a complete list of all the records a farm employer must keep. Additional records may be required.

Hiring Records

Federal Form I-9 — Identity and Employment Eligibility

When hiring someone to perform labor or services in return for wages or any other form of compensation, including food and lodging, the employer must have the new employee complete a federal Form I-9, Employment Eligibility Verification.²⁰⁹ This form, and copies of documents provided by the employee, establish that the employee is eligible for employment in the United States.

The employee section of Form I-9 must be completed, signed, and dated by no later than the employee's first day of work. The employer should

provide the employee with a blank copy of Form I-9 and Form I-9's complete instructions before the first work day.²¹⁰

The employer should then review the Form I-9 and originals of the required documents provided by the employee, as described below, return the original required documents to the employee, and complete the employer's section of the Form I-9 within three business days of the employee's first work day.

Note that employers may not require employees to provide a specific type of identification, such as a Social Security card. As long as the employee provides original, unexpired documentation of a type or types listed as acceptable on the Form I-9, that is sufficient. It is the employee's choice as to which type(s) of documents to provide. Depending on the type of documents the employee has, he or she may provide a single document that shows both identity and employment authorization ("List A")—such as a U.S. passport or permanent resident card—or two separate documents, one showing identity ("List B")—such as a driver's license or other government-issued photo I.D.— and one showing employment authorization ("List C")—such as a Social Security card or a certified copy of a U.S. birth certificate.

Employers must accept any document(s) presented by the employee that reasonably appear on their face to be genuine and to relate to the person presenting them.

Employers must maintain the completed and signed Form I-9 for three years from the date of hire or one year after the employee is no longer working, whichever is later.

Employers must handle all employees' Form I-9 documentation in the same manner, regardless of national origin or citizenship status. For example, while employers are required to review the employee's documentation, they are permitted, but not required, to keep photocopies of those documents; if an employer does choose to make copies of the employee's documents, the employer must do so for all employees.

Minnesota New Hire Report

Minnesota employers are required to submit a "new hire" report for any new employee to whom the employer anticipates paying earnings and any re-hired employee who returns after a break of 60 days or more.²¹¹

The new hire report must be submitted to the Minnesota New Hire Reporting Center within 20 days after the employee is hired or returns to work. The report may be submitted on paper or electronically.²¹²

Required information includes the names and contact information for both the employer and the new employee and the date the employee first performed services for pay.

Proof of Age for Children Under Age 18

Minnesota law requires that employers obtain proof of age for all children under 18 years of age who are not the farmers' own children. Farmers must maintain the proof of age record for the duration of the child's employment.²¹³ The federal Form I-9 and supporting documentation, discussed above, are sufficient as proof of age under this requirement. Also acceptable as proof of age are: a birth certificate, driver's license, or age certificate issued by the head of the child's school.

See FLAG's *Farmers' Guide to Farm Employees: Federal and Minnesota Labor and Employment Law for Small-Scale Family Farms*, available at <http://www.flaginc.org/topics/pubs/MILEguide.pdf>, for more information about child labor laws.

Income Tax Withholding Forms

Federal Requirements

Employers are required to have each new employee complete federal Form W-4 to declare the employee's marital status and income tax withholding allowances.²¹⁴ See Chapter 12 and Appendix C for more information about tax withholding. The form is available from the IRS website—www.irs.gov—or can be ordered by phone at 800-TAX-FORM (800-829-3676).

The information provided by the employee in Form W-4 is used when the employer calculates withholding from the employee's wages. If an employee fails to provide a properly completed Form W-4, the employer is required to withhold federal income taxes from his or her wages as if he or she were single and claiming no withholding allowances.

All records related to employment taxes, including Form W-4, should be maintained by the employer for at least four years.

See the IRS website for more information: <http://www.irs.gov>.

Minnesota Requirements

In most cases, the information in an employee's federal Form W-4 will also be sufficient for calculating Minnesota state tax withholding, and no separate state form will be required. However, if the employee wishes to use a more complex withholding arrangement, a separate Minnesota form (Form W-4MN) must be used.²¹⁵

See Chapter 12, Appendix C, and the Minnesota Department of Revenue website for more information: <http://www.revenue.state.mn.us>.

Hours and Pay Records

In addition to the information that an employer must obtain and record when a new employee is hired, there are other records that must be created and maintained throughout the course of a person's employment. Employers must record the employee's name, address, Social Security number, and occupation.²¹⁶ With this basic background information, employers must maintain complete records for each pay period showing the employee's rate of pay, deductions (such as taxes, lodging, and meals), and wages received.²¹⁷

Timesheets must be maintained showing the beginning and ending hours worked each day, including a.m. and p.m. designations, plus total hours worked each day and each workweek.²¹⁸ Employers must also keep a running record of any employer-provided meals accepted by the employee.²¹⁹

Workplace Safety Records

Employers with more than ten employees at any time in the previous year must keep detailed injury and illness logs.²²⁰ Recordkeeping forms are available from the OSHA website at <http://www.osha.gov/recordkeeping/RKforms.html>.

Although employers with ten or fewer employees are not required to keep injury and illness logs, they are still required to report to OSHA any workplace incident that results in a fatality or the hospitalization of three or more employees.

See Chapter 9 for more information about workplace safety rules.

Payroll Tax Records

A full description of the payroll tax records required for farm employers is beyond the scope of this guide. Required federal and state tax records vary from operation to operation. However, employers should at least keep records of the amounts withheld from employee paychecks for state and federal tax purposes. Employers should also keep copies of any tax forms submitted by the employer to the state or federal government with tax withholding payments.

For more information on payroll tax records, the following IRS and Minnesota resources may be helpful:

- Publication 51 (Circular A), Agricultural Employer's Tax Guide:
<http://www.irs.gov/publications/p51/index.html>.
- IRS Agriculture Tax Center web page collecting links to agricultural tax resources:
<http://www.irs.gov/businesses/small/article/0,,id=118249,00.html>.
- IRS Forms and Publications to Assist Farmers web page collecting links to resources useful to farmers:
<http://www.irs.gov/businesses/small/industries/article/0,,id=201608,00.html>.
- Minnesota Department of Revenue Income Tax Withholding Instruction Booklet and Tax Tables:
http://www.revenue.state.mn.us/Forms_and_Instructions/2012/wh_inst_12.pdf.

See Chapter 12 and Appendix C for more information about federal and state payroll taxes.

Unemployment Tax Records

Employers who are required to pay the federal unemployment tax (FUTA) must pay the tax quarterly. The required form is federal Form 940. Do not collect or deduct the FUTA tax from employee wages.

The FUTA tax applies to the first \$7,000 employers pay to each employee during a calendar year after subtracting any payments exempt from FUTA

tax. See the IRS website www.irs.gov/form940 for more information and to download Form 940.

Employers who are required to enroll in the Minnesota Unemployment Insurance Program and pay state unemployment taxes should refer to the program website at <http://www.uimn.org/uimn/employers/index.jsp> for more information about required filings. The program handbook is available at <http://www.uimn.org/uimn/employers/publications/emp-hbook/index.jsp>.

See Chapter 12 for more information about federal and state unemployment taxes.

Workers' Compensation Insurance Records

Employers who are required to obtain a workers' compensation insurance policy for employees should keep copies of insurance paperwork, records of policy premium payments, and any other paperwork received regarding workers' compensation. Information about Minnesota workers' compensation is available at the Minnesota Department of Labor and Industry (DLI) website at <http://www.dli.mn.gov/workcomp.asp>. The DLI Workers' Compensation hotline is 1-800-342-5354, press 2.

See Chapter 11 for more information about workers' compensation.

Appendices and Endnotes

- A Worksheet: 500 Man-Day Exemption
 - B Worksheet: Are Your Workers Performing
Agricultural Work?
 - C Tax Resources
- Endnotes

APPENDIX A

Worksheet: 500 Man-Day Exemption

The FLSA 500 Man-Day Exemption for Federal Minimum Wage and Federal Overtime

If you qualify for the 500 Man-Day Exemption, you do not have to:

- Pay federal minimum wage and federal overtime for “agricultural work” (see Appendix B for worksheet, “Are Your Workers Doing Agricultural Work?”) to determine whether your workers are doing agricultural work).

To qualify for the 500 Man-Day Exemption, you must show that you have not hired workers for more than 500 “man-days” of “agricultural work” during any “calendar quarter” of the **preceding** calendar year. That means you need information from the **previous year** to know whether you qualify for the exemption during **the current year**.

Man-Day Definition: Any day during which an employee performs *one hour* or more of **agricultural work** (again, see Appendix B for worksheet, “Are Your Workers Doing Agricultural Work?” to determine what counts as “agricultural work”).

- If an employee does only 59 minutes of agricultural labor during a particular day, that day is NOT a man-day and does NOT have to be counted toward the 500 man-day limit. If an employee does 60 minutes or more of agricultural work in one day, however, that day is a man-day and must be counted.
- Work done by immediate family (legal spouse, parents, and children) does not need to be counted toward your man-day totals.
- Work done by neighboring farmers on your farm does not count toward your man-day totals, as long as no compensation is paid

for the work and you also help the neighboring farmers on their farms.

You must track the hours your employees spend on agricultural work every day of the year to determine whether you qualify for the 500 Man-Day Exemption in the next year. To track hours, you should have your employees maintain a timesheet showing the times they worked each day. You can then use the timesheets to calculate the number of man-days used each week, month, and quarter. It is important to have records because, if challenged, you must be able to provide evidence showing you qualify for the exemption. In other words, the burden of proving the exemption is on you.

After you have a man-day count for each employee in each calendar quarter, add up the man-days to see whether your employees, as a group, worked 500 or fewer man-days during each calendar quarter of the preceding calendar year.

EXAMPLE #1: 500 Man-Day Exemption Chart for 2012

Showing Number of Days Employees Did One Hour or More of Agricultural Labor (Man-Days) During Calendar Quarters of the Preceding Year (2011)

Employee Name	# of Man-Days Worked in Calendar Quarter 1 <i>(Jan 1, 2011 – Mar 31, 2011)</i>	# of Man-Days Worked in Calendar Quarter 2 <i>(Apr 1, 2011 – Jun 30, 2011)</i>	# of Man-Days Worked in Calendar Quarter 3 <i>(Jul 1, 2011 – Sep 30, 2011)</i>	# of Man-Days Worked in Calendar Quarter 4 <i>(Oct 1, 2011 – Dec 31, 2011)</i>
Abby	52	103	240	45
Bart	12	95	151	0
Cecily	1	36	83	67
Dave	28	120	197	30
Totals:	93	354	671	142

The farmer in Example #1 above does **not** qualify for the 500 Man-Day exemption because her employees, as a group, worked more than 500 man-days in Calendar Quarter 3 of the preceding year (between July 1, 2011 and September 30, 2011). This farmer **must pay all employees at least the federal minimum wage** for all hours worked in all workweeks **in the current year**. This farmer **must also pay federal**

overtime for all workweeks, unless the federal Agricultural Overtime Exemption applies (this exemption applies where an employee did solely agricultural work during a particular workweek, see Chapter 4) or the intern qualifies as a volunteer, trainee, or independent contractor (see Chapter 2).

EXAMPLE #2: 500 Man-Day Exemption Chart for 2012

Showing Number of Days Employees Did One Hour or More of Agricultural Labor (Man-Days) During Calendar Quarters of the Preceding Year (2011)

Employee Name	# of Man Days Worked in Calendar Quarter 1 <i>(Jan 1, 2011 – Mar 31, 2011)</i>	# of Man Days Worked in Calendar Quarter 2 <i>(Apr 1, 2011 – Jun 30, 2011)</i>	# of Man Days Worked in Calendar Quarter 3 <i>(Jul 1, 2011 – Sep 30, 2011)</i>	# of Man Days Worked in Calendar Quarter 4 <i>(Oct 1, 2011 – Dec 31, 2011)</i>
Gabe	2	56	100	40
Helen	23	50	85	0
Kyle	0	28	135	52
Totals:	25	134	320	92

The farmer in Example #2 above **does** qualify for the 500 Man-Day exemption **during the calendar year 2012** because her employees, as a group, worked less than 500 man-days in each calendar quarter during the preceding calendar year (2011). This farmer **does not have to pay the federal minimum wage or federal overtime** for any week in 2012 as long as the workers are doing solely agricultural work. However, this farmer likely **does** have to pay the state minimum wage (\$5.25/hr) and state overtime (see Chapter 3, pages 3-6 and 3-7).

Chart for Recording Man-Days Worked By Employees

Farm Name: _____

Week Beginning: _____

Hours of Agricultural Labor Worked Per Day				
	Employee A	Employee B	Employee C	Employee D
Monday Date: _____				
Tuesday Date: _____				
Wednesday Date: _____				
Thursday Date: _____				
Friday Date: _____				
Saturday Date: _____				
Sunday Date: _____				

Hours of Agricultural Labor Worked Per Day				
	Employee A	Employee B	Employee C	Employee D
Monday Date: _____				
Tuesday Date: _____				
Wednesday Date: _____				
Thursday Date: _____				
Friday Date: _____				
Saturday Date: _____				
Sunday Date: _____				

APPENDIX B

Worksheet: Are Your Workers Performing Agricultural Work?

Under the FLSA and MFLSA (the federal and Minnesota labor and employment laws), “agricultural work” involves “farming and all its branches.” This means that “agricultural work” includes “the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities...[and] the raising of livestock, bees, fur-bearing animals, or poultry.” Agricultural work generally also includes certain activities done to support the farming operation, such as office work; equipment repair; preparing farm products for market; delivering the farm’s product to market or a storage facility; and selling the farm’s products at an on-farm store.

The exemptions discussed in this guide require that workers be performing “agricultural work” in order for the farmer to receive the benefit of the exemptions. **Farmers can use the exemptions only during workweeks when their workers did solely agricultural work for the entire workweek.** Essentially, unless workers do **only** agricultural work for an **entire workweek**, farmers must pay the federal minimum wage and federal overtime to the worker for that week.

Each workweek is evaluated separately for purposes of the exemptions. Also, each worker is evaluated separately. For example, if Worker A has done only agricultural work in Week 1, but did two hours of non-agricultural work one day in Week 2, you could be exempt from federal minimum wage and overtime requirements for Week 1, but you would have to pay federal minimum wage and overtime for Worker A for Week 2. In contrast, if Worker B did only agricultural work in Week 1 and Week 2, you could be exempt from federal minimum wage and overtime rules for Worker B for both Week 1 and Week 2.

Each workweek, ask the following questions for each worker to determine whether he or she performed non-agricultural work that would prevent you from taking advantage of the exemptions (500 Man-Day, Agricultural Overtime, Two Workers/\$386 Per Week), and keep track of the information for your records.

During any workweek, did your worker...

- Perform office work as a primary duty (not just to support the agricultural work of the farm)? Y N
- Maintain farm equipment as a primary duty (not just to support the agricultural work of the farm)? Y N
- Sell products off the farm (for example, selling at a farmers' market or staffing an off-farm farm stand)? Y N
- Help harvest crops for another farmer? Y N
- Work in a processing plant that handles produce or meat for another farmer (even if the plant is on my farm)? Y N
- Package crops or meat for another farmer (even if done on my farm premises)? Y N
- Load and transport another farmer's agricultural products to market or to storage (even if loading was done on my farm premises and the products were combined with my own)? Y N
- Perform housecleaning tasks? Y N
- Perform any other tasks that you believe do not fall within the federal definition of agricultural work? Y N

If you answered **YES** to **ANY** of these questions, you **CANNOT** use the exemptions for your worker during that particular workweek because your worker performed **NON**-agricultural work during that week.

If you cannot use the exemptions for a particular workweek because your worker performed more than one hour of non-agricultural work, you must pay your worker the federal minimum wage of \$7.25 per hour for all hours worked during that week. You must also pay the federal overtime rate for all hours worked over 40 hours during that week (except for fruit and vegetable transport hours, see below).

If you answered **NO** to **ALL** of these questions, you can generally assume your worker did only agricultural work during that week. That means you do not have to pay your worker the federal minimum wage or federal overtime. However, you will likely have to pay the state minimum wage (\$5.25/hr) and state overtime for hours worked in excess of 48 hours (unless the Two Worker/\$386 Per Week Exemption applies (see Chapter 4, pages 4-8 and 4-9)).

APPENDIX C

Tax Resources

General

As a general resource for employment tax requirements, farmers may wish to review the publication, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, a publication created through a partnership of several governmental agencies, including the Minnesota Department of Revenue, the Minnesota Unemployment Insurance Program at the Minnesota Department of Employment and Economic Development, and the Internal Revenue Service. The publication is available online at http://www.uimn.org/uimn/images/employment_tax.pdf.

Federal Taxes

Employer Identification Number: This number is requested through Form SS-4, *Application for Employer Identification Number* (available at the IRS website, <http://www.irs.gov/pub/irs-pdf/fss4.pdf>.) Farmers may also apply for an identification number by toll-free telephone at 1-800-829-4933.

IRS Form W-4 is available online at <http://www.irs.gov/pub/irs-pdf/fw4.pdf>.

In order to comply with all the withholding and payment requirements, farmers and their tax professionals should obtain copies of the following IRS publications: *Publication 51 (Circular A): Agricultural Employer's Tax Guide*; and *Publication 15 (Circular E): Employer's Tax Guide*. Both publications may be obtained through the Internal Revenue Service website, and are located at <http://www.irs.gov/publications/p51/index.html> and <http://www.irs.gov/publications/p15/index.html>.

If you must pay Social Security, Medicare, and federal income taxes because you do not meet the \$150 test or the \$2,500 test:

- Farmers must file IRS Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*, for each calendar year beginning with the first year that the farmer pays \$2,500 or more for farm work or employs a farmworker who meets the \$150 test described in Chapter 12, page 12-5 to 12-6.²²¹ Form 943 can be obtained through the IRS website and is available on the agency's Forms and Instructions page, located at <http://www.irs.gov/app/picklist/list/formsInstructions.html>.

If you must pay federal unemployment taxes:

- Farm employers who fail to meet either of the tests described in Chapter 12, page 12-6, are required to pay an unemployment tax and to file IRS Form 940, the *Employer's Annual Federal Unemployment (FUTA) Tax Return*.²²² Form 940 can be obtained through the IRS website and is available on the agency's Forms and Instructions page, located at <http://www.irs.gov/app/picklist/list/formsInstructions.html>.

State Taxes

Employer Identification Number: The form ABR is available through the Minnesota Department of Revenue's website at http://www.revenue.state.mn.us/Forms_and_Instructions/abr.pdf or by calling 651-282-5225.

Farmers who have withholding questions can call the state Department of Revenue's withholding tax hotline number at 651-282-9999 in the metro area, or 1-800-657-3594 in Greater Minnesota, or send those questions by e-mail to: withholding.tax@state.mn.us. Information about depositing state income tax withholdings can also be obtained through the publication, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, available online at http://www.uimn.org/uimn/images/employment_tax.pdf.²²³

For more information about the reporting requirements for unemployment insurance and how an employer's tax rate is calculated,

farmers may wish to call the Minnesota Unemployment Insurance Program at 651-296-6141.

ENDNOTES

¹ 29 U.S.C. § 203(e) (2011).

² 29 U.S.C. § 203(g) (2011). See also, *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 325-26 (1992) (holding that the broad definition of “employ” in the federal Fair Labor Standards Act (FLSA) gives the Act wide coverage); Minn. Stat. § 177.23, subds. 5, 7 (2011) (applying a similarly broad definition of “employee” in the Minnesota Fair Labor Standards Act).

³ See *Barrentine v. Arkansas-Best Freight Sys.*, 450 U.S. 728, 740 (1981) (affirming that an employee cannot waive federal Fair Labor Standards Act benefits). See also Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 8 (June 2011) available at http://www.uimn.org/uimn/images/employment_tax.pdf (noting that the state agencies responsible for enforcing workplace laws will look beyond agreements designating an individual as a non-employee and will instead determine employee status based on the facts of each case).

⁴ Each of the laws discussed in this guide may have slightly different definitions for the terms “employee,” “volunteer,” “trainee,” and “independent contractor.” Generally speaking, however, the agencies that enforce the laws use similar criteria to determine if an individual has been misclassified, and will typically arrive at the same determination about employee status. See, for example, Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 8 (June 2011) available at http://www.uimn.org/uimn/images/employment_tax.pdf (stating that each agency follows similar criteria and will usually make identical decisions with respect to employee status).

⁵ At the same time, farmers should understand that there is a very limited possibility that an intern who is considered an employee under one law, could be classified otherwise under a different law that more narrowly defines the term “employee.”

The definitions and criteria described in this chapter are used to determine employee status under the federal Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act. These laws very broadly define the term “employee.” See 29 U.S.C. § 203(e)(1) (2011) (defining an employee for purposes of the federal Fair Labor Standards Act (FLSA) as “any individual employed by an employer”); 29 U.S.C. § 203(g) (2011) (stating the term “employ” under the FLSA includes to “suffer or permit to work”). The Migrant and Seasonal Agricultural Worker Protection Act explicitly adopts the FLSA definition of “employ.” See 29 U.S.C. § 1802(5) (2011) (adopting meaning of “employee” given under section 3(g) of the FLSA). Other laws discussed in this guide that also

use similarly broad definitions of the term employee but do not expressly adopt the FLSA definition include the Minnesota Fair Labor Standards Act and the federal and Minnesota Occupational Safety and Health Acts. See Minn. Stat. § 177.23, subds. 5, 7 (2011) (defining an employee for purposes of the Minnesota Fair Labor Standards Act as “any individual employed by an employer” and stating “employ” means to “permit to work”); 29 U.S.C. § 652(6) (2011) (under the federal Occupational Safety and Health Act, an employee is defined as “an employee of an employer who is employed in a business of his employer which affects commerce”); Minn. Stat. § 182.651, subd. 9 (2011) (the Minnesota Occupational Safety and Health Act defines employee as “any person suffered or permitted to work by an employer”).

Thus, it is possible that someone classified as an employee under these two acts might not be classified as an employee under another law. Regardless of the precise definition used, however, the agencies enforcing labor and employment laws typically analyze the same factors to determine employee status and will come to the same determination on this issue. The courts, in turn, generally defer to the enforcing agency’s determination. See, for example, *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (holding that “the rulings, interpretations and opinions” of the Wage and Hour Division of the Department of Labor, “while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance.”); *Gonzales v. Oregon*, 546 U.S. 243, 268-269 (2006) (holding that under *Skidmore*, the Court will “follow an agency’s rule to the extent it is persuasive”).

⁶ *Tony & Susan Alamo Found. v. Sec’y of Labor*, 471 U.S. 290, 301, 303 n.25 (1985).

⁷ *Tony & Susan Alamo Found. v. Sec’y of Labor*, 471 U.S. 290, 301-303 (1985).

⁸ See U.S. Department of Labor, Wage & Hour Division, *Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act* (April 2010), available at <http://www.dol.gov/whd/regs/compliance/whdfs71.htm>; see also U.S. Department of Labor, Wage & Hour Division, Opinion Letter FLSA2004-5NA, *FLSA status of student interns* (May 17, 2004), available at http://www.dol.gov/whd/opinion/FLSANA/2004/2004_05_17_05FLSA_NA_internship.pdf.

⁹ Similar factors control whether an individual is classified as a trainee under other laws. See *Judd v. Sanatorium Comm’n of Hennepin County*, 35 N.W.2d 430, 433-434 (Minn. 1948) (holding an intern was an employee for purposes of the Minnesota Workers’ Compensation Act because, although she was working primarily to gain further experience and practical knowledge, “the sanatorium was still receiving the benefit of her labor in connection with the preparation of food for its patients at the time of her injury”); *Oelrich v. Schlagels, Inc.*, 426 N.W.2d 430, 432-434 (Minn. 1988) (holding an individual should be classified as

an employee for purposes of the Minnesota Workers' Compensation Act because, even though the individual did not receive any wage compensation or room and board from his "trainer," the business clearly obtained a benefit from his training); *Johnson City Medical Ctr. v. United States*, 999 F.2d 973 (6th Cir. 1993) (holding where student nurses did not receive academic credit for their work, earnings were not nominal, and services were unconnected with an educational plan, hospital was required to pay FICA taxes upon wages paid to nursing students); see also Rev. Rul. 68-541, 1968-2 C.B. 456 (finding compensated high school trainees gaining practical knowledge and experience in occupational training programs to be employees for purposes of Social Security and Medicare taxes).

¹⁰ See U.S. Department of Labor, Wage & Hour Division, *Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act* (April 2010), available at <http://www.dol.gov/whd/regs/compliance/whdfs71.htm>; see also U.S. Department of Labor, Wage & Hour Division, Opinion Letter FLSA2004-5NA, *FLSA status of student interns* (May 17, 2004), available at http://www.dol.gov/whd/opinion/FLSANA/2004/2004_05_17_05FLSA_NA_internship.pdf.

¹¹ Federal law also provides for a student-learner exemption which permits an employer to pay an employee receiving school credit for work at 85 percent of the minimum wage with prior authorization from the Department of Labor's Wage and Hour Division. See 29 U.S.C. § 214 (2011); 29 C.F.R. §§ 520.200-520.508 (2011). However, the Wage and Hour Division will not authorize the payment of less than minimum wage to student workers unless the employer meets several requirements, including: (1) employment of student workers "will not create a substantial probability of reducing the full-time employment opportunities" of other workers; and (2) "[t]he occupational needs of the community or industry warrant the training of student-learners." See 29 U.S.C. § 214(b) (2011); 29 C.F.R. § 520.503 (2011). Because farm interns do hands-on work that would otherwise be performed by regular employees, the student-learner exception is unlikely to be a good fit for farm interns. In addition, were farmers to advertise their internships as paying the federal minimum wage, the positions would likely fill quickly, given the current popularity of farm internship programs.

In addition to the federal "trainee" and "student-learner" classifications, Minnesota allows for payment of less than the minimum wage to participants in state-certified apprenticeship programs. However, agricultural occupations have not yet been treated as apprenticeable occupations in Minnesota. Thus, farm interns likely will not qualify as apprentices under the provisions of these state-sanctioned programs at this point. See Johnnie Burns, Director of Apprenticeship at Minnesota Department of Labor and Industry, *List of occupations with apprenticeship training programs*, available at <http://www.doli.state.mn.us/APPR/PDF/apprtrn.pdf> (last visited Nov. 15, 2012).

The Minnesota Department of Labor and Industry (MNDOLI) is the State Apprenticeship Agency in Minnesota.

¹² See *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 751 (1989).

¹³ See *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 751-752 (1989). See also *Ernst v. Luxco, Inc.*, 596 F.3d 1000, 1003-1004 (8th Cir. 2010).

¹⁴ 29 U.S.C. §§ 201-219 (2011); 29 C.F.R. parts 510-794 (2011).

¹⁵ Minn. Stat. Chap. 177 (2011).

¹⁶ The FLSA and MFLSA also regulate the employment of minors, a subject beyond the scope of this guide. For more information on federal and Minnesota laws regulating the employment of minors, please see FLAG's publication: *Farmers' Guide to Farm Employees: Federal and Minnesota Labor and Employment Law for Small-Scale Family Farms*, available at <http://www.flaginc.org/topics/pubs/MILEguide.pdf>.

¹⁷ The Wage and Hour Division of the U.S. Department of Labor is responsible for enforcing the federal Fair Labor Standards Act (FLSA). According to the Wage and Hour Division, "[v]irtually all employees engaged in agriculture are covered by the [FLSA]" U. S. Department of Labor, Wage & Hour Division, *Fact Sheet #12: Agricultural Employers Under the Fair Labor Standards Act (FLSA)* (July 2008), <http://www.dol.gov/whd/regs/compliance/whdfs12.htm>. Family farm workers working in Minnesota are also generally covered by the Minnesota FLSA (MFLSA). The Minnesota Department of Labor and Industry's Labor Standards Unit is responsible for enforcing the MFLSA.

¹⁸ 29 U.S.C. § 206(a)(1)(C) (2011).

¹⁹ 29 U.S.C. § 206(g) (2011).

²⁰ 29 U.S.C. § 214(b)(2) (2011); 29 C.F.R. §§ 520.200-520.508 (2011). As noted earlier, DOL will not authorize the payment of less than minimum wage to student workers unless the employer meets several requirements, including: (1) employment of student workers "will not create a substantial probability of reducing the full-time employment opportunities" of other workers; and (2) "[t]he occupational needs of the community or industry warrant the training of student-learners." See 29 U.S.C. § 214(b) (2011); 29 C.F.R. § 520.503 (2011).

²¹ Certificates can be obtained from the Department of Labor's national certification team in Chicago, which can be contacted by telephone at 312-596-7195.

²² Minn. Stat. § 177.24, subd. 1(a)(2), (b) (2011). The current minimum wage rates can be obtained through the Minnesota Department of Labor and Industry and are listed on its website at <http://www.doli.state.mn.us/ls/FedMinWage.asp>. Note that federal law requires employers with annual gross sales of \$500,000 or more to pay the federal minimum wage of \$7.25 per hour. See 29 U.S.C. § 203(s) (2011); 29 U.S.C. § 206(a) (2011). Thus, all farmers grossing \$500,000 or more

should plan to pay the federal minimum wage unless they fall within a specific exemption to the federal minimum wage requirements.

²³ Minnesota Department of Labor and Industry, *How federal minimum-wage increase affects Minnesota businesses*, available at <http://www.doli.state.mn.us/lis/FedMinWage.asp> (last visited Nov. 15, 2012).

²⁴ 29 U.S.C. § 207(a)(1) (2011).

²⁵ 29 U.S.C. § 207(a)(1); Minn. Stat. § 177.25, subd. 1 (2011).

²⁶ Minn. Stat. § 177.25, subd. 1 (2011).

²⁷ 29 C.F.R. §§ 785.7, 785.12 (2011); Minn. R. 5200.0120 (2011).

²⁸ Minn. R. 5200.0120, subp. 1 (2011). Note that under federal law, there are circumstances under which training time does not have to be paid. Farmers should, however, generally follow the more protective state rule that requires payment for training time.

²⁹ *Abbey v. United States*, 82 Fed. Cl. 722, 727 (Fed. Cl. 2008); see also *Reich v. Stewart*, 121 F.3d 400, 407 (8th Cir. 1997) (holding an employer must compensate employees for off-the-clock work if the employer knew of the hours being worked “or had the opportunity through reasonable diligence to acquire [that] knowledge”); *Rudolph v. Metro. Airports Comm’n*, 103 F.3d 677, 680 (8th Cir. 1996) (holding that to be entitled to back-pay for off-duty hours worked, employees must show a reasonable employer would know it had provided an unreasonably short amount of time to perform assigned tasks).

³⁰ 29 C.F.R. § 785.23 (2011); *Rudolph v. Metro. Airports Comm’n*, 103 F.3d 677, 680, 684 (8th Cir. 1996) (holding that agreement between the employees and the defendant employer was reasonable, despite the fact that the employees claimed to have regularly worked in excess of the time for which they were paid; the court reasoned that the employer was entitled to rely on the employees to follow the clear terms of the agreement by not performing additional work without prior approval); *Gaby v. Omaha Home for Boys*, 140 F.3d 1184, 1187-1188 (8th Cir. 1998).

³¹ Farmers exempt from the FLSA but covered by the MFLSA may, as a matter of good practice, want to use such agreements even though the use of these agreements has not been considered under the MFLSA and there is no MFLSA provision specifically sanctioning their use.

³² Under federal and Minnesota law, an employer can require an employee to stay on the work premises during the meal break provided that the employee is completely free from work duties during the meal. 29 C.F.R. § 785.19 (2011); Minn. R. 5200.0120, subp. 4 (2011).

³³ Minn. R. 5200.0120, subp. 1 (2011).

³⁴ 29 C.F.R. § 778.105 (2011); Minn. R. 5200.0170, subp. 1 (2011).

³⁵ 29 C.F.R. § 778.105 (2011); Minn. R. 5200.0170, subp. 1 (2011).

³⁶ There are additional exemptions that apply to agricultural employees but are not discussed here because they are unlikely to apply to farm interns. More information about these exemptions can be found on the U.S. Department of Labor's website at <http://www.dol.gov/whd/regs/compliance/whdfs12.htm>.

Note that federal and state laws may also have exemptions for a farmer's immediate family members. To the extent they might be relevant to labor and employment laws related to farm internships, those exemptions are mentioned in this guide; they are described in more detail in FLAG's publication *Farmers' Guide to Farm Employees: Federal and Minnesota Labor and Employment Law for Small-Scale Family Farms*, available at <http://www.flaginc.org/topics/pubs/MILEguide.pdf>.

³⁷ 29 C.F.R. § 780.305 (2011) (noting that 500 man-days generally equals seven full-time employees); see also Elizabeth R. Springsteen, *Agricultural Labor: An Employer's Obligations and Responsibilities*, The National Agricultural Law Center, at 19 (2009), available at http://www.nationalaglawcenter.org/assets/articles/springsteen_aglabor-ppt.pdf.

³⁸ 29 U.S.C. § 213(a)(6), (g) (2011).

³⁹ 29 C.F.R. § 780.305 (2011) (noting that 500 man-days generally equals seven full-time employees); see also Elizabeth R. Springsteen, *Agricultural Labor: An Employer's Obligations and Responsibilities*, The National Agricultural Law Center, at 19 (2009), available at http://www.nationalaglawcenter.org/assets/articles/springsteen_aglabor-ppt.pdf.

⁴⁰ See 29 U.S.C. § 203(e)(3), (u) (2011); 29 C.F.R. § 780.301 (2011). This holds true regardless of the form of business organization (for example, sole proprietorship, partnership, or corporation).

⁴¹ 29 U.S.C. § 203(u) (2011); 29 C.F.R. § 780.301(a) (2011).

⁴² 29 C.F.R. § 780.304(b) (2011).

⁴³ 29 C.F.R. § 780.304(b) (2011).

⁴⁴ 29 C.F.R. § 780.306 (2011).

⁴⁵ 29 C.F.R. § 780.306 (2011).

⁴⁶ See 29 U.S.C. § 203(e)(3), (u) (2011); 29 C.F.R. § 780.301 (2011). This holds true regardless of the form of business organization (for example, sole proprietorship, partnership, or corporation).

⁴⁷ See 29 C.F.R. § 780.308 (2011).

⁴⁸ 29 C.F.R. § 780.332 (2011).

⁴⁹ 29 C.F.R. § 780.332 (2011).

⁵⁰ 29 C.F.R. § 780.301 (2011). More information about the hand harvest laborer exemption can be found on the U.S. Department of Labor's website at <http://www.dol.gov/whd/regs/compliance/whdfs12.pdf>.

⁵¹ 29 C.F.R. § 780.310 (2011).

⁵² 29 U.S.C. § 213(a)(6)(C) (2011). The federal regulations interpreting this exemption state that "[t]he fact that a worker may live on the farm where the operations are performed would not be a reason for disqualification." 29 C.F.R. § 780.315(b) (2011). Thus, if a farmer's extended family lived on the farm or with the farmer, the exemption could still apply to them.

⁵³ For purposes of this exemption, a week is considered to be "a fixed and regularly recurring period of 168 hours consisting of seven consecutive 24-hour periods during which the employee worked at least 1 'man-day.'" All agricultural work for all employers in the previous year is counted toward the 13-week total. Consequently, it is the total of all weeks of agricultural employment by the employee for all employers in the preceding calendar year that determines whether he meets the 13-week test, not just the number of weeks he worked for a specific farmer. If a farmer claims this exemption, it is the farmer's responsibility to "obtain a statement from the employee showing the number of weeks he was employed in agriculture during the preceding calendar year." 29 C.F.R. § 780.316 (2011).

⁵⁴ The term "hand harvest laborer" means a farm worker who harvests crops by hand or with hand tools. It does not apply to workers who use electrically powered tools. The term only applies to workers who harvest soil-grown crops. Among other things, these crops include grains, fruits, and vegetables. "Hand-harvesting" does not include any work involving animals. In addition, performance by the hand harvester of any non-harvesting operation in the same workweek makes the exemption inapplicable. For example, workers who wrapped tomatoes in a packing shed would not qualify for the exemption because the wrapping is a non-harvesting operation. Likewise, workers who hand-picked out small undesirable fruit before harvesting to ensure a better crop would not qualify for the exemption because that work would be considered a "preharvest culling operation performed as a part of the cultivation and growing operations not harvesting." 29 C.F.R. § 780.312 (2011).

⁵⁵ The exemption does not apply in any workweek in which the employee is compensated on any other basis. For example, if an employee is compensated on an hourly rate basis for part of the week and on a piece rate basis for part of the week, the exemption would not be available. 29 C.F.R. § 780.313 (2011). Another criteria for the exemption to apply is that the hand harvest operation "has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment." This means that "agricultural employers and employees and other individuals in the region of employment who are familiar with farming operations and practices in the region and the method of

compensation utilized in such operations and practices” would recognize a piece rate method of payment as being customary. 29 C.F.R. § 780.314 (2011).

Note also that non-local minors, 16 years of age or under, who are hand harvesters, 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 age 16 are also exempt from the federal minimum wage and overtime rules. 29 C.F.R. § 780.318 (2011).

⁵⁶ 29 U.S.C. § 213(a)(6) (2011).

⁵⁷ 29 C.F.R. § 780.11 (2011).

⁵⁸ See 29 U.S.C. § 203(f) (2011); 29 C.F.R. § 780.105 (2011). Employees whose work is classified as “primary agriculture” are considered to be doing agricultural work regardless of why or where the work is done (for example, agricultural production that takes place in a city is still considered agricultural work). 29 C.F.R. § 780.106 (2011).

⁵⁹ See 29 U.S.C. § 203(f) (2011); 29 C.F.R. § 780.105 (2011); *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, 762-763 (1949); *Holly Farms Corp. v. NLRB*, 517 U.S. 392, 397-398 (1996).

⁶⁰ 29 C.F.R. § 780.129 (2011).

⁶¹ 29 C.F.R. § 780.132 (2011).

⁶² 29 C.F.R. § 780.158 (2011).

⁶³ 29 C.F.R. § 780.158 (2011).

⁶⁴ 29 C.F.R. § 780.134 (2011).

⁶⁵ 29 U.S.C. § 203(f) (2011); 29 C.F.R. §§ 780.150-780.155 (2011).

⁶⁶ 29 C.F.R. § 780.150 (2011).

⁶⁷ 29 C.F.R. § 780.158 (2011).

⁶⁸ C.F.R. §§ 780.137, 780.141 (2011). Note that a separate federal exemption from overtime provisions exists for workers engaged in the transportation of fruits or vegetables from the farm “to a place of first processing or first marketing within the same State.” This exemption might apply in cases where interns are delivering raw, unprocessed produce of someone other than the farmer. 29 U.S.C. § 213(b)(16) (2011). It is permissible to combine exempt work under one exemption with exempt work under another exemption. Where the scope of the exemptions is not the same, however, the exemption with a more limited scope applies to the employee. 29 C.F.R. § 780.12 (2011). Thus, if an intern did some agricultural work and did deliveries for the employing farmer that included produce from another farm, the intern would need to be paid the minimum wage for that week but would not receive overtime because the fruit and vegetable transport exemption would apply for that workweek.

⁶⁹ 29 C.F.R. § 780.332 (2011). Harvesting a crop fits within the definition of primary agriculture and therefore is considered agricultural work regardless of where the activities are performed. 29 C.F.R. § 780.106 (2011).

⁷⁰ 29 U.S.C. § 213(b)(12) (2011).

⁷¹ Minn. Stat. § 177.23, subd. 7(1) (2011).

⁷² A salary is defined as a guaranteed predetermined weekly wage which does not change, even if work is only available for a portion of the week. See Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 60 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf. See also *In re: the Order to Comply: Labor Law Violation of Daley Farm of Lewiston*, No. A11-1788, 2012 Minn. App. LEXIS 65 (July 9, 2012) (holding that a “salary” must be a “predetermined wage for each workweek,” and not an hourly rate).

⁷³ The \$386.00 figure is derived from the following language in the statute: “any individual employed in agriculture on a farming unit or operation who is paid a salary greater than the individual would be paid if the individual worked 48 hours at the state minimum wage [\$252.00] plus 17 hours at 1-1/2 times the state minimum wage per week [\$7.875 x 17 = \$133.88].” $\$252.00 + \$133.88 = \$385.88$. Rounding up to the nearest dollar, family farm workers should be paid a salary of at least \$386.00 per week (based on the minimum wage rate of \$5.25 that applies to small-scale employers with less than \$500,000 in gross annual sales) to be excluded from the definition of “employee.” Minn. Stat. § 177.23, subd. 7 (2011).

⁷⁴ Farmers should be aware that, based on the language in the statute, there appear to be two exemptions applicable to interns: (1) an exemption for one or two designated individuals doing agricultural work provided those individuals are paid a salary, regardless of the amount of the salary; and (2) an exemption for an unlimited number of individuals doing agricultural work, provided they are paid a salary of at least \$386.00 per week. Based on conversations with Department of Labor and Industry personnel, it is our understanding that the Department reads these two separate provisions of the statute together as one exemption. We have described the exemptions consistent with the Department’s more restrictive interpretation because it is the agency tasked with enforcing those provisions and would do so based on its reading of them. That does not mean, however, that the Department’s interpretation of the language is the only possible interpretation. The statute can reasonably be read to contain two separate exemptions as described above.

Notably, in the two court cases to consider the MFLSA agricultural exemptions from Minnesota minimum wage and overtime requirements, the courts considered the salary language as a free-standing exemption instead of reading the two provisions jointly as one exemption. Consequently, it would appear the courts may read the statute differently than the DLI does. On the other hand,

if this point were contested by the DLI, a court may defer to the DLI's interpretation of the exemption language since it is the agency tasked with enforcing the statutory language. See *In re: the Order to Comply: Labor Law Violation of Daley Farm of Lewiston*, No. A11-1788, 2012 Minn. App. LEXIS 65 (July 9, 2012); *Wenigar v. Johnson*, 712 N.W.2d 190, 204-205 (Minn. Ct. App. 2006).

⁷⁵ Minn. R. 5200.0260 (2011).

⁷⁶ Minn. R. 5200.0260 (2011).

⁷⁷ See NRCS, *Interim Conservation Practice Standard: Seasonal High Tunnel System for Crops* (Oct. 2010), available at http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1046313.pdf (clarifying that “[t]he [seasonal high tunnel] practice does not include greenhouses”).

⁷⁸ 29 U.S.C. § 203(m) (2011); 29 C.F.R. § 531.36(a) (2011).

⁷⁹ 29 U.S.C. § 203(m) (2011); 29 C.F.R. §§ 531.3(a), (b) (2011). Federal law allows farmers to subtract the “reasonable cost” of providing meals and lodging from intern wages if the farmer customarily furnishes employees with these items. The federal regulations define “reasonable cost” to mean no more than “the actual cost to the employer” of meals or lodging. See *Tony & Susan Alamo Found. v. Sec’y of Labor*, 471 U.S. 290, 303-304 (1985) (reiterating that FLSA does not require payment of cash wages, as the reasonable cost of board and lodging is included in the definition of “wage”); see also *Donovan v. Williams Chem. Co.*, 682 F.2d 185, 189 (8th Cir. 1982) (reviewing trial court’s decision to apply a credit in favor of employer for cost of lodging, to be applied against employee’s minimum wage and overtime claims).

⁸⁰ 29 C.F.R. § 531.36(a) (2011).

⁸¹ 29 C.F.R. § 516.27(a) (2011).

⁸² 29 C.F.R. § 516.27(a)(1) (2011).

⁸³ 29 C.F.R. § 516.27(a) (2011).

⁸⁴ 29 C.F.R. § 516.27 (2011).

⁸⁵ 29 C.F.R. § 516.5 (2011).

⁸⁶ 29 C.F.R. § 531.36(a) (2011).

⁸⁷ Minn. Stat. § 177.28, subd. 3(2) (2011); Minn. R. 5200.0060; 5200.0070; 5200.0160 (2011).

⁸⁸ Minn. Stat. §§ 177.28, 177.23 (2011).

⁸⁹ This figure represents 60 percent of the adult minimum wage rate applicable to a small employer (\$5.25) for one hour of work per meal. Minn. R. 5200.0060 (2011). A meal is defined as “an adequate portion of a variety of wholesome, nutritious foods and shall include at least one food from each of the following

four groups: fruits or vegetables; cereals, bread, or potatoes; eggs, meat, or fish; milk, tea, or coffee; except that for breakfast, eggs, meat, or fish may be omitted if both cereal or bread are offered.” Minn. R. 5200.0060 (2011).

⁹⁰ Minn. R. 5200.0060 (2011).

⁹¹ Minn. R. 5200.0070 (2011). The maximum lodging allowance for seasonal employment is 75 percent of the adult minimum wage rate applicable to small employers for one hour of work (\$5.25), so farmers get a credit of \$3.93 for each day of lodging provided to an employee.

⁹² Minn. R. 5200.0160 (2011).

⁹³ Minn. Stat. § 181.101 (2011).

⁹⁴ Minn. Stat. § 181.101 (2011).

⁹⁵ Minn. Stat. § 181.13 (2011).

⁹⁶ Minn. Stat. § 181.14 (2011).

⁹⁷ Minn. Stat. § 181.14 (2011).

⁹⁸ Minn. Stat. § 177.23, subd. 4 (2011).

⁹⁹ Minn. Stat. § 181.032 (2011); see also Minnesota Department of Labor and Industry, *Labor Standards—Payment for hours worked*, available at <http://www.dli.mn.gov/LS/Pay4Hours.asp> (last visited Nov. 19, 2012).

¹⁰⁰ Minn. Stat. § 181.032 (2011).

¹⁰¹ Federal law does require that rest breaks of five to twenty minutes be compensated if such breaks are given. See 29 C.F.R. § 785.18 (2011).

¹⁰² Minn. Stat. §§ 177.253, 177.254 (2011).

¹⁰³ Minn. Stat. § 177.254, subd. 1 (2011).

¹⁰⁴ 29 C.F.R. § 785.19 (2011); Minn. R. 5200.0120, subd. 4 (2011).

¹⁰⁵ See, for example, *Rios v. Jennie-O Turkey Store, Inc.*, 793 N.W.2d 309 (Minn. App. 2011) (upholding the district court’s determination that “there is no bright-line requirement for a 30-minute meal under Minnesota law”); but see, *Frank v. Gold’n Plump Poultry, Inc.*, 2007 U.S. Dist. LEXIS 71179, 25 (D. Minn. 2007) (disagreeing with the district court’s holding in *Rios* and finding that the regulation “was intended to *require* employers to provide an uninterrupted, thirty-minute meal break unless the employer can demonstrate that ‘special conditions’ justify a shorter period”).

¹⁰⁶ 29 C.F.R. § 785.19 (2011).

¹⁰⁷ Minn. Stat. § 177.254, subd. 2 (2011); Minn. R. 5200.0120, subp. 4 (2011).

¹⁰⁸ Minn. Stat. § 177.253 (2011).

¹⁰⁹ Minn. R. 5200.0120, subp. 1 (2011).

¹¹⁰ Federal law requires that employees be paid for rest breaks “of short duration, running from 5 minutes to about 20 minutes.” 29 C.F.R. § 785.18 (2011).

¹¹¹ 29 U.S.C. §§ 1821-1823 (2011). The MSPA also regulates farm labor contractors who furnish migrant agricultural workers to employers. Those provisions of the MSPA are beyond the scope of this guide and will not be addressed here.

¹¹² 29 C.F.R. § 500.20(p) (2011). H-2A temporary foreign workers (that is, nonimmigrant aliens authorized to work in agricultural employment in the United States for a specified time period, normally less than one year) are excluded from the definition of “migrant” workers.

¹¹³ See, for example, *Caro-Galvan v. Curtis Richardson, Inc.*, 993 F.2d 1500, 1511-1512 (11th Cir. 1993) (holding that workers were protected by the MSPA where: (1) housing was provided to workers and not provided to the general public; (2) termination of employment allowed eviction; and (3) there were few other inexpensive housing options available nearby).

¹¹⁴ 29 C.F.R. § 500.20(r) (2011). Workers doing certain types of processing and who are transported by a day-haul operation are also considered seasonal workers.

¹¹⁵ Note that Minnesota state law also contains provisions that apply to certain employers of migrant workers. The provisions apply only to “a processor of fruits or vegetables that employs, either directly or indirectly through a recruiter, more than 30 migrant workers per day for more than seven days in any calendar year.” Minn. Stat. § 181.85, subd. 4 (2011). Under state law, a migrant worker means “an individual at least 17 years of age who travels more than 100 miles to Minnesota from some other state to perform seasonal agricultural labor in Minnesota.” Minn. Stat. § 181.85, subd. 3 (2011). Based on these definitions, it seems unlikely that the state law provisions would apply to farm internship programs. For that reason, we have not included an analysis of these provisions here.

¹¹⁶ 29 U.S.C. § 1822 (2011).

¹¹⁷ 29 U.S.C. § 1821(d) (2011).

¹¹⁸ 29 U.S.C. § 1821(a) (2011).

¹¹⁹ Written disclosures must also be provided at any other time an employee requests a copy, not just at the time of recruitment. 29 U.S.C. § 1821(b) (2011).

¹²⁰ 29 U.S.C. § 1821(g) (2011).

¹²¹ 29 U.S.C. § 1821(a)(1)-(7) (2011).

¹²² Required workers' compensation information must include information regarding “. . . whether State workers' compensation insurance is provided, and, if so, the name of the State workers' compensation insurance carrier, the name of the policyholder of such insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given.” This requirement is satisfied if the employer gives the worker a photocopy of the state-mandated workers' compensation

notice for the state in which the worker is employed. See 29 U.S.C. § 1821(a)(8) (2011). In Minnesota, these notices can be obtained from the Department of Labor and Industry by calling 800-342-5354.

¹²³ 29 U.S.C. §§ 1803(a)(1), (2) (2011).

¹²⁴ “Recruit,” as that term is used in the MSPA, includes “pre-employment discussion between the recruiter and the migrant worker.” H.R. Rep. No. 97-885, at 13 (1982), reprinted in 1982 U.S.C.C.A.N. 4547, 4559.

¹²⁵ 29 U.S.C. § 1803(a)(1) (2011); 29 U.S.C. § 1802(6) (2011). These activities must be performed exclusively for the farmer’s own operation for the exemption to apply.

¹²⁶ The Wage & Hour Division (WHD) of the Employment Standards Administration (ESA) of the U.S. Department of Labor has shared authority with OSHA over two standards: the Field Sanitation standard (1928.110), and the Temporary Labor Camp standard (1910.142). OSHA, *OSHA’s Field Operations Manual*, at 10-6 (Nov. 2009), available at http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-148.pdf.

¹²⁷ 29 U.S.C. § 654. The Act provides that each employer: “(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees; [and] (2) shall comply with occupational safety and health standards promulgated under this chapter.”

¹²⁸ OSHA, *OSHA’s Field Operations Manual*, at 10-2 to 10-3 (Nov. 2009), available at http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-148.pdf; see also Jack L. Runyan, *Summary of Federal Laws and Regulations Affecting Agricultural Employers*, USDA Agricultural Handbook No. 719, at 7 (2000) (noting that DOL has “interpreted this to mean that whenever a farm operation has more than 10 workers employed on 1 day, the operation is subject to OSHA regulations”). This exemption arises from annual appropriations bills for the U.S. Department of Labor that exclude some small-farm employers from OSHA audits and inspections.

¹²⁹ 29 C.F.R. § 1975.4(b)(2) (2011).

¹³⁰ See OSHA Regional Notice, Directive Number CPL 04-00 (LEP 009), *Local Emphasis Program for Dairy Farm Operations*, Region V, at V (Nov. 1, 2011) (stating immediate family member means “those in direct relation to the farm employer, such as a parent, spouse, or child. Step-children, foster children, step-parents and foster parents will also be considered as immediate family members. Other relatives, even when living permanently in the same household as the employer, will not be considered to be part of the immediate family”) (citing 29 C.F.R. § 780.308 (2011) “Definition of immediate family” regarding exemptions under minimum wage and overtime provisions), available at http://www.osha.gov/dep/leps/RegionV/Dairy_Farm_fy12.doc.

¹³¹ OSHA generally defines a farming operation to mean “any operation involved in the growing or harvesting of crops, the raising of livestock or poultry, or related activities conducted by a farmer on sites such as farms, ranches, orchards, dairy farms or similar farming operations.” OSHA, *OSHA's Field Operations Manual*, at 10-2 (Nov. 2009), available at http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-148.pdf.

¹³² 29 C.F.R. § 1910.142 (2011).

¹³³ 29 C.F.R. § 1910.111 (2011).

¹³⁴ 29 C.F.R. § 1910.266(d), (e) (2011).

¹³⁵ 29 C.F.R. § 1910.145 (2011).

¹³⁶ 29 C.F.R. § 1928.51 (2011).

¹³⁷ 29 C.F.R. § 1928.57 (2011).

¹³⁸ 29 C.F.R. § 1928.113 (2011).

¹³⁹ 29 C.F.R. § 1910.1200 (2011). This section concerns labeling safety hazards.

¹⁴⁰ 29 C.F.R. § 1928.110 (2011).

¹⁴¹ 29 C.F.R. § 1928.110(a), (c) (2011); U.S. Department of Labor, Wage & Hour Division, *Fact Sheet #51: Field Sanitation Standards under the Occupational Safety and Health Act* (July 2008), available at <http://www.dol.gov/whd/regs/compliance/whdfs51.pdf>.

¹⁴² See 29 C.F.R. § 1910.142 for temporary labor camp standards; OSHA, *OSHA's Field Operations Manual*, at 12-1 to 12-8 (Nov. 2009), available at http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-150.pdf.

¹⁴³ OSHA, *OSHA's Field Operations Manual*, at 12-1 (Nov. 2009), available at http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-150.pdf; Minn. R. 5206.1500, subp. 10 (2011).

¹⁴⁴ 29 U.S.C. §§ 667, 651(b)(11) (2011). The federal Occupational Safety and Health Administration approves and monitors the state plan and helps to pay its operating costs.

¹⁴⁵ Minn. Stat. § 182.652, subd. 1 (2011).

¹⁴⁶ Minn. Stat. § 182.666 (2011).

¹⁴⁷ Minn. Stat. § 182.667 (2011).

¹⁴⁸ Minn. Stat. §§ 182.653, 182.654, 182.655 (2011).

¹⁴⁹ See Minn. Stat. § 182.653, subd. 8 (2011) (requiring employers with North American Industry Classification System (NAICS) codes to create AWAIR plans); see also Minn. R. 5208.1500 (2011) (Standard Industrial Classification List for AWAIR) (listing NAICS codes for agriculture, forestry, fishing, and hunting); see also Minnesota Department of Labor and Industry Occupational Safety & Health Division, *An Employer's Guide to Developing A Workplace Accident and Injury*

Reduction (AWAIR) Program, at 1-2 (Aug. 2012), available at <http://www.dli.mn.gov/OSHA/PDF/awair.pdf>.

¹⁵⁰ See Minn. Stat. § 182.653, subd. 8 (2011); see also Minnesota Department of Labor and Industry Occupational Safety & Health Division, *An Employer's Guide to Developing A Workplace Accident and Injury Reduction (AWAIR) Program*, at 1 (Aug. 2012), available at <http://www.dli.mn.gov/OSHA/PDF/awair.pdf>.

¹⁵¹ Minn. Stat. § 182.653, subd. 4(e) (2011). The training requirements are set forth in sections 5206.1600 through 5206.1900 of the Minnesota Rules, available on the website for the Minnesota Office of the Revisor of Statutes at <https://www.revisor.mn.gov/data/revisor/rule/current/5206/5206.pdf>.

¹⁵² Minn. Stat. § 182.653, subd. 4(e) (2011); Minn. R. 5206.1400 (2011).

¹⁵³ 29 U.S.C. § 1823(b) (2011). See Chapter 9 regarding Temporary Labor Camp definition and standards under the MSPA. A 45-day time frame applies to requests for inspection—if a farmer makes a request for inspection at least 45 days prior to the date the housing is to be occupied but the agency does not inspect by that date, you can go ahead without the inspection. 29 U.S.C. § 1823(b)(2).

¹⁵⁴ 29 U.S.C. § 1823(b)(1) (2011).

¹⁵⁵ 29 U.S.C. § 1823(c) (2011).

¹⁵⁶ OSHA, *OSHA's Field Operations Manual*, at 12-1 (Nov. 2009), available at http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-150.pdf.

¹⁵⁷ 29 C.F.R. § 1910.142 (2011).

¹⁵⁸ See Minn. R. 5205.0010, subp. 2 (2011) (incorporating federal OSHA standards, including those on temporary labor camps (29 C.F.R. Part 1910.142) and subsequent changes to the temporary labor camp standard on drinking fountains (updating OSHA Standards, 70 Fed. Reg. 176, 53,925-53,929 (Sept. 13, 2005))).

¹⁵⁹ Minn. Stat. § 176.021, subd. 1 (2011).

¹⁶⁰ Minn. Stat. § 176.011, subd. 9 (2011).

¹⁶¹ See *Judd v. Sanatorium Comm'n of Hennepin County*, 35 N.W.2d 430, 433 (Minn. 1948) (holding that trainee was an employee for workers' compensation purposes where the employer controlled and directed the manner and means by which the trainee's work was to be performed and the employer benefited from her work).

¹⁶² Minn. Stat. § 176.041, subd. 1 (2011).

¹⁶³ Minn. Stat. § 176.011, subd. 11a (2011); see also Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 47 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf (stating that current average state annual wage is approximately \$26,000).

¹⁶⁴ Minn. Stat. § 176.011, subd. 11a(b) (2011).

¹⁶⁵ Minn. Stat. § 176.041, subd. 1 (2011). The Minnesota workers' compensation insurance statute also excludes: (1) business partners in farm operations; (2) executive officers of family farm corporations; (3) executive officers of closely held corporations; (4) spouses, parents, or children of any person excluded by these categories; and (5) farmers or members of their family who exchange work with other farmers in the same community. See *Monson v. Arcand*, 58 N.W.2d 753, 754 (Minn. 1953) (holding that the partnership is the employer when it is an entity distinct from its members). "Family farm corporation" means "a corporation founded for the purpose of farming and the ownership of agricultural land in which the majority of the stock is held by and the majority of the stockholders are persons, the spouses of persons, or current beneficiaries of one or more family farm trusts in which the trustee holds stock in a family farm corporation, related to each other within the third degree of kindred according to the rules of the civil law, and at least one of the related persons is residing on or actively operating the farm, and none of whose stockholders are corporations." Minn. Stat. § 500.24, subd. 2(c) (2011). A closely held corporation is defined as having fewer than 22,880 hours of payroll in the preceding calendar year, if the executive officer owns at least 25 percent of the stock of the corporation. Minn. Stat. §§ 176.041, subd. 1(7), 176.011, subd. 9 (2011).

¹⁶⁶ The U.S. Congress created the Medicare program in 1965. See, for example, Social Security Administration, *Social Security Programs in the United States*, at 51 (July 1997), available at <http://www.ssa.gov/policy/docs/progdesc/sspus/sspus.pdf>.

¹⁶⁷ Starting in 2013, employers must withhold a 0.9% Additional Medicare Tax on wages paid to an employee in excess of \$200,000 in a calendar year. Internal Revenue Service, *Notice 1036, Early Release Copies of the 2013 Percentage Method Tables for Income Tax Withholding* (Rev. Jan. 2013), available at <http://www.irs.gov/pub/irs-pdf/n1036.pdf>.

¹⁶⁸ The U.S. Congress created the first version of Social Security in 1935. Mikki D. Waid, AARP Public Policy Institute, *Social Security: A Brief Overview*, at 1 (March 2012), available at: http://www.aarp.org/content/dam/aarp/research/public_policy_institute/econ_sec/2012/social-security-brief-overview-fs-AARP-ppi-econ-sec.pdf.

¹⁶⁹ The law creating this unemployment compensation system is called the Federal Unemployment Tax Act, known as "FUTA." 26 U.S.C. Chap. 23 (2011). Minnesota unemployment benefits are governed by the State Unemployment Tax Act. Minn. Stat. Chap. 268 (2011).

¹⁷⁰ Form SS-4 is available from the IRS website, at <http://www.irs.gov/pub/irs-pdf/ss4.pdf>, or by toll-free telephone at 1-800-829-4933.

¹⁷¹ Farms run as sole proprietorships with no employees are likely exempt from having to obtain an Employer Identification Number. See IRS, *Do You Need an*

EIN? (Oct. 2012), available at

<http://www.irs.gov/businesses/small/article/0,,id=97872,00.html>.

¹⁷² Applications for business registration can be completed online at <https://www.mndor.state.mn.us/tp/webreg/mMeHowRF/#1>. Form ABR is also available through the Minnesota Department of Revenue's website at http://www.revenue.state.mn.us/Forms_and_Instructions/abr.pdf, or by calling 651-282-5225.

¹⁷³ In order to comply with all the withholding and payment requirements, farmers and their tax professionals should obtain copies of the following IRS publications: *Publication 51 (Circular A): Agricultural Employer's Tax Guide*; and *Publication 15 (Circular E): Employer's Tax Guide*. Both publications may be obtained through the Internal Revenue Service website, and are located at <http://www.irs.gov/publications/p51/index.html> and <http://www.irs.gov/publications/p15/index.html>.

¹⁷⁴ The W-4 form is available online at <http://www.irs.gov/pub/irs-pdf/fw4.pdf>.

¹⁷⁵ See Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 20 (June 2011) available at http://www.uimn.org/uimn/images/employment_tax.pdf.

¹⁷⁶ I.R.C. § 3121(b)(B)(3) (2011). Note that the exemption for children under the age of 18 applies only when a child is employed by the child's father or mother. Therefore, this exception may not apply where the employer is a corporation or partnership.

¹⁷⁷ Internal Revenue Service, *Publication 51 (Circular A): Agricultural Employer's Tax Guide*, at Section 5, *Federal Income Tax Withholding* (2012), available at <http://www.irs.gov/publications/p51/index.html>.

¹⁷⁸ Internal Revenue Service, *Publication 51 (Circular A): Agricultural Employer's Tax Guide*, at Section 4, *Social Security and Medicare Taxes* (2012), available at <http://www.irs.gov/publications/p51/index.html>.

The \$150 and \$2,500 tests do not apply to wages paid to a farmworker who receives less than \$150 in annual cash wages even if the farmer pays \$2,500 or more in that year to all farmworkers if the farmworker: (1) is employed in agriculture as a hand-harvest laborer; (2) is paid on a piece-rate basis; (3) commutes daily from his or her permanent home to the farm; and (4) was employed in agriculture less than 13 weeks in the preceding calendar year.

¹⁸⁰ Internal Revenue Service, *Publication 51 (Circular A): Agricultural Employer's Tax Guide*, at Section 4, *Social Security and Medicare Taxes* (2012), available at <http://www.irs.gov/publications/p51/index.html>.

¹⁸¹ The law creating this unemployment compensation system is called the Federal Unemployment Tax Act, known as "FUTA." 26 U.S.C. Chap. 23 (2011).

¹⁸² 26 U.S.C. § 3306(a)(2) (2011).

¹⁸³ Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 24-25 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf.

¹⁸⁴ Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 24 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf. Note that employees who are residents of North Dakota or Michigan and work in Minnesota are not required to have Minnesota income tax withheld from their wages if they complete Form MWR, Reciprocity Exemption/Affidavit of Residency.

¹⁸⁵ Minn. Stat. § 268.035, subd. 11 (2011). Note, however, that services provided by these individuals will count where the family farm corporation or the farmer is regulated under the FUTA.

¹⁸⁶ Minn. Stat. § 268.035, subd. 2, subd. 11(5)-(6), subd. 16 (2011).

¹⁸⁷ Minn. Stat. § 268.035, subd. 11 (2011); see also Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 32 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf; Unemployment Insurance Minnesota, *Employer Handbook: Covered/Noncovered Employment*, available at <http://www.uimn.org/uimn/employers/publications/emp-hbook/covered-employment.jsp>. Minnesota law defines the calendar quarters for unemployment insurance purposes to be January 1 to March 31; April 1 to June 30; July 1 to September 30; and October 1 to December 31. Minn. Stat. § 268.035, subd. 7 (2011).

¹⁸⁸ Minn. Stat. § 268.042, subd. 1 (2011); Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 31 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf.

¹⁸⁹ Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 33 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf.

¹⁹⁰ Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 38 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf. If the due date falls on a Saturday, Sunday, or legal holiday, the report and tax payment are due on the next department business day.

¹⁹¹ Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 31 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf.

¹⁹² 42 U.S.C. §§ 2000e–2000e-17 (2011).

¹⁹³ 42 U.S.C. § 2000e(k) (2011).

¹⁹⁴ 42 U.S.C. § 2000e(b) (2011).

¹⁹⁵ 29 U.S.C. § 206(d) (2011).

¹⁹⁶ 29 U.S.C. §§ 621–634 (2011).

¹⁹⁷ 29 U.S.C. § 630(b) (2011).

¹⁹⁸ 29 U.S.C. § 206(g) (2011).

¹⁹⁹ 42 U.S.C. §§ 12101–12213 (2011).

²⁰⁰ 42 U.S.C. § 12102 (2011).

²⁰¹ 42 U.S.C. § 12112(b)(5)(A) (2011).

²⁰² 42 U.S.C. § 12111(5)(A) (2011).

²⁰³ 42 U.S.C. §§ 2000ff–2000ff-11 (2011).

²⁰⁴ 42 U.S.C. § 2000ff(2)(B) (2011).

²⁰⁵ Minn. Stat. Chap. 363A (2011).

²⁰⁶ Minn. Stat. § 363A.08, subd. 6(a) (2011).

²⁰⁷ Minn. Stat. §§ 181.66–181.71 (2011).

²⁰⁸ Minn. Stat. § 177.30(a)(5) (2011).

²⁰⁹ For detailed information about the Form I-9 requirements, see the *Handbook for Employers: Instructions for Completing Form I-9 (Employment Eligibility Verification Form)*, prepared by the U.S. Citizenship and Immigration Service (June 2011), available at <http://www.uscis.gov/files/form/m-274.pdf>.

²¹⁰ Current version available at <http://www.uscis.gov/files/form/i-9.pdf>.

²¹¹ Minn. Stat. § 256.998 (2011).

²¹² The Center's website at <https://newhire-reporting.com/MN-Newhire/Default.aspx> has instructions for online reporting and a downloadable form for paper or email filing. A help desk is available toll-free at 1-800-672-4473 during business hours.

²¹³ Minn. Stat. § 181A.06 (2011); see also Minnesota Department of Labor and Industry, *A guide to Minnesota's wage standards: Records and payments*, available at http://www.doli.state.mn.us/ls/Pdf/record_payment.pdf (last visited Nov. 27, 2012).

²¹⁴ See Internal Revenue Service, *Topic 753 – Form W-4 – Employee's Withholding Allowance Certificate*, available at <http://www.irs.gov/taxtopics/tc753.html> (Nov. 2012). More generally, see Internal Revenue Service, *Publication 15 (Circular E): Employer's Tax Guide* (2012), available at <http://www.irs.gov/publications/p15/index.html>.

²¹⁵ An employee must use Form W-4MN if the employee wants to claim exemption from state or federal withholding; claim fewer Minnesota allowances than federal allowances; claim more than ten (10) Minnesota allowances; or request additional Minnesota withholding. See Minnesota Department of

Revenue's *2012 Minnesota Income Tax Withholding Instruction Booklet and Tax Tables*, at 7 (Dec. 2011), available at http://www.revenue.state.mn.us/Forms_and_Instructions/2012/wh_inst_12.pdf.

The employer may be required to file this form with the Minnesota Department of Revenue if: the employee claims more than ten (10) Minnesota allowances; the employee claims to be exempt from Minnesota withholding, and the employer reasonably expects the employee's wages to exceed \$200 per week (unless the employee is a resident of a reciprocity state and has completed Form MWR); or the employer believes the employee is not entitled to the number of allowances claimed. (However, note that employers are not required to verify the number of withholding allowances claimed by each employee.) There is a \$50 penalty for each Form W-4MN that is required to be filed with the department but is not submitted.

Additionally, residents of Michigan and North Dakota who are working for a Minnesota employer may complete Form MWR to request exemption from Minnesota income tax on their earnings (they will instead be taxed on the Minnesota income by their home state). See Minnesota Department of Revenue, *Reciprocity Exemption/Affidavit of Residency for Tax Year 2012*, available at http://www.revenue.state.mn.us/Forms_and_Instructions/2011/mwr_12.pdf. Form MWR must be retained for five years.

²¹⁶ Minn. Stat. § 177.30(a)(1)-(3) (2011); see also Minnesota Department of Labor and Industry, *A guide to Minnesota's wage standards: Records and payments*, available at http://www.doli.state.mn.us/ls/Pdf/record_payment.pdf (last visited Nov. 27, 2012).

²¹⁷ Minn. Stat. § 177.30(a)(1)-(3) (2011); see also Minnesota Department of Labor and Industry, *A guide to Minnesota's wage standards: Records and payments*, available at http://www.doli.state.mn.us/ls/Pdf/record_payment.pdf (last visited Nov. 27, 2012).

²¹⁸ Minn. Stat. § 177.30(a)(1)-(3) (2011); see also Minnesota Department of Labor and Industry, *A guide to Minnesota's wage standards: Records and payments*, available at http://www.doli.state.mn.us/ls/Pdf/record_payment.pdf (last visited Nov. 27, 2012).

²¹⁹ Minnesota Department of Labor and Industry, *A guide to Minnesota's wage standards: Records and payments*, available at http://www.doli.state.mn.us/ls/Pdf/record_payment.pdf (last visited Nov. 27, 2012).

²²⁰ See Minnesota Department of Labor and Industry, *Minnesota OSHA Recordkeeping Requirements*, at 2 (Aug. 2012) available at <http://www.dli.mn.gov/OSHA/PDF/recordkeepingstandard.pdf>. Some non-agricultural industries are exempt from this recordkeeping requirement even for employers with more than ten (10) employees.

²²¹ Internal Revenue Service, *Publication 51 (Circular A): Agricultural Employer's Tax Guide*, at Section 8, *Form 943* (2012), available at <http://www.irs.gov/publications/p51/index.html>.

²²² See Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide* (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf.

²²³ Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide* (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf.



FLAG



**FARMERS' LEGAL
ACTION GROUP,
INCORPORATED**

Farmers' Legal Action Group, Inc. (FLAG)
6 West Fifth Street, Saint Paul, MN 55102
Saint Paul, Minnesota 55102
Phone: 651-223-5400 ~ Fax: 651-223-5335
Email: lawyers@flaginc.org ~ Website: www.flaginc.org