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FARM EMPLOYMENT ISSUES FOR TAX PROFESSIONALS

- Taxes
- Wages
- Insurance

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Preface

Farm employers must comply with a variety of state and federal laws and regulations. This publication contains information on the regulations of concern to New York farm employers and employees. It does not constitute a legal document; it is for general educational use. Requests for information on specific rulings or legal interpretations should be directed to the appropriate state or federal agencies or to an attorney. The information contained in this publication is accurate as of January 24, 2002. It is the employer's responsibility to keep abreast of current changes in state and federal farm labor laws.

Agricultural Employers - Those who employ persons who perform services:

1. On a farm in connection with cultivating the soil, or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, fur bearing animals and wildlife;
2. In the employ of the owner, tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;
3. In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage, market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed in the employ of an operator of a farm (a) as an incident to farming operations, or (b) in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market.

Services performed in relation with any agricultural or horticultural commodity after its delivery to a terminal market for distribution, or in commercial canning or commercial freezing, are not considered agricultural employment. Also, services in connection with converting a primary product to a secondary derivative, such as grapes to wine, and services in retail operation, even if located on a farm are NOT considered agricultural employment.

Employee or Independent Contractor?

Independent contractors are not considered to be employees and they are either excluded from coverage or treated differently under most of the labor laws and regulations discussed in this publication. Therefore it is important for a farmer to know whether an individual doing work is an employee or an independent contractor.

Independent contractors are persons who are actually in business for themselves and hold themselves available to the general public to perform services. A person is an independent contractor only when free from control and direction of an employer in the performance of those services.

Although the laws described here do not define an independent contractor, court decisions have held that all the factors concerning the relationship between the two parties must be considered to determine if the farmer contracting for services has the right to exercise supervision, direction, or control over the person performing the services. If an employer has any doubt about

the nature of the relationship, the best course of action is to ask the state or federal agency administering the law for a written determination, because in almost all circumstances an ambiguous situation is interpreted in favor of the worker.

Although no single factor or group of factors is conclusive in deciding if an employer-employee relationship exists, the following conditions tend to indicate that a person is an employee:

- A person who is told how, when, and where to work is usually an employee.
- A person who must be trained by an experienced worker is normally an employee.
- The existence of a continuing relationship between the worker and the employer, especially if set work hours are established, indicates control.
- When an individual works full time for one party, especially if the work is done on the employer's premises, the worker is normally an employee.
- When the employer pays the worker's expenses, provides fringe benefits, or furnishes tools or equipment, it indicates control by the employer.
- An employee is usually paid by the hour, week, or month and has the right to quit at any time without incurring any liability.
- An employee is not in a position to realize a profit or suffer a loss as a result of services performed (although an employee may be paid a commission or on a piece rate).
- An individual who performs unskilled labor is usually considered to be under the supervision of an employer.

To protect themselves when hiring an independent contractor to do custom work, farmers must eliminate any confusion about the nature of the relationship. The farmer should leave the method of work to the independent contractor's discretion and specify only the desired result. In addition, the farmer should pay for the job as a whole and not on an hourly basis, refrain from furnishing the independent contractor with any equipment, and tailor the work contract (which ideally should be in writing) to deal with the other factors listed above. Obtaining proof that the independent contractor carries liability insurance and that he or she pays self-employment tax are two other safeguards that can be used.

For federal tax purposes, if you want a decision about whether a worker is an employee, file Form SS-8, "Information for Use in Determining Whether a Worker Is an Employee for Federal Employment Taxes and Income Tax Withholding," which can be obtained at IRS offices. For more information, contact the agency responsible for administering the law in question. The relevant addresses and telephone numbers are listed in the Appendix.

Employment Verification System

Immigration Reform and Control Act of 1986

The Immigration Reform and Control Act of 1986 makes it illegal to hire aliens who are unauthorized to work in the United States. The act also establishes stiff penalties for violation of its provisions, so it is important to recognize how this new law applies to farm employers. In addition, the act established a legalization program that provides temporary and then permanent resident status to aliens who entered the United States prior to January 1, 1982, and who registered with the Immigration and Naturalization Service (INS).

Employment Verification System

Form I-9 is the key for documenting compliance with the new law. It is the employer's responsibility to be sure that new employees fill out their part of Form I-9 when they start work. The employer must physically examine documents establishing employees' identity and eligibility to work. An employer should not rely on any document that does not reasonably appear to be genuine. These documents should be requested promptly because the employer must complete the employer's section of Form I-9 within three business days of hiring. While not required, it is a good idea to make photocopies of the submitted documents to keep with the employee's I-9 form.

Form I-9 should be retained for at least three years, or for one year after the employee leaves the job if he or she has worked for more than three years. An employer must be prepared to present the form for inspection to an INS or Department of Labor officer upon request. At least three days' notice must be given before such an inspection.

Employers need only complete Form I-9 for individuals hired after November 6, 1986. Copies of the form can be obtained by calling the nearest INS office. For most of New York State, the Buffalo office is the best to contact. The number is (716) 846-4731. In New York City, the number is (212) 206-6500.

Some of the acceptable documents for purposes of identity and eligibility to work are listed on Form I-9 itself, others are listed in the *Handbook for Employers* (Instructions for Completing Form I-9) available from INS at the address given at the end of this section.

If an employee you wish to hire does not have the right documents, he or she can give you a copy of the receipt showing that he or she has applied for the document. You must see the actual document within 21 days of hiring.

Unfair Immigration-related Employment Practice

Employers with four or more employees may not discriminate against any individual (other than an unauthorized alien) based on citizenship or alien status if the person alleging discrimination is either a U.S. citizen or is a permanent resident alien, has been admitted as a refugee, has been granted asylum, or is a newly legalized alien and has filed a notice of intent to become a U.S. citizen.

Employers can be fined up to \$1,000 for unfairly discriminating against an individual based on national origin or citizenship status. Repeat offenders may face fines of up to \$2,000 back pay, and attorney's fees may also be awarded to a winning claimant under the act.

Sanctions

Penalties for noncompliance are chilling. Failure to submit a completed Form I-9 could result in fines of \$100 to \$1,000 for each form. Hiring an illegal alien could result in a penalty of \$250 to \$2,000 for a first violation. Second or third violations can cost up to \$10,000 per illegal worker. Factors that INS will consider in determining the penalty amount to include the size of the employer's business, the employer's good faith, the seriousness of the violation, and the employer's history of previous violations.

The employer has an obligation not to continue to knowingly employ an alien once the alien loses legal status. This includes liability when a contractor hires an unauthorized alien with the employer's knowledge.

Temporary H-2A Workers

The H-2A temporary agricultural worker program requires an affirmative search for available U.S. workers and a determination that the admission of alien workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.

The employer must apply to the Secretary of Labor for certification and then submit the petition to the U.S. Attorney General for final approval. Employers seeking alien workers cannot be required to apply for certification more than 60 days in advance of the estimated date of need, and the Secretary of Labor is required to approve or deny certification not later than 20 days before the date of need. In certain cases, expedited administrative appeal procedures are provided for denial of certification and for a new determination. Protections for alien workers include guaranteed housing, workers' compensation, and access to legal assistance for work-related matters.

For further information regarding the H-2A program, refer to the *H-2A Program Employee Information Booklet*, available from the U.S. Department of Labor.

Additional Sources of Information

For more information, call the INS office nearest you at the following numbers: Buffalo (716) 849-6760; New York City (212) 206-6500.

The *Handbook for Employers* (instructions for completing Form I-9) can be obtained by contacting the U.S. Department of Justice, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536.

Taxes

Social Security

The Social Security Act covers all farm employees, regardless of age, (including family members over the age of 18) unless the employer spends less than \$2,500 for payroll during a

calendar year. If this annual payroll requirement is not met, the law covers those agricultural employees who were paid \$150 or more in cash wages during a calendar year. Cash wages are defined as the total wages paid before payroll deductions but do not include the value of meals, lodging, or farm produce an employee receives. Children under the age of 18 are not considered employees if they work for their parents but will be employees if they work for anyone else, including a farm corporation.

With few exceptions, all employers must file year-end Social Security reports on hired help, Federal Form 943, by January 31. Exceptions include wages paid by a parent to a child for domestic service in the home are not covered until the child's twenty-first birthday. In addition, household employers can file Schedule H if their total cash wages are below \$1,200. If federal income taxes are withheld, they are reported on this form. If taxes are deposited with the Internal Revenue Service (IRS) before the end of the year, the deadline for filing the form is February 10. To complete Form 943 properly, the employer must have an identification number and the Social Security number of every farm employee. New employers apply for an identification number on Federal Form SS-4, which is available at any IRS or Social Security Administration office.

"Month-end-check" Guide

Farm employers must either withhold employees' Social Security taxes and add the farm's share or pay both the employer and employees' share. If the employer pays the employees' share, it becomes subject to income taxes but is not considered cash wages. Farm employers who report \$50,000 or less of federal employment taxes during a year must make monthly deposits of the following year's employment taxes (excluding FUTA taxes) by the 15th of the following month. Employers who report more than \$50,000 of federal employment taxes annually must make semi-weekly deposits. A farm employer who accumulates less than \$2,500 of employment taxes during a year may make the entire payment at the end of the year using Form 943. The employer must deposit the total amount at a Federal Reserve Bank or authorized commercial bank by the 15th of the following month. In either case, Form 8109, Federal Tax Deposit Coupon, should be used. A Federal Tax Deposit Coupon book is automatically sent to new employers when they receive an identification number. It may take several weeks to receive the coupon book. You may use Form 8109B in the meantime.

Non-Farm Employees

If you employ both farm and non-farm employees, you must treat them separately for tax purposes. See Circular E, IRS Employer's Tax Guide, for information about reporting for non-farm employees. Information is also available on-line at <http://www.irs.treas.gov>.

Tax Statement to Workers

Employers are required to provide each employee with a statement by January 31 of each year indicating wages reported to the federal Internal Revenue Service and the New York State Tax Bureau and the amount of Social Security taxes that have been withheld. Copies of forms W-2 (federal) and IT-2102 (state) or SS-14 can be used for this purpose.

The *intent* of the law is for employees to pay their own share of the Social Security tax.

Additional Information

Detailed descriptions of an agricultural employer's obligations under the federal tax laws can be found in IRS Circular A, *Agricultural Employer's Tax Guide* (IRS Publication 51). See also *Farmer's Tax Guide* (IRS Publication 225). Contact your area Social Security Administration office for additional information.

Federal Income Tax**Reporting**

The Tax Reform Act of 1986 and subsequent laws made sweeping changes in the federal income tax law. Most of these changes do not radically affect the reporting requirements of farm employers. However, because different methods are now used to calculate individual tax liability, it is important that employers and employees use only up-to-date forms and instruction booklets in tax reporting.

Withholding

Withholding is required on wages of farm workers. The W-4 is a simple form used to claim withholding exemptions. IRS Publication 505, *Tax Withholding and Estimated Tax*, and Circular E, *Employer's Tax Guide* are available for use in calculating the correct amount of withholding.

Information Returns

Farm employers are responsible for providing each employee with an annual information return and for filing a statement with the government indicating payments of any amount (including the cash value of payments not made in cash, except for meals or lodging furnished as a condition of employment) made to farm employees during the year for salaries, fees, or other compensation for personal services. Federal Form W-2 is used for this purpose and must be distributed to employees by January 31.

Working Students (Subject to Withholdings)

Under the tax law, individuals are not subject to withholding of federal income tax if they paid no tax in the previous year and they do not anticipate being liable for any federal income tax in the current year. Students who earn no more than their standard deduction amount and who have no interest or dividend income meet these criteria. Such students should fill out Form W-4E, Withholding Exemption Certificate, and give it to their employers. This form can be obtained from district offices of the IRS. Students who follow these procedures will not have to wait to receive refunds.

Dependent Children

A single dependent child employed on a farm must file an income tax return if he or she had any unearned income and the total unearned and earned income was over \$750 in 2001. If the dependent child had no unearned income, a return must be filed if his or her earned income was over \$4,550 during the 2001 tax year. Unearned income includes interest, dividends, and trust income.

Employees' Tax Responsibility

Every citizen or resident of the United States, whether an adult or a minor, who was paid \$7,450 or more in the 2001 taxable year must file a return. In the case of married couples filing joint returns, the amount is \$13,400 as of 2001. These numbers are likely to increase in the future. Farm employees are *required* to file and pay a declaration of estimated income tax (Form 1040-ES) if they have income from sources not subject to withholding and they expect their tax liability on these earnings to be over \$1,000, or 100% of the prior year's tax liability or 90% of the current year, if under \$1,500. The tax can be paid in four equal installments. Some employees have been penalized for not filing estimates. Once an employee has filed Form 1040-ES, the IRS will automatically send additional forms and information, including payment vouchers.

Additional Information

Contact your area Internal Revenue Service, Federal Tax Office, for additional information. Call the toll-free number listed under "U.S. Government" in the telephone book to order federal tax forms. You will have to respond to a recorded message, so be sure you know exactly which forms you wish to order.

State Income Tax

In general, New York State's income tax laws are the same as the federal laws. Tax rates are different and state forms are usually required, but the basic principles and many of the procedural requirements are the same.

New York State Single File

The NYS Department of Taxation and Finance and Department of Labor jointly developed a Single File program to simplify reporting requirements for employers. It combines the Quarterly Unemployment Insurance report (Form IA-5) and the Quarterly Combined Withholding and Wage Return Reporting (Form NYS-4), enabling employers and their agents to report state withholding tax, wage reporting and unemployment information on a single form. The form is NYS-45 and NYS-45-ATT replaces IA-5, NYS-4 and NYS-4-ATT.

Withholding

The New York State Tax Law requires farm employers to withhold income tax from farm employees. An employee should submit a completed Form IT-2104 to his employer. Withheld dollars for taxes should be sent to the New York State Income Tax Division with Form NYS-45.

Since 1992, anyone required to withhold New York tax from employees is required to make deposits and file reports at least quarterly. Filers with less than \$700 quarterly withholding liability reconcile and pay taxes withheld using Form WT-4-AEZ. They report employees' wages and withholding information using WT-4-B within one month of the end of each quarter, except for the last quarter when reporting is required by February 28.

In general, filers with \$700 or more in quarterly withholding liability will remit taxes using Form WT-1 within three business days of the payroll in which \$700 was accumulated. Any withholding balance under \$700 at the end of any quarter should be remitted using WT-1.

Filers withholding \$700 or more during a quarter are required to file WT-4-A and WT-4-B by the end of the month following the end of the quarter, except for the last quarter when reports are due by February 28. There are some additional rules with which employers should familiarize themselves if they fall into this category.

The rules and the withholding tables are included in WT-100, "New York State Withholding Tax Guide," available from the New York State Tax Department (1-800-462-8100).

Newly Hired Employees

For employees hired on or after March 1, 1996, New York State requires an employer to report certain identifying information to the New York State Department of Taxation and Finance. This reporting requirement is designed to help insure that employees with child support obligations honor that responsibility. To meet this reporting requirement, an employer should send a legible photocopy of the newly hired employee's IRS Form W-4, Employee's Withholding Allowance Certificate, to the following address:

New York State Department of Taxation and Finance
New Hire Notification
P.O. Box 15119
Albany, NY 12212-5119

The information can also be sent via facsimile to (518) 463-4514. Questions regarding this reporting requirement should be directed to the Business Tax Information Center at 1-800-972-1233 or 1-800-225-5829.

Additional Information

Contact the New York State Department of Taxation and Finance (see the Appendix). To order forms and receive basic tax information, check the telephone book under "New York State" for the toll-free number.

Collection of Wages

Agricultural workers must be paid "not later than seven calendar days after the end of the week in which the wages are earned." They may be paid every two weeks as long as this requirement is observed. Deductions from wages are illegal. The only deductions a farm employer can make are legal withholdings authorized by law such as income tax or Social Security, and deductions authorized in writing by the employee for his or her own benefit, such as health insurance premiums. Agricultural workers may be paid by check without special permission. Any questions or reports of violations pertaining to wages should be directed to the New York State Department of Labor (see the Appendix for a list of district offices).

The Federal Wage-Hour Law

Hired farm workers were first covered by the Federal Wage-Hour Law (Fair Labor Standards Act) in 1967. Congress has amended the act several times, most recently on September 1, 1997, and the current federal minimum wage for all employees is \$5.15 per hour. Overtime pay is not required for agricultural employees under federal law.

The legislation also allows an employer to pay less than the minimum wage (but not less than \$4.25 per hour) to any employee under the age of 20 during the first 90 consecutive days of employment. This is called the "youth opportunity wage." It may be used only once per employee. The 90-day window applies to calendar days, not just days worked. There is no requirement that training be provided to qualify for this wage rate.

Coverage

Exceptions

The activities of the employee, not the employer, determine whether he or she is exempt, and it is possible for both exempt and nonexempt employees to work for the same employer. The minimum wage provisions cover all employees working on farms that are covered by the Federal Wage-Hour Law except employees whose hours are not counted in calculating man-days and professional or administrative employees, who are exempt from all the provisions of the Fair Labor Standards Act.

Small Farm Exemption—The federal minimum wage provisions apply to all employers who used more than 500 man-days of agricultural labor in any calendar quarter of the preceding calendar year. A man-day is any day in which an employee performs any agricultural labor for one hour or more. If an employer owns more than one farm, the total number of man-days used on all farms will determine whether agricultural employees on each farm must be paid the federal minimum wage.

Allowances

The law provides that wages may include board, lodging, and other benefits customarily provided as compensation to the employee. These noncash wage benefits may be included at reasonable cost or farm market value as determined by the Wage and Hour Division of the U.S. Department of Labor. The division does not have dollar maximums for the allowances; each case is judged individually. However, maximum allowances for noncash wage benefits have been established, under the New York State Minimum Wage Order for Farm Workers.

Full-Time Student Rate

Workers who are full-time students, regardless of age, may be employed by retail and service employers, farmers, and colleges and universities at rates no less than 85 percent of the minimum wage otherwise applicable. They may work no more than 20 hours in any workweek, however, except during vacations, when they may work up to 40 hours. To hire a full-time student, an employer must obtain a Full-Time Student Certificate from the U.S. Department of Labor. A certificate will be issued after the Department of Labor has determined the following: full-time students are available for employment; granting the certificate is necessary to prevent curtailment of opportunities for their employment; granting the certificate to more than six students will not substantially reduce the probability of employment for persons other than those employed under the certificate; and granting the certificate will not result in other employees, including students, receiving reduced wages.

The federal certificate covers full-time students of any age, whereas the state certificate deals with youth under 18, regardless of their student status. Also, the state Youth Rate Certificate

permits an employer to hire an unlimited number of youth, whereas the federal Full-Time Student Certificate, as a rule, permits no more than six full-time students to be hired and their hours cannot account for more than 10 percent of the employer's total man-hours of labor. An employer covered by both laws must comply with both standards. See the section entitled "Youth Employment" for more details.

Farms Including Nonfarm Operations

The inclusion of certain nonfarm operations such as roadside markets and various shipping and processing activities in laws pertaining to farms results in some confusing coverage provisions, particularly because federal and state requirements differ. All operations classified as farm are subject to the 500 man-day farm exemption.

If only the farmer's produce is processed, shipped, or sold, the operation is classified as farm. If produce from other farms is processed, shipped, or sold, the operation is classified as nonfarm, in which case a mixed enterprise coverage exemption is applied.

Standards for both minimum wage and overtime apply if the combined sales of the farm and nonfarm operations exceeded \$250,000 in the four most recently completed quarters. In contrast to farm coverage, the standards apply in the ensuing quarter if the sales test is met or exceeded.

If an employee's hours are split during the week between a covered and a noncovered operation, then his or her total hours are treated as covered. Coverage provisions and requirements are summarized in Table 1.

Greenhouses

Greenhouse employers may be classified as farm, nonfarm, or a combination of the two. They are classified as farm employers if the enterprise includes growing plants rather than just holding plants for resale. If the enterprise is classified as a farm employer, then the farm exemption applies. If it is classified exclusively as a nonfarm employer and gross annual sales meet or exceed \$362,000, minimum wage and overtime requirements are in effect. Enterprises classified as both farm and nonfarm are covered under the provisions explained in the preceding section.

Piece Rate

Employees may be paid on a piece rate basis; but under both federal and state law, covered employees must earn at least the minimum hourly wage. With a state Youth Rate Certificate for farms, minors under 18 years of age may be paid a piece rate lower than \$5.15 per hour.

Work Hours

Work hours at farm jobs include time going from field to field and waiting for equipment, but do not include time lost because of bad weather unless the employer has asked the employee to wait for the weather to clear.

TABLE 1. Federal Minimum Wage and Overtime Requirements for Enterprises Combining Processing, Shipping, and Selling with Farming

		Processing, Shipping, and Selling	
		Own Products	Other's Products
Classification	Farm	Farm	Nonfarm
Over 500 man-days ¹ Under \$500,000 sales ²	Minimum Wage	Minimum Wage	Minimum Wage
Over 500 man-days Over \$500,000 sales	Minimum Wage	Minimum Wage	Minimum Wage and Overtime ³
Under 500 man-days Over \$500,000 sales	None	None	Minimum Wage and Overtime

1. The 500 man-day test is applied only to the part of the enterprise that is classified as farm. If the selling, shipping, or processing involves only the farmer's own produce, these operations are classified as farm and the employees are included in the 500 man-day test.

2. The \$500,000 sales test is applied to the total enterprise — farm sales plus sales from the part of the enterprise classified as nonfarm. If the total enterprise is classified as farm, the sales test does not apply.

3. The overtime requirement is 1½ times the regular rate of pay for hours exceeding 40 hours of work per week.

Statement of Wages

Federal law does not require employers to issue statements of wages to any employees except migrant and seasonal workers. State law, however, requires that all employees be issued such statements. The employer's identification number must appear on these statements.

Record Keeping

The law specifies that every employer must keep true and accurate records of the hours each employee works and the wages he or she is paid, as well as each employee's Social Security number, address, and any other information required by the Federal Wage-Hour Law. These records must be kept for three years and be available for review at any time. Copies of wage statements provide the basic information needed. Inadequate records are a major complaint of minimum wage inspectors. Employers should establish a basic record system, especially if migrant or seasonal agricultural workers are employed.

An official "Notice to Employees" furnished by the U.S. Department of Labor Wage and Hour Division must be posted where employees can readily see it.

Additional Information

See the Department of Labor offices listed in the Appendix.

New York State Minimum Wage Standards for Farm Workers

The New York State Minimum Wage Standards for Farm Workers, which became effective in 1969, has been amended several times. The farm minimum wage rate is \$5.15 per hour as of March 31, 2000. The Minimum Wage Order for Farm Workers provides that all workers, with certain exceptions, must be paid at least \$5.15 per hour. This does not include members of the employer's immediate family and minors under 17 years of age employed as hand harvest workers on the same farm as their parents or guardians and who are paid on a piece rate basis at the same rate as employees over 17.

An employer who is covered by the Federal Wage-Hour Law is also covered by the New York State Minimum Wage Standards for Farm Workers and must comply with both laws. Employers covered by the Federal Wage-Hour Law should confirm that they are in compliance with other provisions of the federal law pertaining to rates, allowances, Youth Rate Certificates, and the minimum wage rate for youth.

Posting

The Minimum Wage Order for Farm Workers requires that a summary of Article 19-A of the Labor Law and the minimum wage order pertaining to farm workers be posted at the work site. These posters may be obtained by contacting the Division of Labor Standards at the offices listed in the Appendix.

Coverage

The New York State Minimum Wage Standards for Farm Workers applies to any employer of farm workers whose aggregate cash payroll was \$3,000 or more during the previous calendar year. Workers supplied by a farm labor contractor are included, and the farmer who uses the services of a contractor is responsible for complying with the law.

Exceptions

The law covers all persons performing farm work except members of the employer's immediate family and persons under 17 years of age who are employed as hand-harvest workers on the same farms as their parents and who are paid on the same piece rate basis as workers older than 17.

Allowances

The law states that wages may include allowances for meals, lodging, services, and facilities furnished by the employer to the employee. The values allowed are listed in Table 2. These values represent minimum requirements and are not intended to represent the actual value of the item furnished. No lodging allowances are permitted as part of the minimum wage for migrant employees, nor are lodging allowances permitted unless the employer pays for utilities. Payment in kind (milk, meat, and the like) acceptable to the employee may be considered at farm cost or at the current farm market value. For a discussion of housing for migrant employees, see the section titled Migrant Workers.

TABLE 2. Minimum Wage Requirements and Allowances for New York State Farms
(Rate per Hour unless Otherwise Indicated)

Farm Minimum Wage ¹	\$5.15
Youth aged 16 and 17 (certificate needed)	
Harvesting	
First Harvest Season	3.60
Second Harvest Season	3.80
Third Harvest Season	4.25
Nonharvesting	
First 300 Hours	3.60
Second 300 Hours	3.80
More than 600 Hours	5.15
Youth under 16 (farm work permit required)	3.20
Allowances	
Meals ²	1.70
Lodging (dormitory style) and utilities ³	
Single occupancy (per week)	18.95
Multiple occupancy (per employee per week)	12.65
House or apartment and utilities ⁴	
Individual employee (per day)	5.00
Employee whose family resides with employee (per employee per day)	8.00
Payment in kind (milk, eggs, meat, etc.) acceptable to the employee	Cost or farm market value

1. The state general minimum wage for nonagricultural workers is the same.

2. No allowance for meals may be considered part of the minimum wage if a seasonal migrant employee earns less than \$254 in a two-week period other than by reason of a voluntary absence.

3. This allowance cannot be used for migrant workers. See the section on migrant workers for a discussion of housing for these employees.

4. This allowance cannot be used for migrant workers. See the section on migrant workers for a discussion of housing for these employees. When a house or apartment and utilities are provided by the employer (no lodging allowance is permitted if utilities are not provided), a fair and reasonable amount may be allowed for such facilities. This amount is not to exceed the lesser of either the reasonable value of comparable facilities in the area or the rates listed.

Youth Rate

The minimum wage rate for youth under 18 years of age is lower than for adults (see Table 2). The state youth rate exists only for workers covered under the Minimum Wage Order for Farm Workers. To pay at this lower rate, the employer must obtain a Youth Rate Certificate from the commissioner of labor and keep it on file for six years after employment is terminated. These certificates can be obtained by calling the Division of Labor Standards district offices. A Youth Rate Certificate permits the employer to hire any number of young workers. Youth under 16 must also have farm work permits. These permits can be obtained by the employee from the local school office. Employers are responsible for checking to see that each young person has a work permit. An employer covered under the Federal Wage-Hour Law needs to obtain a federal Full-Time Student Certificate as well as the state certificate. Under federal law, full-time students may work no more than 10 percent of their employers' total man-hours of labor. For additional information, contact Employment Standards Administration, U.S. Department of Labor, 1515 Broadway, New York, NY 10036. See the Youth Employment Section for more details regarding the limitations on employing young people.

Piece Rate

Employees may be paid on a piece rate basis and, as under the federal law, must earn at least the minimum wage or the minimum wage for youths.

Work Hours

Work hours include all hours on the job, including time going from field to field and waiting for equipment, but do not include time lost because of inclement weather.

New York State Meal Period Requirement Guideline

New York State Labor Law provides every person employed in or in connection with a mercantile or other establishment or occupation be allowed at least thirty minutes for the noonday meal. The noonday meal period is recognized as extending from eleven o'clock in the morning to two o'clock in the afternoon. An employee who works a shift for more than six hours, which extends over the noonday meal period is entitled to at least thirty minutes off within that period.

New York State Farms Including Nonfarm Operations

Processing, shipping, and selling operations that are part of the farm operation are not necessarily treated as they are under federal law. All selling operations, such as roadside stands, florist shops, and greenhouse sales outlets, are classified as nonfarm and are covered under the Minimum Wage Order for Miscellaneous Industries and Occupations, even if the farmers sell their own products. A roadside stand will be covered under the Minimum Wage Order for Farm Workers if at least 95% of gross sales were of goods produced on the employer's farm(s). Under this wage order, all employers, not just those with cash payrolls in excess of \$3,000 per year, are required to pay minimum wage. If an employee's work is governed by two different minimum wage orders because, for example, he or she both harvests and sells produce at a roadside stand, New York law provides that the employee should be paid in direct proportion to the actual hours of work performed under each work order during a payroll week. In this case, the farmer may credit all farm allowances against the gross wage regardless of the proportion of coverage under various wage orders.

Processing and shipping operations may be classified as either farm or nonfarm. If the farmer processes and ships only his or her own products, then the operations are classified as farm and coverage provisions for farms apply to the *entire* enterprise. If the farmer processes and ships others' products, then the operations are covered by the Minimum Wage Order for Miscellaneous Industries. Under this wage order, the farmer is required to pay overtime rates of 1 ½ times the employee's basic wage for work exceeding 40 hours per week.

An employer may or may not be required to meet nonfarm requirements for a worker whose hours are split between farm and nonfarm operations. If the nonfarm operation is covered under the Minimum Wage Order for Miscellaneous Industries, the employer may follow farm requirements for those hours the worker spent in the farm operation and follow the nonfarm requirements for the remaining hours if he or she has accurate records of the hours worked in each operation by each employee. Rough estimates are not acceptable. See Table 3.

Advisory Council

The law establishes a State Advisory Council on minimum wage standards for farm workers which shall consult with the Commissioner of Labor and provide recommendations before regulations are issued. The Council is appointed by the Commissioner of Labor and is composed of five members representing the interests of farmers, five representing the interests of employees and the public, and one who acts as an impartial chair. Public hearings with due notice are required before issuing regulations.

Notice to Employees

Upon hiring, employers must notify an employee in writing of the conditions of employment in a "work agreement." A copy of a generally applicable work agreement must be posted at the work site. A work agreement must include the following: name, address, and telephone number of employer; location and type of work; housing arrangements, including cost, number of rooms, and cooking facilities; allowances, if any, for meals and lodging to be deducted from wages, wages to be paid and time of payment; period of employment; all other planned payroll deductions; noneconomic terms and conditions of employment; and overtime provisions.

Both the employer and employee must sign the work agreement and each must keep a signed copy.

Statement of Wages

On each payday, employees must be furnished with a statement showing hours worked, rates paid (including wages based on piece rate, the size or weight of the piece rate unit, and the number of units produced during the pay period), gross wages, allowances, deductions, and net wages.

Table 3
State Wage Order Coverage for Enterprises Combining Processing, Shipping, and Selling with Farming

		<u>Processing, Shipping and Selling</u>		
		<u>Own Products</u>	<u>Others Products</u>	
Classification	Farm	Farm	Nonfarm	Nonfarm*
Wage orders	Farm	Farm	Miscell. Industries	Miscell. industries
Requirements				
Minimum wage	Yes	Yes	Yes	Yes
Overtime	No	No	Yes	Yes
Call-in pay	No	No	No	No
Weekly minimum wage	No	No	No	No
Split shift and spread of hours pay	No	No	No	No

*Up to 5% of products not produced on the farm.

The Cornell publication *Farm Employee Wage Record* (121CU-FMWAREC) provides an excellent record form for employee wages and benefits. It can be purchased from Distribution Center, 7 Cornell Business and Technology Park, Ithaca, NY 14850.

Workers must be given a written summary of their wages at the time employment is terminated. It must include gross and net earnings and a listing of deductions taken. The summary must be given or mailed to the employee not later than the regular payday for the payroll period in which the termination occurred.

Records of Employees

The law specifies that employers must keep signed copies of work agreements and accurate records of daily and weekly hours worked by each employee; wages paid, including piece rate information; allowances and deductions; cash advances made; and information about employees under the age of 18, including evidence that appropriate permits, certificates, parental permission, and any other information needed to comply with the Minimum Wage Law have been obtained. These records must be kept for three years and be available for review at any time. Copies of wage statements provide the basic information needed. Inadequate records are a major complaint of minimum wage inspectors. It is a crime to fail to maintain proper records or to hinder the inspection process in any way. Employers have been cited for such failure, and heavy fines may be levied. Every employer should establish a basic record-keeping system.

Penalties for Noncompliance

The N.Y. Department of Labor assists minors and others in the collection of their unpaid wages. The Department's Labor Standard's Division investigates claims for unpaid wages and attempts to adjust fairly the differences between the employer and employee. The Commissioner of

Labor is in a position to institute criminal proceedings for failure to pay wages. The Commissioner of Labor may also require an employer to pay interest and civil penalties on unpaid wages. The Commissioner also may take an assignment of the employee's wage claim and may institute a civil suit to recover the wages due. In situations where civil action is brought to recover unpaid wages and the failure to pay wages is found to be willful, the employer may be required to pay an additional amount of 25 percent of the claim in liquidated damages. It is a misdemeanor to pay an employee less than minimum wage, even if the employee agrees to the rate of compensation. It is also a crime to fire an employee, or otherwise discriminate against him or her, because he or she has complained that the employer has not paid minimum wage. Civil penalties for noncompliance can include fines of up to \$3,000.

Additional Information

Additional information on the New York State Minimum Wage Standards for Farm Workers can be obtained from district offices of the New York State Department of Labor. See the Appendix for details.

Eviction When Housing Is Provided by Employer

It is a common practice for farmers to provide a house as part of the farm employee's compensation package. Problems arise when the employee is fired or quits but does not move out. The farmer wants the house vacated to make it available to a new employee. Many people mistakenly believe that time-consuming notice provisions and procedures are required under New York law before a tenant can be evicted. However, the New York Real Property Actions and Proceedings Law establishes special rules if housing is provided as a condition of employment, and it may be possible for a farmer to regain possession of a house within two weeks through a court proceeding.

To minimize later problems when providing housing as a condition of employment, a farmer should be sure that the housing arrangement is in writing and signed by the employer and the employee. There should be a clear paragraph in the work agreement that sets forth the parties' understanding, including the time that the house will be vacated if employment terminates. The farmer should require a reasonable security deposit in advance if the employee has pets or children or if the employer is concerned about the possibility of damage to the property.

If a housed employee is terminated from his or her job, a farm employer should be prepared to give the employee written notice of the termination of employment and of the housing arrangement immediately. It may be necessary to contact an attorney who can prepare summary eviction papers if the tenant does not vacate voluntarily. Under no circumstances should a farmer attempt to remove a tenant, either by changing locks or by the use of force. Should it become necessary to seek a lawyer's help, the eviction process will be more efficient if certain information is available. A lawyer should have copies of the work agreement, the notice to quit (vacate the premises), and any other relevant documents. In addition, the farm employer should keep the lawyer informed of any other actions he or she has taken.

To start a summary eviction proceeding, a notice of the proceeding and the petition bringing the action should be served on the tenant employee at least five and not more than twelve days before the hearing. These papers can be served as early as one day after termination of em-

ployment. The court may not adjourn the hearing for more than ten days unless all parties consent.

After a judgment for the farm employer, the court will issue a warrant to remove the tenant. The enforcing officer must give 72 hours' notice before removal. A farmer realistically can expect to get his or her house back within two weeks, but the process could possibly take as long as one month to complete.

Even if the parties agree, under state law it is not proper for the farm employer to withhold wages to cover damage done to the property. The summary eviction proceeding does not include a process for deciding claims for money due, so a separate court action is required. For this reason, arranging a security deposit in advance is wise.

New York State's Wage Reporting System

Under New York tax law, employers are required to submit Form NYS-45 Department of Taxation and Finance. This form is used to verify eligibility for public assistance and benefits under the Social Services Law, to locate absent parents and establish child-support obligations, and to verify eligibility for insurance benefits administered by the Department of Labor.

Coverage

Most employers are required to file a quarterly wage report. Employers who are not required to and do not withhold federal income taxes from the wages of their employees are exempted from this regulation.

Information Required

The name, Social Security number, and gross wages of every employee who resides or is employed in New York State must be reported, regardless of whether his or her wages are subject to withholding of taxes or tax payments under the Personal Income Tax Law. Information is required on *all* employees. Some additional data on the employer are also required.

Penalties for Noncompliance

Failure to provide the required information can result in financial penalties. Employers who fail to comply will be informed by certified mail that they are delinquent. An employer who does not comply within 15 days of this mailing will be fined based on the number of employees for whom wages were not reported or the number who received late or inaccurate reports. The fines range from \$1 to \$25 per employee, depending on the number of offenses the employer has had within the past eight reporting periods.

Records to Be Kept

All records and information pertinent to the wage reporting system must be available for inspection by the tax commission for four years after wage reports are filed.

Additional Information

Most employers who are required to report are sent the necessary Form NYS-45 by the Department of Taxation and Finance. The form contains instructions and sources of additional

information. Forms and additional information can also be obtained from any local office of the Department of Taxation and Finance. See the Appendix for details. To request Form NYS-50, *"Employers Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax,"* call 1-800-972-1233.

Insurance

Workers' Compensation Insurance

Workers' Compensation laws are intended to ensure that employees who are injured or disabled on the job are provided with fixed monetary awards, eliminating the need for litigation. These laws also provide benefits for dependents of those workers who are killed because of work-related accidents or illnesses.

Coverage

The New York State Workers' Compensation Law covers most employees. Some special coverage provisions and exemptions apply to farm laborers, volunteers, domestics, chauffeurs, and teenagers. Rules that apply to young workers are explained in the section on Youth Employment.

Farmers in New York State must purchase workers' compensation insurance if their cash wage payments to farm employees totaled \$1,200 or more in the previous calendar year. Insurance must be purchased from a private carrier or the State Insurance Fund for 12 months beginning April 1. Larger employers find it profitable, and may be permitted by the Workers' Compensation Board, to self-insure. Contact the Workers' Compensation Board for more information.

The \$1,200 annual payroll rule applies to only four farm classifications: general farms (0006); fruit farms (0007); vegetable or berry farms (0031); and poultry farms (0034). Other businesses classified as nursery (0005), florist, cultivating, and gardening (0035), landscape gardening (0042), custom tree pruning and spraying (0106), and stores (8001) are not subject to the \$1,200 payroll rule. These businesses must provide workers' compensation coverage regardless of their annual payrolls. The percentage a wage worker will receive while on disability (temporary or permanent) is 66 2/3% of their salary at the time the disability occurred.

Farmers not required to provide workers' compensation coverage to their employees may voluntarily elect to do so. If employees will be expected to contribute to premium payments, they must be given 30 days notice that a voluntary plan is to be undertaken and one-half of the employees to be covered must consent to the contribution requirements. If a farm employer who has elected voluntary participation chooses to end the coverage, the affected employees must be given 90 days' notice before coverage ends. In addition, before terminating, the employer must have made sufficient contributions to provide for payments of benefits for at least one year.

An employer who is not required to provide worker's compensation coverage may choose not to do so voluntarily, relying on coverage being provided to injured workers under other liability policies carried by the employer or the farm business. Be sure to check with the insurance company to determine whether the liability policy specifically excludes employee injuries or work-related claims. This is often the case.

Farm Family Workers

An employer's spouse employed on a farm is considered an employee for purposes of determining worker's compensation coverage. An employer's child under the age of 18 is considered an employee only if his or her services are provided under an express contract for hire. An express contract for hire is a legal term used to distinguish a situation in which a person is a hired worker from a situation in which a person does an occasional chore or odd job for pay. The farmer's 16-year-old son who works as an employee, whether full time during school vacations or part time during the school year, is considered an employee, for example; whereas children who help out occasionally in the barn or perform tasks for which they are paid by the job are usually considered casual laborers.

To determine which situation applies to your child, ask yourself the following three questions:

Am I paying a regular wage for the work being done?

Is my child performing tasks I would hire an outsider to do?

Do I have an understanding, or an agreement, with this child (even an oral one) that tasks will be performed for compensation?

If the answers to all three questions are yes, the services are clearly being performed under an express contract for hire and workers' compensation laws apply. If you are still not sure of the nature of the relationship and your legal obligations, contact the Workers' Compensation Board. Children 18 and over who work on the family farm are automatically considered employees, even if they are students, and their wages are included in determining whether workers' compensation coverage is necessary. If the farm meets or exceeds the \$1,200 cash wage test, then all farm employees over the age of 18 are covered, including family workers. Note that once an insurance policy is in effect on a farm, the insurance company assumes financial responsibility for work-related injuries to any covered employee, regardless of whether premiums were collected for his or her wages. Determination of the existence of an express contract for hire and coverage under the law are made by the New York State Workers' Compensation Board, not by the insurance company. Most insurance companies will therefore want to collect premiums on all workers.

The family worker exemption applies only to those individuals in the classifications above to which the \$1,200 cash wage test applies. In other businesses, family workers are considered employees even if no express contract for hire exists and thus Workers' Compensation insurance must be provided.

Farm Labor Contractors

Farm workers who are recruited, supplied, or supervised by a farm labor contractor are considered employees of the farm owner or leasee for purposes of workers' compensation coverage.

Custom Work

A person doing custom work for a farmer is considered his or her employee unless it can be demonstrated that the individual is an independent contractor who does custom work for others as a normal part of his or her business. The criteria for distinguishing between employee-employer and independent contractor-owner relationships seem well established in New York

case law, but problems may arise in applying criteria in an individual case. See the Preface section, "Employee or Independent Contractor?", for a discussion of the criteria used to establish whether someone is an independent contractor or an employee.

To protect him- or herself, a farmer must eliminate any confusion as to the nature of the relationship with the independent contractor. The farmer should leave the method of work to the independent contractor's discretion and specify only the desired result. In addition, the farmer should pay for the job as a whole and not on an hourly basis, refrain from furnishing the independent contractor with any equipment, and tailor the work contract to the relative nature of the work test. Courts in New York have concluded that the Workers' Compensation Law is remedial in nature and therefore requires a liberal interpretation. Ambiguity in a relationship thus works to the farmer's detriment: the injured person making a claim will be considered an employee.

One area in which problems have arisen is trucking. A truck driver who picks up produce and delivers it to a processing plant is considered the farm owner's employee, even though the evidence indicates that the driver is an independent contractor. The farmer can avoid responsibility for workers' compensation only by obtaining a certificate of insurance from the driver. The Workers' Compensation Board may be willing to issue a nonbinding opinion on a given set of facts, but it will not issue a binding opinion. This particular issue has not yet been tested in a New York court. The area of custom work is a problem in both agricultural and nonagricultural enterprises. Questions about specific situations should be directed to the Workers' Compensation Board.

Employer's Responsibilities

- Ensure that benefits will be paid by purchasing insurance or, if applicable, self-insuring.
- Post a Notice of Compliance (Form C-105), including the name of the insurance company.
- Keep records of all injuries.
- Notify the nearest office of the Workers' Compensation Board whenever on an on-the-job injury results in loss of time.

Penalties

An employer who refuses or neglects to report an injury may be guilty of a misdemeanor, which is punishable by a fine of up to \$500 or imprisonment for not more than one year, or both. In the event of an injury, an uninsured employer is personally liable for the worker's compensation and medical benefits, as well as for an assessment of \$150 and 15 percent of any award made. The assessment may not exceed \$1,500 for any one claim. In addition, an uninsured employer loses his or her common-law defenses and may be subject to a suit by the injured worker. He or she may also be subject to criminal prosecution for failing to insure and to an additional \$50 assessment if he or she remains uninsured for 10 or more days.

Employment of a Minor

Additional liability can be incurred if the worker is under 18 years of age and employed in violation of the Labor Law. If the employee is injured on the job, he or she receives two times the Workers' Compensation award, all of which the employer must pay. If the employer is uninsured for workers' compensation, he or she is also liable for all medical awards, as well as

the penalties listed above levied on uninsured employers. Rules that apply to young workers are explained in the Youth Employment section.

Additional Information

If you have questions about insurance premiums or payroll reports, contact your insurance agent or on an office of the State Insurance Fund. If you have questions about on an accident or claim, contact one of the district offices of the Workers' Compensation Board (see the Appendix).

Disability Benefits

The Disability Benefits Law complements the Workers' Compensation Law which provides benefits to workers injured on the job, whereas the Disability Benefits Law provides benefits for workers disabled off the job.

Coverage

An individual who employs one or more persons on each of 30 days, or on any part of 30 days, in any calendar year becomes covered four weeks after the 30th day of such employment. The law excludes certain categories of employees, such as the spouse or minor child of the employer, and certain types of employment, such as: farm labor, casual employment (which has a very broad definition), service as a golf caddy, and the part-time service of elementary and secondary school students.

An employer may exclude his or her spouse from coverage, but only if the proper form is filed with the insurance carrier requesting the exclusion.

Note that laborers are the only farm employees excluded from the law. Other farm employees, such as corporate officers and office workers, are covered. Note also that if a farm is incorporated, there are no family workers because the employer is the corporation. All persons working in the business, including the corporate owners, are employed by the corporation, unless they are nominal officers and receive no wages or other payment for services. If two people own all the corporate stock and hold all the corporate offices, however, they are exempt from these provisions.

A covered employer is required to post a Notice of Compliance in a conspicuous place in and about the place of business. An employer must supply a worker who has been disabled more than seven days with a Statement of Rights under the Disability Benefits Law (Form DB-271), within five days of realizing that the worker is disabled.

Cost of Disability Benefits

The disability benefits program is financed in one of two ways: either entirely by the employer or jointly by the employer and employee. If the employer is providing statutory disability benefits, the employee may be required to contribute one-half of 1 percent of his or her weekly wages, not to exceed \$.60 per week. Unlike rates for workers' compensation insurance, the rates for disability benefits insurance are not uniform; the cost of the coverage varies among insurance companies. Shop around!

Benefits

An employee may receive one-half of his or her weekly wage, up to \$170, starting one week after he or she becomes ill or injured, for a maximum of 26 weeks during a 52-week period or during one period of disability. If the employee's average weekly wage for the eight weeks preceding the injury is less than \$20, he or she receives the average weekly wage. These benefits are provided by statute. Some insurance companies include additional benefits in their policies.

Reporting and Filing Requirements

Reporting and filing requirements vary among insurance companies. Some require physical audits of the payroll, whereas others use a self-audit. The insurance companies provide forms and explain procedures.

Additional Information

Contact an office of the Workers' Compensation Board, your insurance agent, or the State Insurance Fund for additional information about these and special coverage provisions of the

Unemployment Insurance

In 1978, mandatory coverage for unemployment insurance (U.I.) was extended to include agriculture under both state and federal law. Before then, coverage was voluntary.

Coverage

Agricultural workers are covered if their employer is covered. Employers of agricultural labor are liable for payment of contributions if: (1) as of the beginning of any calendar year in which they employ 10 or more persons for some portion of any day in each of 20 different weeks or (2) as of the beginning of any calendar quarter in which cash labor payments of \$20,000 or more are paid. 3) employers are liable for the tax imposed under the federal unemployment tax act (FN 1) as an employer of agricultural labor and the liability shall in such event commence on the first day of the calendar quarter in such calendar year when he first paid remuneration for agricultural labor in this state.

Employment not considered agricultural labor usually comes under the general-coverage provision. Under this provision, an employer is liable for U.I. taxes if his or her cash payroll is \$1,500 or more in any calendar quarter, usually the case if the farm has any employees. An employer is also liable for U.I. taxes as of the beginning of any calendar quarter in which at least one person is employed for some portion of any day in each of 20 weeks.

If neither the general minimum requirements nor the farm minimum requirements apply, it is necessary to determine whether a given employee is properly categorized as an agricultural laborer and therefore excluded from U.I. coverage required for nonfarm employees.

Agricultural labor includes all services performed in the following:

- on a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity (including livestock);
- in the employ of the owner or tenant or other operator of a farm in connection with the operation of the farm;

- in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market any agricultural or horticultural commodity, but only if such service is performed in the employ of an operator of a farm, or a group of operators (as a cooperative), and if such operator(s) produced more than half the commodity associated with such service.

The term farm refers to stock, dairy, poultry, fur-bearing animal, and fruit farms, as well as truck farms, plantations, nurseries, greenhouses, and other similar operations engaged primarily in raising agricultural or horticultural commodities and orchards. If there is a retail component to the business it will be required to pay U.I.

If you have any questions about whether a particular position is classified as agricultural labor, do not guess. Seek an interpretation from the Unemployment Division of the New York State Department of Labor. Employers have unwittingly failed to provide coverage for employees only to find that the state concluded that coverage was required. A wine maker who was responsible for overseeing the processing of grapes into wine at a vineyard was considered an employee of a commercial, not an agricultural, operation even though a vineyard is clearly a farm under New York law. Apparently it did not matter that the processing occurred on the vineyard premises; nor was processing considered "incident to the preparation" of grapes for market.

Farm Owners

If the farm is a sole proprietorship or partnership, the owner or owners cannot be considered employees, even though wages may be drawn. If the firm is a corporation, however, the owners are considered employees if they draw wages or perform services. If the farm meets the coverage provisions, the owner has to pay U. I. taxes on his or her wages and those taxes must be included in the test for coverage.

Family Workers

The unemployment insurance provisions do not apply to an employer's spouse and children under 21 unless the business is a partnership or a corporation. In this case, family workers are treated no differently than other employees in determining whether the business is covered by U.I.

Independent Contractor Status

Independent contractors are excluded from coverage under the Unemployment Insurance Law. The law, however, does not define an independent contractor, and the same problems can arise here as in other areas where it is not clear whether a person is an employee or an independent contractor. The section "Employee or Independent Contractor?" at the beginning of this publication discusses the distinctions between the two.

Crew Leaders

Under certain very restricted conditions, a crew leader, rather than the farm owner or operator, is considered the employer. The crew leader must not be an employee of the farm operator and must not have entered into a written employment agreement with the farm operator. He or she must also hold a valid Certificate of Registration under the Migrant and Seasonal Agricultural

Worker Protection Act, or the majority of crewmembers must operate or maintain mechanized equipment provided by the crew leader. If all these conditions are met, the crew leader may be considered the employer, in which case his or her liability is based on the coverage provisions listed above. A farm operator should receive a written opinion from the Unemployment Insurance Division before assuming that the crew leader is the employer.

Federal Unemployment Tax

Under the Federal Unemployment Tax Act (FUTA), unemployment tax is imposed on the employer, and it must not be collected or deducted from the wages of employees. The tax rate is 6.2 percent on the first \$7,000 of wages paid to each employee during 2001. While there is a credit of as much as 5.4 percent for state unemployment tax payments as discussed below, an employer remains liable for federal unemployment tax even though he or she may be exempt from state tax or if employees are ineligible to receive state unemployment benefits.

Form 940 or Form 940 EZ, Employer's Annual Federal Unemployment Tax Return, must be filed by January 31 following the close of the calendar year for which tax is due. The rules for depositing FUTA tax are different from those discussed earlier for depositing Social Security and withheld income taxes. Generally, FUTA taxes are deposited quarterly. See IRS Publication 51, Circular A for rules.

If an employer is liable for U.I. contributions, a notice furnished by the state Department of Labor must be posted at the workplace.

IRS Publication 51, Circular A contains information useful in determining how the federal unemployment tax will apply to an individual farm employer.

State U.I. Tax Rates

In 2000, an employer who became liable for unemployment taxes for the first time was assigned a rate of no more than 3.4 percent on the first \$8,500 of each employee's taxed wages. Wages include both cash and perquisites at a "reasonable money value," as stated in minimum wage orders. Although taxed wages include both cash and perquisites, the coverage test is applied only to cash wages. Since the initial tax rate has changed several times in the past, it is possible that it will change again in later years.

Experience rating can change the tax rate. To qualify for experience rating, the employer

- must have been in the system during the five calendar quarters ending on the computation date—December 31 -- of any year;
- must have filed all contribution reports due for all periods of his or her liability in the three payroll years preceding the computation date (a payroll year encompasses the four consecutive calendar quarters ending on September 30); and
- must have paid some remuneration to employees in the payroll year ending September 30 preceding the computation date.

Employers are notified of their tax rates in March of each year, well before the April 30 due date for the first quarter report. Tax rates also appear on the reporting forms sent to employers quarterly.

Appeal

Employers who are not satisfied with a determination affecting their tax liability have 20 days from the date of the determination to request a hearing before a referee, and 20 days from the date the referee's decision is sent to the employer to appeal to the Appeal Board. Employers are not charged for these proceedings (see "Additional Information" for the office to contact).

Reconciling State and Federal Reporting

The annual total taxable New York State wages reportable for FUTA purposes on Form 940 should be reconciled to the taxable wages reported to the state on the quarterly Employer's Report of Contributions (New York State Form 45). Employers should take time to review these figures and resolve any discrepancies before submitting the reports that are due January 31 of each year. This will assure receiving proper credit toward FUTA tax due and may forestall future questions resulting from any apparent discrepancy between the amounts of taxable wages reported to each agency for the year.

An employer subject to FUTA will obtain a 5.4 percent credit against the federal tax if the state tax is paid in full by January 31 following the close of the taxable year, and a reduced credit if the state tax payment is made later.

Penalties for Noncompliance

Failure to register or pay the required taxes on time can result in substantial penalties. Late tax payments are not credited to the employer's account and can thus result in a higher than usual tax rate. An interest rate of 12 percent is charged on all delinquent payments. Refusal to submit taxes, or excessive delay in doing so, may result in a warrant, which, when filed, becomes a lien upon the employer's title and interest in real property.

Record Keeping

For each person they employ, all employers must maintain records that show the employee's name and Social Security number as well as the dates that the employee worked and the earnings, including bonuses, noncash payments, and similar forms of compensation. The records must be retained for the current year and at least three preceding years and be available for inspection.

Additional Information

The Unemployment Insurance Division of the New York State Department of Labor publishes useful materials regularly. Two publications are particularly valuable: *Employer's Guide to Unemployment Insurance* (updated periodically and sent to insured employers) and *Agricultural Employment*.

Questions regarding coverage and an employer's liability for unemployment insurance taxes should be directed to Liability and Determination Section, Unemployment Insurance Division, New York State Department of Labor, State Campus, Albany, NY 12240-0322.

Questions regarding claims should be directed to your local New York State Department of Labor Unemployment Insurance Office, listed in the phone directory.

APPENDIX

Regulatory Agencies

U.S. DEPARTMENT OF LABOR

www.dol.gov

Federal DOL wage and hours NY offices:

www.dol.gov/esa/contacts/whd/america2.htm#NewYork

NEW YORK STATE WORKERS' COMPENSATION BOARD

www.wcb.state.ny.us

New York State District Office Locations

<http://www.wcb.state.ny.us/design/framework/districtoffices.htm>

Albany District (Eastern New York)

Counties Served: Albany, Clinton, Columbia,
Dutchess, Essex, Franklin, Fulton, Greene,
Hamilton, Montgomery, Rensselaer, Saratoga,
Schenectady, Schoharie, Ulster, Warren, Washington
518 474-6674

FAX - 518 473-9166

100 Broadway-Menands

Albany, NY 12241

Binghamton District (Southern Tier)

Counties Served: Broome, Chemung, Chenango,
Cortland, Delaware, Otsego, Schuyler, Sullivan, Tioga,
Tompkins

607 721-8356

FAX - 607 721-8324

State Office Building

44 Hawley Street

Binghamton, NY 13901

Brooklyn District (New York City)

Counties Served: Kings, Richmond

1 800-877-1373

FAX - 718 802-6642

111 Livingston Street

Brooklyn, NY 11201

Buffalo District (Western New York)

Counties Served: Cattaraugus, Chautauqua, Erie,
Niagara

716 842-2166

FAX - 716 842-2171

Statler Towers, Third Floor

107 Delaware Avenue

Buffalo, NY 14202-2898

Hauppauge District

Counties Served: Suffolk

631 952-6000

631 952-6300

FAX - 631 952-7966

220 Rabro Drive, Suite 100

Hauppauge, NY 11788-4230

Hempstead District (Long Island)

Counties Served: Nassau

516 560-7700

FAX - 516 560-7807

175 Fulton Avenue

Hempstead, NY 11550

Manhattan District

Counties Served: Bronx, New York

1 800-877-1373

215 W. 125th Street

New York, NY 10027

Peekskill District Counties Served: Orange,
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