

# **Farm Labor Management:** *Helping Producers Cultivate Human Resources*

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## Acknowledgments

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The authors drew upon a number of excellent references to provide this material, particularly the educational and informational materials of the Department of Labor, the Internal Revenue Service, and the U.S. Equal Employment Opportunity Commission. The work of Sarah Fogelman during her time with Kansas State Research and Extension was also of great assistance in helping us prepare the human resources materials included in this handbook.

Finally, the authors would like to express their profound gratitude to Mr. Paul A. Ross with McAfee and Taft, P.C. in Oklahoma City, Oklahoma, Ms. Susanna Gattoni of Hall Estill, P.C. in Oklahoma City, Oklahoma, and Ms. Leah Keele of Latham, Stall, Wagner, Steele & Lehman, P.C. in Tulsa. Each of these attorneys, well-recognized as experts in the field of employment law, provided exhaustive review and tremendously helpful comments on the materials used to develop this handbook.

## Disclaimer

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This publication includes information about a number of legal topics. It is intended to provide general information about legal issues. It should not be cited or relied upon as legal authority. State laws vary, and for advice about how these issues might apply to your individual situation, please consult an experienced labor and employment attorney licensed and in good standing for your particular state.



United States Department of Agriculture  
National Institute of Food and Agriculture

**Funded by USDA-NIFA through  
Southern Risk Management Education Center  
Project Number 12322**

## Introduction

Employment in agriculture can be both the most challenging and most rewarding path one can take. Providing food, fiber, and fuel to a growing world while working in concert with nature can provide the farm and ranch employee with immense fulfillment. At the same time, though, the things that can make agricultural work so enjoyable can also provide significant adversity. Thus, many farmers and ranchers can be heard uttering that old saying “good help is hard to find these days.” There are a number of obstacles facing agricultural employers, ranging from the fact that rural areas with smaller populations may simply have a smaller pool of qualified job candidates to the numerous variables in both farm employment itself.

At the same time, economic pressures continue to encourage farmers and ranchers to grow their operations. Such growth means the operations demand more labor than can be provided by the operator and his or her family. Thus, recruiting and retaining good employees can be critical to the long-term success of the farm or ranch.

Agricultural operations face an increasingly competitive job market. As the world economy improves from its recent recession, it is anticipated that over the next ten years, American employers will have 10 million fewer workers to meet their labor needs due to slowing population growth and mass retirements of Baby Boomers from the work force.<sup>1</sup>

As a result, it is important for agricultural employers to not only understand the laws that apply to them, but also how to create a workplace where employees *want* to work. Fortunately, there are a number of tools and practices farmers and ranchers can use to find employees that fit their needs while simultaneously making their farm an engaging and rewarding place to work. Our team has worked to pull these tools together in this handbook so that you will have a simple and easy-to-use guide for managing your operation’s human resources. Here, you will find tips for determining your farm’s human resource needs, finding the employees that fit those needs, bringing those employees “up to speed” quickly, and helping them develop as a part of your operation. Our exploration of these issues will be divided into three basic steps:

1. Assessing your human resource needs and preparing to be an employer
2. Recruiting, interviewing, and hiring agricultural employees
3. Managing, developing, and incentivizing your employees

Along the way, this handbook will also help you understand the increasingly complex area of employment law. We all remember the old saying “There is an exception to every rule.” When talking about employment law and agriculture, though, there needs to be another saying: “There’s an exception to every rule, and then there is an exception to every exception for agriculture.” Labor law in the United States has long recognized that the agricultural industry operates in a unique environment and under unique demands. Lawmakers tried to accommodate those circumstances with specially-crafted rules that apply to our farms and ranchers. In so doing, though, they also created a complex legal landscape for the agricultural industry. With a little homework, though, farmers and ranchers can avoid many employment law pitfalls and can recruit and maintain a quality workforce that adds to their bottom line.

The authors hope this handbook provide you with a number of useful tools as you work with your farm employees. Farmers and ranchers are masters of managing resources, and we hope that these resources will help you managing your most important resources – your *human* resources.

# Section 1

## Assessing Your Human Resource Needs and Preparing to be an Employer

### *Assessing Human Resource Needs for the Farm and Ranch*

While many farmers and ranchers want to jump directly to the question of “what do I have to do (and avoid) to hire an employee,” they often skip what may be the most important piece of the whole process: carefully thinking about their own business plan and how a prospective employee may fit into that picture.

### **Understanding the Vision Statement for the Farm and Ranch**

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The foundation for creating a meaningful work environment is to help employees see how they fit into the big picture. Farms and ranches that are able to stay focused on their long-term vision will be more successful. Therefore, it is important that all stakeholders in the organization, including employees, be aware of the long-term vision of the business, and be involved in strategic planning activities.<sup>2</sup>

Many farmers and ranchers may say to themselves “There’s too much going on around here for me to sit around coming up with a ‘strategic plan!’” To be sure, there is plenty to do on the farm or ranch, but strategic planning can provide tremendous value to the operation.

Strategic planning involves thinking about where the business needs to be in the future. It involves considering what the various stakeholders want to happen to the business as a whole and evaluating what skills and resources the business participants bring to the table. The long-term concept of vision and/or mission statements form the foundation of a strategic management system by helping the business focus on what it is all about and where it hopes to be in the future. When everyone involved in the organization has a clear understanding of and broad acceptance of what the business does and why they do it, the path becomes much clearer. The authors strongly encourage farm and ranch managers to develop a vision statement for their business with heavy involvement from current employees, and to effectively communicate that vision to potential new employees.

### **Assessing Current and Needed Human Resources**

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Farmers and ranchers should begin building a staffing plan with some “deep thinking” about the type and quantity of work that will be necessary to achieve their business vision.

To start, assess current human resources by listing all the people involved in the operation and the roles they play. This sounds simplistic, but it can provide valuable insights as to how an enterprise has currently allocated decision-making and work responsibilities. Think about what current and new tasks will be required in the business. Develop an estimate of the time required to accomplish all the various tasks in a timely manner, both now and in the future. This will help visualize seasonal work demands. Reviewing past employee time records or keeping a record of how you spend your time can be a useful start to this process. Be sure to consider *all* of the tasks that need to be accomplished, including production, marketing, maintenance, and management. A workload schedule by season may help as you plan, and incorporating the information into a template like the following example may be useful.

The example illustrated in Figure 1 illustrates how a diversified crop and livestock farm that is considering an expansion with rented land might begin to assess their human resource situation. The current human resources have been identified, along with the current primary roles. Full time stakeholders are fully employed, with individuals working extra hours and part time help utilized when workload peaks are experienced. When the current situation is portrayed in this manner, it is fairly easy to see that there are some impending human resource changes needed. In the near term, if the farm decides to take advantage of the expansion opportunity it appears that approximately 1,200 additional hours of labor will be needed unless the equipment compliment is changed accordingly. Within a few years additional changes will be needed as two of the main figures on the farm approach retirement. With the template, it is easy to see which task gaps will need to be filled.

Figure 1 — Example Human Resource Assessment Template

Person	Current Role in Business	Timeline	Workload Constraints	Foreseeable Future Issues If 400 acres of Rented Land Added
Dad	Crop Enterprise Manager General Labor Marketing and Production Decision Maker	< 3 years to retirement	Currently relies on help from son and employees during spring planting, summer harvest, and fall planting - harvest	Will require another 1,000 hours of equipment operator time spread over spring through fall time period
Mom	Recordkeeping and Financial Management Marketing Decision Maker	< 3 years to retirement	Would like to shed financial management duties as retirement approaches	Recordkeeping and analysis time would be largely unaffected
Son	Livestock Enterprise Manager General Labor Marketing and Production Decision Maker	Foreseeable Future	OK for now, but as he takes on more management duties will likely need more help during fall and winter when livestock need attention	Will increase the number of stockers, resulting in approximately an additional 200 hours of time required between September and May
Full-time Employee	General Labor - Skilled Production and Equipment Maintenance Decision Maker	Foreseeable Future	Currently fully employed and working as many extra hours at peak times as desired	Additional time requirements will necessitate a combination of additional skilled and unskilled labor
Part-time Seasonal Help	General Labor - Unskilled	Always Uncertain	Need to maintain a source for part time unskilled labor during peak workload periods	

Next, assess how well-suited the current workers are for their current roles in the operation by evaluating skills and interests. Try to determine if people currently in the operation have unique, but untapped skills, or are there people who would be happier in other roles. Are there people who would be suited for additional tasks with more training or education?

Consider if there are people who will be leaving the operation whose roles will need to be filled. That information, combined with the assessment of tasks and estimated time requirements will help identify the impending human resource gaps. In the earlier example, Dad and Mom will be leaving the operation so the Son and/or other stakeholders will need to determine whether or not the management roles that will be left open are roles that they are well-suited for and in which they have an interest. This will help determine whether or not addition human resource acquisitions will be needed to fill management roles, production roles, or a combination. Only then can an intelligent plan be made to fill the gaps.

Options for filling those gaps include redefining tasks for the current workforce, adding new labor to the workforce, trading labor or tasks with others in the community, or investing in equipment that will reduce the amount of labor needed (in other words, substituting capital for labor). The specific strategy chosen will depend on how much of a gap exists between the current workforce and projected workforce needs, as well as the assessment of the fit between the tasks that need to be performed and the current workforce assignments.<sup>3</sup>

## Preparing Job Descriptions

Job descriptions are an essential part of the employment process, from both a practical and legal perspective. Farms need to communicate the image of a well-managed and -organized business to prospective employees. Job descriptions demonstrate that the business has thought about specific labor needs, and the skills that are needed to perform those tasks. They also form the basis for much of the employee-employer relationship, including recruitment, selection, training, and evaluation of performance. The job description helps the parties to reach a mutual understanding regarding important details of a job in order to avoid future problems or conflict. In other words, job descriptions can be critical to helping the farm or ranch run smoothly!

Job descriptions are not difficult to write. Start by consulting with existing employees to write job descriptions for their current jobs. The goal is to provide a clear picture of the job so that both the employee and the employer fully understand expectations. Important components include a job title, a summary of major responsibilities, qualifications, specific duties or tasks, where the job fits in the organizational structure of the business, compensation and benefits, and a discussion of the work schedule.<sup>4</sup>

As discussed below, a well-reasoned and -written job description can also provide numerous protections for the employer

throughout the recruitment, employment, and if necessary, termination processes.<sup>5</sup> There are a number of tools available to help you start the process of assembling your job descriptions, and some references to help with this process are included in Figure 2 below.

Figure 2 – Job Description References and Sample Job Description

Farm Journal Legacy Project Job Description Template, available at [http://www.agweb.com/legacyproject/article/tool\\_job\\_description\\_template/](http://www.agweb.com/legacyproject/article/tool_job_description_template/)

Ohio State University Fact Sheet: Writing Job Descriptions for Small Businesses, Fact Sheet CDFS-1376-95, available at <http://ohioline.osu.edu/cd-fact/1376.html>

Step 1: Defining Job Requirements. LINDA A. HILL, HIRING AN EMPLOYEE pp. 7-16 (Harvard Business Press 2008).

### **Job Description — Crop Production Associate**

#### **General Description of Job**

The main goals of this position are: Perform all field operations in the timeliest manner possible, keep crop production costs within established budgets, maintain all equipment in top working order, and keep stored grains in top quality. Keep storage losses less than 2%. This position will be supervised by the Crop Production Manager.

#### **Duties, tasks, and responsibilities**

1. Perform crop operations in the most timely, cost-effective, and efficient manner possible.
2. Monitor quality of stored grains throughout the year.
3. Spring and Fall operations are particularly time sensitive— a) Have equipment ready ahead of time, b) Remember that every delay in planting and harvesting results in yield loss, c) Be prepared to work longer hours to accommodate weather, breakdowns, and other factors that are beyond our control.
4. Equipment maintenance is one of your highest priorities— a) Keep safety shields in place, b) Keep fluids at the optimum levels, c) perform maintenance procedures on time. Lubricate, change fluids, check tire pressures, watch for unusual wear, fix minor problems before they become major expenses, d) Use off-season time to do major maintenance and repair, e) Have all equipment ready for the field ahead of time. Planters and harvesters are particularly time sensitive and need thorough preparation ahead of their season.
5. Safety is extremely important— a) Maintain safety equipment, b) Use goggles, gloves, and other body protection when using chemicals, c) Use support stands and jacks when working under equipment, d) Wear safety glasses and other protective gear when working around torches, welders, drills, and other equipment that creates heat, sparks, or projectiles, e) Be extremely careful around PTOs and other chains, gears, belts, etc.
6. Perform all data collection and recordkeeping duties as defined by management.
7. Do your part to provide an atmosphere of teamwork, camaraderie, and an enjoyable work environment for everyone at the operation.
8. Enjoy what you do and provide suggestions to make working here more satisfying for everyone.

#### **Working Conditions**

This position will require working outdoors in all types of weather conditions. During planting and harvest seasons work days will exceed 9 hours. Applicants must be able to lift at least 50 pounds from ground level to overhead on a regular basis.

#### **Required knowledge, skills, and abilities**

- Ability to safely and efficiently operate planter and harvester machinery.
- Ability to assess stored grain quality.
- Ability to observe performance of machinery.
- Skill to perform maintenance on machinery.
- Ability to get along with co-workers and help maintain an atmosphere of teamwork.
- Ability to collect data and keep production records.

#### **Evaluation**

Position will be evaluated through formal job evaluations on an annual basis by the direct supervisor. Feedback will be provided on an ongoing basis by the direct supervisor as needed.

#### **Compensation**

Compensation will be based on skills and experience of the candidate. Wages will range from \$9-\$11 per hour. Housing will also be provided. One meal per day will be provided.



## Preparing to be an Employer

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Before hiring any new employees, a farm or ranch needs to ensure a number of other affairs are in order. This includes determining if a business entity such as an LLC or corporation should be used for the enterprise and establishing a tax “identity” in preparation for the payroll withholding that may be required.

### *Choosing an Entity Structure for the Farm and Ranch*

While a full discussion of selecting a business form for your farm or ranch is beyond the scope of this handbook, you should consider what business form is right for your operation. A limited liability form such as a limited liability company or corporation may provide important protections for your operation, as well as providing tax advantages to you if you will be providing your employees with benefits such as insurance or retirement plans. For information about entity forms and some of the considerations associated with them, consult the Farm Transitions Workbook, available at <http://agecon.okstate.edu/farmtransitions>. Be sure to engage the help of your tax professional and attorney in selecting the structure that is right for you.

### *Establishing an “Identity” — Obtaining Your Federal EIN*

If your farm or ranch operates as a separate entity (*i.e.* as anything other than a sole proprietorship), it will need a Federal Employer Identification Number, or “EIN,” to file its own tax returns and to withhold any Federal income, Social Security, or Medicare taxes. An EIN serves a business much like a Social Security number serves an individual. To apply for an EIN, use Form SS-4, “Application for Employer Identification Number,” which can be downloaded at <http://www.irs.gov/pub/irs-pdf/fss4.pdf>. Applying online allows you to immediately receive a temporary EIN, which will then be confirmed by mailing of the permanent EIN (which, in most cases, is the same as the temporary number). It also pre-enrolls the business entity in the Electronic Federal Tax Payment System, enabling the business to submit information and payments electronically.

### *Preparing for Federal and State Tax Withholding*

One of the biggest tasks ahead of an employer is handling the federal and state tax withholding that must be managed for each employee. This subsection will help you understand when these withholding requirements apply to you and how you can handle your responsibilities if they do.

### ***A Note about Employees and Independent Contractors***

Throughout much of employment law, classifying a worker as an “employee” or an “independent contractor” triggers different requirements for the employer. In the context of payroll withholding, an employer must withhold payments of federal and state income, Social Security, Medicare, and state and federal unemployment taxes for employees but need not do the same for independent contractors. As discussed later, there are also a number of differences in the recordkeeping requirements for the two classes of workers.

What distinguishes an employee from an independent contractor? No single factor can answer this question, but the IRS and state tax agencies routinely look at the following factors to separate employees from independent contractors:<sup>6</sup>

**Detail of instructions:** Persons given highly specific, detailed instructions about when and where to do work, what tools or equipment to use, and who is to do the work are more likely to be employees than independent contractors

**Training:** The greater the level of training provided by the employer to the person, the more likely the person is to be an employee than an independent contractor.

**Financial investment and risk:** Independent contractors frequently make significant financial investments in their own training and equipment, and bear the financial risk of their activities, while employees’ out-of-pocket investments are likely minimal and their pay is not as likely to be dependent on the outcome of a project.

**Characterization of the relationship:** Written agreements that characterize the parties’ intentions with respect to the relationship (*i.e.* a contract stating the worker is an independent contractor and not an employee), the permanency of the relationship (on a job-by-job basis or a continuous, daily engagement; also, is the worker free to work for other parties as well), and the extent to which the tasks of the person are central to the regular business of the employer are all evidence that may be examined to evaluate the relationship. Note, though, just because an employer calls someone an “independent contractor” does not make it so.

Figure 3 – Considerations in determining employee or independent contractor status

Employee	Independent Contractor
Given highly specific instructions about how and when to perform work	Told desired outcome with little instruction about how to achieve outcome
Employer owns tools; employee told what to use	Selects and provides own tools & equipment
Given training / supervision by supervisor	Assumed to have needed skills / no training provided
Little or no financial risk dependent on project outcome	Payment contingent; based on successful performance of project

Understandably, employers often wish they could categorize people who work for them as independent contractors, but making that choice incorrectly can trigger significant liabilities (and potentially, monetary penalties) for the employer. Farmers and ranchers need to look at all the circumstances surrounding the work relationship to make a determination as to whether a worker is an employee or an independent contractor. When in doubt about whether a worker is an employee or independent contractor, contact your attorney and tax professional.

#### Form W-4

As a new employee joins the farm or ranch (but not during the interview process, as discussed below), they should provide the employer with a Form W-4, “Employee’s Withholding Allowance Certificate.” Form W-4 can be downloaded at <http://www.irs.gov/pub/irs-pdf/fw4.pdf>. Since the W-4 serves as the basis for the employer’s withholdings, employees should be encouraged to consult with their tax professional in preparing this form.<sup>7</sup> When receiving an employee’s W-4, the employer should also ask to see the employee’s Social Security card (again, as the worker reports to the farm or ranch, not during the interview process) so that they can record the employee’s name and Social Security number accurately. If the employee does not already have a Social Security card, they can apply for one using form SS-5, “Application for a Social Security Card,” available for download at <http://www.ssa.gov/online/ss-5.pdf>.

Let’s say that Patty has hired Pete to work on her farm. Pete is a single person, is not claimed as a dependent person on anyone else’s taxes, and only has one job. On his W-4, Pete would claim one allowance for himself (entering a 1 on line A) and one allowance as a single person only having one job (entering a 1 on line B), for a total of two allowances.

Figure 4 – Example W-4 withholding allowance worksheet

Personal Allowances Worksheet (Keep for your records.)	
<b>A</b>	Enter “1” for <b>yourself</b> if no one else can claim you as a dependent . . . . . <b>A</b> _____
<b>B</b>	Enter “1” if: <ul style="list-style-type: none"> <li>• You are single and have only one job; or</li> <li>• You are married, have only one job, and your spouse does not work; or</li> <li>• Your wages from a second job or your spouse’s wages (or the total of both) are \$1,500 or less.</li> </ul> . . . . . <b>B</b> _____
<b>C</b>	Enter “1” for your <b>spouse</b> . But, you may choose to enter “-0-” if you are married and have either a working spouse or more than one job. (Entering “-0-” may help you avoid having too little tax withheld.) . . . . . <b>C</b> _____
<b>D</b>	Enter number of <b>dependents</b> (other than your spouse or yourself) you will claim on your tax return . . . . . <b>D</b> _____
<b>E</b>	Enter “1” if you will file as <b>head of household</b> on your tax return (see conditions under <b>Head of household</b> above) . . . . . <b>E</b> _____
<b>F</b>	Enter “1” if you have at least \$2,000 of <b>child or dependent care expenses</b> for which you plan to claim a credit . . . . . <b>F</b> _____ <b>(Note: Do not include child support payments. See Pub. 503, Child and Dependent Care Expenses, for details.)</b>
<b>G</b>	<b>Child Tax Credit</b> (including additional child tax credit). See Pub. 972, Child Tax Credit, for more information. <ul style="list-style-type: none"> <li>• If your total income will be less than \$70,000 (\$100,000 if married), enter “2” for each eligible child; then <b>less</b> “1” if you have two to four eligible children or <b>less</b> “2” if you have five or more eligible children.</li> <li>• If your total income will be between \$70,000 and \$84,000 (\$100,000 and \$119,000 if married), enter “1” for each eligible child . . . . . <b>G</b> _____</li> </ul>
<b>H</b>	Add lines A through G and enter total here. <b>(Note: This may be different from the number of exemptions you claim on your tax return.)</b> ► <b>H</b> _____
For accuracy, <b>complete all worksheets that apply.</b> <ul style="list-style-type: none"> <li>• If you plan to <b>itemize or claim adjustments to income</b> and want to reduce your withholding, see the <b>Deductions and Adjustments Worksheet</b> on page 2.</li> <li>• If you are <b>single and have more than one job</b> or are <b>married and you and your spouse both work</b> and the combined earnings from all jobs exceed \$50,000 (\$20,000 if married), see the <b>Two-Earners/Multiple Jobs Worksheet</b> on page 2 to avoid having too little tax withheld.</li> <li>• If <b>neither</b> of the above situations applies, <b>stop here</b> and enter the number from line H on line 5 of Form W-4 below.</li> </ul>	

### **Withholding Federal Income Tax**

As an agricultural employer, it is quite likely you will have to withhold federal income tax. There is no set minimum amount of income tax that triggers an employer's duty to withhold federal income tax; if any income tax is due by the employee, withholding is required.

Calculating the Federal income tax to be withheld from the employee's wages can be a somewhat complex task, and you should engage the help of your tax professional when in doubt about your calculations. To start, consult the employee's W-4 (discussed above) to determine the number of withholding allowances claimed by the employee. Next, using Publication 51, Circular A, choose a method of calculating the appropriate withholding amount. While there are several methods available to employers, the two most common are the "wage bracket method" and the "percentage method."

#### **i. "Wage bracket method"**

To use the wage bracket method, you will use the filing status of the employee (*i.e.* single, married, *etc.*), number of allowances claimed by the employee, the payroll period (*i.e.* weekly, biweekly, monthly, *etc.*) and the amount they are paid per payroll period. With this information, you will then look to the "Wage Bracket Method Tables" in Publication 51, Circular to find the amount of income tax withholding for each pay period.

*Example:*  
Let's say Patty pays Pete \$800.00 per week. Remembering that Pete is a single person with two allowances, we would look at the line in the "Single Persons- Weekly Payroll Period" for Using the Wage Bracket Method Tables for Income Tax Withholding" in Publication 51, Circular A, you would look at the line for wages "At least \$800 but less than \$810" and the column for two allowances to see that Patty needs to withhold \$82.00 for federal income taxes from Pete's weekly paycheck.

Figure 5 – Example of Wage Bracket Method Table for Income Tax Withholding

#### Percentage Method—2016 Amount for One Withholding Allowance

Payroll Period	One Withholding Allowance
Weekly	\$ 77.90
Biweekly	\$ 155.80
Semimonthly	\$ 168.80
Monthly	\$ 337.50
Quarterly	\$1,012.50
Semiannually	\$2,025.00
Annually	\$4,050.00
Daily or miscellaneous (each day of the payroll period)	\$ 15.60

**Percentage Method Tables for Income Tax Withholding**

**(For Wages Paid in 2016)**

**TABLE 1—WEEKLY Payroll Period**

<b>(a) SINGLE person</b> (including head of household)—				<b>(b) MARRIED person—</b>			
If the amount of wages (after subtracting withholding allowances) is:				If the amount of wages (after subtracting withholding allowances) is:			
The amount of income tax to withhold is:				The amount of income tax to withhold is:			
Not over \$43 . . . . . \$0				Not over \$164 . . . . . \$0			
<b>Over—</b>	<b>But not over—</b>		<b>of excess over—</b>	<b>Over—</b>	<b>But not over—</b>		<b>of excess over—</b>
\$43	—\$222 . .	\$0.00 plus 10%	—\$43	\$164	—\$521 . .	\$0.00 plus 10%	—\$164
\$222	—\$767 . .	\$17.90 plus 15%	—\$222	\$521	—\$1,613 . .	\$35.70 plus 15%	—\$521
\$767	—\$1,796 . .	\$99.65 plus 25%	—\$767	\$1,613	—\$3,086 . .	\$199.50 plus 25%	—\$1,613
\$1,796	—\$3,700 . .	\$356.90 plus 28%	—\$1,796	\$3,086	—\$4,615 . .	\$567.75 plus 28%	—\$3,086
\$3,700	—\$7,992 . .	\$890.02 plus 33%	—\$3,700	\$4,615	—\$8,113 . .	\$995.87 plus 33%	—\$4,615
\$7,992	—\$8,025 . .	\$2,306.38 plus 35%	—\$7,992	\$8,113	—\$9,144 . .	\$2,150.21 plus 35%	—\$8,113
\$8,025 . . . . .	\$2,317.93 plus 39.6%		—\$8,025	\$9,144 . . . . .	\$2,511.06 plus 39.6%		—\$9,144

ii. **“Percentage method” – To use the percentage method, you will need the following table:**

*Figure 6 – 2016 Amounts for One Withholding Allowance*  
 Percentage Method—2016 Amount for One Withholding Allowance

Payroll Period	One Withholding Allowance
Weekly	\$ 77.90
Biweekly	\$ 155.80
Semimonthly	\$ 168.80
Monthly	\$ 337.50
Quarterly	\$1,012.50
Semiannually	\$2,025.00
Annually	\$4,050.00
Daily or miscellaneous (each day of the payroll period)	\$ 15.60

Using the payroll period applicable to the employee, multiply the amount from the table by the number of allowances claimed by the employee. For example, an employee paid on a weekly payroll period with one allowance would have an amount of \$77.90; if the same employee had two allowances, the amount would be \$155.80, and so on. Subtract this amount from the wages paid to the employee for the payroll period to find the amount of wages subject to withholding. Then, consult the table for the calculation that applies to the employee’s filing status and amount of wages for the payroll period. This method is best explained through an example.

*Example:*

Recall that Pete claims two allowances and is paid \$800.00 on a weekly payroll period. This means Pete's allowances equal \$155.80 ("one withholding allowance" on a weekly payroll period of \$77.90 x 2 allowances = \$155.80).

Subtracting this from Pete's weekly pay of \$800.00, we get \$644.20 ( $\$800.00 - 155.80 = \$644.20$ ). This is the amount of Pete's wages subject to withholding.

Using the Publication 51, Circular A's "Table 1" for a weekly payroll period and a single person, use the line for wages "Over \$222 but not over \$767" (since our wage amount is \$644.20) – this indicates the amount of tax to withhold is \$17.90 plus 15% of the amount over \$222.

Thus, Patty would need to withhold a total of \$82.00 from Pete's weekly paycheck, calculated by these steps:

- 1)  $\$644.20$  (amount of wages subject to withholding) –  $\$222.00$  (bottom of wage bracket) =  $\$422.20$
- 2)  $\$422.20$  (excess over bottom of wage bracket) x 15% (tax bracket) =  $\$63.33$
- 3)  $\$17.90$  (base of tax bracket) +  $\$63.33$  (tax on excess over bottom of bracket) =  $\$81.23$  (round to  $\$82.00$ )

### **Withholding federal Social Security and Medicare Tax, Social Security Tax, and Medicare Tax (FICA)**

The Federal Insurance Contributions Act (FICA) requires employers<sup>8</sup> and employees<sup>9</sup> to make contributions to Social Security and Medicare. This is why you often hear Social Security and Medicare contributions referred to as "FICA taxes."

If you are an employer, you must start withholding federal Social Security and Medicare taxes when you either

- (A) pay cash wages of \$150 or more in a year to any one employee, or
- (B) if the amount of total wages paid to all of your employees in a year is \$2,500 or more (in other words, if your total payroll is more than \$2,500).<sup>10</sup>

For 2016, the amount to be withheld for Social Security from the employee is 6.2% of gross wages. The employer must also contribute an amount equal to 6.2% of the employee's gross wages (this amount cannot be deducted from the employee's pay) for a total contribution (the amount withheld from the employee's paycheck and the amount contributed by the employer) of 12.4%.<sup>11</sup>

*Example:*

Since Patty pays Pete \$800 per week, Patty would need to withhold \$49.60 ( $\$800.00 \times 6.2\%$ ) in Social Security taxes from Pete's paycheck. This represents Pete's Social Security contribution. Patty would also need to contribute \$49.60 (again,  $\$800.00 \times 6.2\%$ ) in Social Security taxes herself. This represents the employer's tax, and this amount would have to come from Patty's business; and could not be withheld from Pete's paycheck. The total Social Security contributions (both Pete and Patty's contributions) would be \$99.20 (Pete's \$49.60 contribution + Patty's \$49.60 employer tax).

Medicare withholding rates for 2016 are 1.45% for the employee (withheld from the employee's pay) and 1.45% for the employer (contributed by the employer, not deducted from the employee's pay), for a total contribution (the amount withheld from the employee's paycheck and the amount contributed by the employer) of 2.9%.

*Example:*

Since Patty pays Pete \$800 per week, Patty would need to withhold \$11.60 ( $\$800.00 \times 1.45\%$ ) in Medicare taxes from Pete's paycheck. This represents Pete's Medicare contribution. Patty would also need to contribute \$11.60 (again,  $\$800.00 \times 1.45\%$ ) in Medicare taxes herself. This represents the employer's tax, and this amount would have to come from Patty's business; it cannot be withheld from Pete's paycheck. The total Medicare contributions (both Pete and Patty's contributions) would be \$23.20 (Pete's \$11.60 contribution and Patty's \$11.60 employer tax).

### **Federal Unemployment Taxes**

Taxes collected under the Federal Unemployment Tax Act (FUTA) are treated differently from Federal income, Social

Security, and Medicare taxes. You need to submit a Form 940, “Employer’s Annual Federal Unemployment Tax Return” if either of the following conditions are met: (A) you paid cash wages of \$20,000 or more to farm workers in any calendar quarter (January–March, April–June, July–September, or October–December) of the preceding year, *or* (B) if you employed 10 or more farm workers during at least some part of a day (even if the employees were not all present at the same time of day) during any 20 or more different weeks in the preceding year.<sup>12</sup> From a practical standpoint, this means that you employed ten or more farm workers for a significant period of the year.

*Example:*

*Patty has just one employee, Pete. Pete is paid \$800 per week. Pete’s cash wages per quarter (13 weeks) would be \$10,400, so Patty would not meet the \$20,000 trigger. Similarly, since she only has one employee, she would not satisfy ten employee trigger. Thus, Patty would not be required to make any FUTA contributions.*

If you do satisfy the payroll or employee number thresholds, you will pay a FUTA tax rate of 6.0% on the first \$7,000 of earnings for each employee. However, the employer can also use a credit of up to 5.4% for payments made in state unemployment taxes. Note that FUTA taxes are employer taxes, and cannot be withheld from the employee’s wages.

Given the rather high threshold for FUTA taxes, we will not discuss them in further detail in this handbook. However, if you think that you may meet one of these thresholds, you can obtain more information about FUTA withholding in IRS Publication 15, Circular E, the Employer’s Tax Guide, which is available at <http://www.irs.gov/pub/irs-pdf/p15.pdf>.

### **Depositing federal taxes**

Generally, Federal income, Social Security, Medicare, and FUTA taxes must be deposited electronically, regardless of the amount of taxes withheld.<sup>13</sup> This electronic filing takes place through the Electronic Federal Tax Payment System (EFTPS). You can enroll in EFTPS at <https://www.eftps.gov/eftps/>.

The frequency of these deposits depends on the amount of these taxes withheld. If the employer withheld \$50,000 or less of these taxes combined (*i.e.* the total of withholdings for Federal income tax, Social Security, and Medicare taxes) in the past year, then the withholdings can be deposited monthly. If more than \$50,000 of these taxes were withheld, the taxes must be deposited semi-weekly.<sup>14</sup> Most agricultural employers will fall well below this threshold, which is sometimes called the “Federal Semiweekly Deposit Schedule” threshold.

### **State Tax Withholding**

Only seven states have no state-level individual income tax: Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming.<sup>15</sup> With the exception of New Hampshire and Tennessee, all other states tax wage and salary income.<sup>16</sup> Most states require employers to withhold income taxes in a manner similar to the methods discussed above for federal income tax withholding. To determine the specific requirements of your state, you can contact your state tax agency. A listing of all state tax agencies can be found through the Federation of Tax Administrators website at <http://www.taxadmin.org/state-tax-agencies>.

Several states also require contributions to a state unemployment insurance fund (sometimes called “unemployment taxes”). Some of these contributions are made solely by the employer, while others are made by both the employer and the employee. Some states also have requirements for employer and/or employee deductions for disability insurance coverage. ADP has compiled a summary of these requirements for each state available here: <https://www.adp.com/-/media/Compliance/2016%20Fast%20Wage%20and%20Tax%20Facts/2016FastFactsALL.ashx?la=en>.

Determining how much state tax must be withheld and how much employer contribution should be made can be somewhat complex. Always consult with a properly credentialed tax professional to help you determine withholding and contribution amounts. To help illustrate this process, the following sub-sections illustrate this process for an Oklahoma employer.

### **Oklahoma State Income Tax Withholding**

While Oklahoma does not have a state equivalent of the Social Security or Medicare taxes, Oklahoma employers do have to withhold state income tax. The Oklahoma Tax Code assumes that all employers will withhold income taxes,<sup>17</sup> but the code does include an important agricultural exception. If you pay \$900.00 or less monthly to an employee “in connection with farming activities,” you not required to withhold income taxes from your employees’ wages.<sup>18</sup> If you will be paying any employee more than this amount in any month, though, you will need to prepare for withholding Oklahoma income tax from your employee’s paychecks.

To properly withhold Oklahoma income tax, your business will need to register with the Oklahoma Tax Commission. To register, you can use the forms provided in OTC Packet A – the Oklahoma Business Registration Packet, available at <https://www.ok.gov/tax/documents/busregpk.pdf>. You can also register online at [https://www.ok.gov/tax/Online\\_Services/Online\\_Business\\_Registration.html](https://www.ok.gov/tax/Online_Services/Online_Business_Registration.html).

To calculate the amount of Oklahoma income tax to be withheld, you will need to use the most recent version of the Oklahoma withholding tables. These tables are published as OTC Publication OW-2, and are available at <https://www.ok.gov/tax/documents/2016WHTables.pdf>.

If you are required to withhold Oklahoma income taxes, you will need to file withholding reports and deposit the tax amounts on a schedule determined by the amount of taxes withheld.<sup>19</sup>

If the amount of tax withheld is ...	... then file withholding report and deposit taxes:
\$500 or less per calendar quarter	by the 20 <sup>th</sup> day of the month following the close of the <i>quarter</i>
More than \$500 but less but not required to follow the Federal Semiweekly Deposit Schedule	by the 20 <sup>th</sup> day of the following <i>month</i>
[Employer is required to follow Federal Semiweekly Deposit Schedule]	by the 20 <sup>th</sup> day of the following <i>month</i> AND required to file electronically

Withholding can be handled online using the Oklahoma Tax Commission’s Oklahoma Taxpayer Access System (OkTAP) system. You can register to use OkTAP at <https://oktap.tax.ok.gov/oktap/web/>. Note that, regardless of whether you use the OkTAP system to handle your taxes electronically, you will also be required to keep records of your tax payments.

### **Oklahoma State Unemployment Tax**

As mentioned above, Oklahoma has its own unemployment tax, which is administered by the Oklahoma Employment Security Commission (OESC). To register with OESC, you will need to complete form OES-1, available online at <https://eztaxexpress.oesc.state.ok.us/>.

You will be required to file unemployment taxes if you meet the thresholds for federal FUTA withholding (discussed above).<sup>20</sup> Again, given that many agricultural employers will not reach these thresholds, we will not discuss them in further detail. If, however, your operation may meet these thresholds, you can learn more about Oklahoma’s unemployment tax system through the OESC’s handbook “Unemployment Insurance,” available at [https://www.ok.gov/oesc\\_web/documents/Employer%20Guide.pdf](https://www.ok.gov/oesc_web/documents/Employer%20Guide.pdf)

### **Deadlines for Employee Withholdings**

A discussion of tax issues would be incomplete without a discussion of filing deadlines. Thus, the following is a brief outline of the tax filing deadlines for agricultural employers:

#### **By January 31:**

- File form 943, Employer’s Annual Federal Tax Return for Agricultural Employees
- Furnish employee with completed W-2
- Furnish anyone who you paid \$600 in non-employee compensation with a Form 1099
- File Form 945, Employer’s Annual Federal Unemployment Tax Return
- File Form 945, Annual Return of Withheld Federal income Tax

#### **By February 28**

- File paper forms 1099 and 1096
- File paper forms W-2 and W-3

#### **By March 31**

- File electronic forms W-2 and 1099

#### **Quarterly (April 30, July 31, October 31, and January 31)**

- Deposit FUTA taxes if the undeposited amount is over \$500
- File TUCA taxes

# Section 2:

## Recruiting, Interviewing, and Hiring Agricultural Employees

### Recruiting, Interviewing, and Hiring

Now that you are “ready for business,” you will need to apply the work you did in evaluating your human resource needs toward crafting a job description and engaging the recruiting process.

### The Recruitment Process

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Once you have a clear understanding of the job you are hiring for and the skills needed in successful candidates, those candidates must be corralled. A successful recruitment phase will provide several (*i.e.* more than one) qualified applicants for any particular position. Remember, in order to find someone who will “stand out in the crowd,” you need a crowd. There are many options for job candidate recruitment, including internal job postings, employee referral incentive programs, search firms, state agencies, educational institutions, online job sites, classifieds (including online classifieds), agricultural trade journals, and word of mouth. However, not all of these methods will be a good fit for your agricultural operation. The most effective option may depend on the type of position being filled. For example, direct recruiting, search firms, and university career services postings may be more effective when trying to fill managerial positions, while other methods such as job postings and media advertisements may be just as effective when recruiting for lower skilled positions. When you are considering a recruitment tool, consider the following:

- What geographic area am I trying to cover? Is it important to me that the candidate come from the local area, or do I want a broader search? Local newspapers, radio, and television outlets will reach the limits of their marketing areas, but internet postings are accessible from anywhere (although many local media outlets also share their content online, as well).
- What type of skills and experience are needed for the position? For example, if a candidate needs at least a bachelor’s degree in, say, animal science or agronomy, posting a job through the career services office of a university with an agricultural program may be a good fit. A position requiring training in a specific technical skill might be suited to posting at a local technical college or trade school. However, if significant experience is required in addition to the training, you would need to determine if alumni of the school in question also have access to such job postings.
- Will the method I am using to advertise the position also give me the tools to automatically filter applicants based on the requirements for the position? Internet application systems often allow the employer to automatically eliminate applications that do not fit specific criteria (such as the minimum education requirements, years of experience, specific skills). This can be helpful when trying to navigate a large number of job candidates, but can also inadvertently screen candidates in which you would have an interest based on other qualifications.
- What is the cost of the recruitment tool, particularly relative to the importance of the position? Finding a manager to take over management responsibilities as you retire may justify considerable expense in finding the perfect candidate, while finding someone for a relatively unskilled seasonal job would likely point toward using a fairly inexpensive tool.
- Will the recruitment tool reach the audience you want? Ask the provider of the tool for information about their audience. For example, if you advertise a position in a trade journal, do you have confidence that the type of candidate you want to reach subscribes to that journal?

No matter what advertisement method or target geographic area is chosen, be sure to provide sufficient information for potential applicants to develop a good understanding of what it is you are looking for.

- Say something positive about both the business and the specific job or work environment.
- Provide an appropriate job title, and briefly describe the job and requirements (be sure to refer back to the section “Preparing Job Descriptions” above).
- If appropriate, provide information regarding potential wages or benefits.
- Tell candidates how to apply. Should they contact you by phone, email, or postal mail? What materials should they include (cover letter, resume, references, *etc.*). Inadequate advertisements with vague details and obscure application



instructions will not get the quality of response you seek.

Another key ingredient of recruiting new talent is to make the business the kind of place where talented and hard-working people feel appreciated and valued. Word will get around about the culture of your organization. Make sure working conditions on the farm or ranch are as pleasant as possible. Develop an organizational chart that shows where each position on the farm fits in and details the “chain of command” in order to avoid confusion on the part of both employees and managers.

## Selection and Interviewing

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While it may seem obvious, it bears stating explicitly: the purpose of the selection process is to narrow the pool of job candidates to the most-qualified candidate as efficiently as possible. Staying focused on this goal will save time and effort for both candidates and for you as the prospective employer. Given this goal, give some thought what traits you are seeking in the “ideal” candidate and how you can best evaluate those traits in all candidates.

- Written applications provide a good first hurdle, as they gauge the applicant’s ability to pass basic requirements of the job. Written applications may provide valuable information regarding criminal records, physical requirements, educational background, and prior work experience that are applicable to the position being filled.
- Ask the applicant to provide names and phone numbers of past employers or references. Thorough conversations with references can reveal important information about the candidate not available from written application materials. Similarly, there is only so much information that can be gleaned from an interview; a discussion with past employers allows you to tap into the experience that employer had with the candidate over what may be a significant period of time. “Indirect” references (other parties to which you are referred by the candidate’s listed references) can also provide important information.
- Written tests can be an excellent tool when specific technical knowledge is required for the job. Oral tests can help assess the applicant’s ability to communicate, or interact with others.
- Practical tests, such as asking a candidate to perform actual or simulated tasks they would face on the job can illustrate how the candidate would handle some of the true responsibilities of the job.

Perhaps the most important hurdle is the interview itself. The objective of the interview is two-fold: to obtain information that can help predict the future performance of a candidate for a particular position; and to further inform the candidate about the business and the open position. A well thought-out interview process is a valuable supplement to other tools which may do a better job of measuring skills and abilities. Throughout the entire process take care to (A) avoid requesting (whether directly or indirectly) information that could increase the risk of a discrimination claim (*i.e.* information that could be linked to a “protected characteristic” as discussed below) and (B) to make sure that the information and skills evaluated are directly relevant to the specific job in question.

The formal interview allows potential employees and the employer to get to know each other. Well-planned interviews consist of open-ended questions that draw out meaningful, relevant information from the candidate. Here are some tips for preparing a productive interview:

- Only allow trained personnel to conduct the interview process. As discussed below, many discrimination claims arise from the interview process. These risks can be minimized by equipping interviewers with information about what are, and perhaps even more importantly, what are *not* allowable interview questions.
- As an employer, prepare for the interview process by determining a limited number of questions that you will ask each candidate; consistency can be important to help you “compare apples to apples” among different candidates.
- Develop a rating system to score, objectively, the performance of each candidate on each question.
- Allow the candidate to do most of the talking.
- Be honest about the job, but at the same time emphasize the strengths of the position.
- At some time during the interview process it may be appropriate to give the candidate a practical test, allowing them to perform one or more of the skills required for the job. This can be an incredibly valuable tool, and if carefully crafted, can help the employer determine a candidate’s ability to perform the job without eliciting discriminatory information. To that end, make sure that the tests closely match the actual requirements of the position in question.
- Although it is natural to try to make the candidate feel comfortable by engaging in “small talk,” remember that such conversations can easily stray into discussions about issues that can lead to discriminatory information, even if the employer has only good intentions. Even seemingly benign questions like “Do you have children? How old are they? What do you do in your spare time” could all lead to such information. Keep conversations relevant to the position.
- Do not say anything that explicitly or implicitly creates guarantees of employment (*ex.* “Once you’re hired, your part

of the Widget Farms family for life.”) Doing so runs the risk of limiting the employment-at-will status that most employers enjoy. See the discussion later in this handbook regarding the “employment-at-will” concept.

- Set up interview times well in advance, with consideration given primarily to the candidate’s schedule. Keep in mind that applicants may be most available on Saturdays, or other irregular times. At least a portion of the interview time needs to be in a quiet, private location to provide the best opportunity for the applicant to speak candidly.
- Practical demonstrations of specific skills such as machinery operation or working *with* livestock may also be used to evaluate potential performance.

Human resource decisions impact the entire business. Devote the necessary time and effort to prepare for the selection process. Develop a relevant job application and spend time formulating basic questions for the interview process. Remember, “wishing you had the perfect employee to fill a business need” may be an easier problem to solve than “having a hastily hired employee that you wish you did not have”.

Bear in mind that almost every recruitment effort will result in one or more candidates *not* being offered a job. Plan for how you will let unsuccessful candidates know whether they have been selected in a timely manner as you go through the process. A well-crafted decision letter should express appreciation to the candidate for their time and interest in applying for your position and should notify them of their status. It is your responsibility to provide a response to all applicants. Remember that you may need to hire more employees in the future, and the candidate that is not right for the position at hand may be right for a future position, or may become a better candidate. Further, how you handle candidates not selected for the present search can impact your reputation as an employer should you need to seek candidates in the future.

## Some Closing Thoughts on Recruitment and Selection

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If the authors were to summarize the cautions in this portion of the handbook into one sentence, it would be “stay on point.” As one author wisely summarized:

*Non-discriminatory interview questions require that the questions be job-related. Avoid questions about age, race, religion, national origin, marital status, credit ratings, physical traits, arrest and conviction records, and disabilities (except as they affect ability to do a job). Questions that may not seem discriminatory to the interviewer may be perceived as inappropriate. All questions should be related to the position sought.<sup>21</sup>*

You should also avoid screening processes or criteria that could have a disproportionate effect that effectively discriminates against a protected trait. For some examples of “disparate impact,” consider the following:

- High school diploma requirements have been found to be discriminatory if a diploma is not a true requirement of the job (disproportionate on race).<sup>22</sup>
- Requesting a candidate’s credit score may pose a risk of discrimination (disproportionate on race).<sup>23</sup>
- Requiring a physical test involving strength or agility can be discriminatory based on the age or gender of a candidate.<sup>24</sup>
- Giving a test or asking interview questions only to candidates with a protected trait while not giving the same test or questions to other candidates is “disparate treatment” and could also be regarded as discriminatory.<sup>25</sup>

During the recruitment and interview process, avoid questions and other pre-employment checks (such as tests) that directly address a protected characteristic, but also be aware of questions that may be innocent enough (*i.e.* merely seek to engage the candidate in “casual conversation”) but that could go towards a protected characteristic. For example, avoid talking about family (children) or plans for children in the future – these topics can lead to information about a protected medical condition or a basis for sex-based discrimination. Don’t ask questions about national origin or race, and furthermore, never ask for pictures of applicants.<sup>26</sup> Using the “overqualified” excuse to not hire an older applicant has also been used as a pretext for age discrimination.<sup>27</sup> For a list of interview questions that can lead to trouble, see Appendix 2. The Michigan Department of Civil Rights’ “Pre Employment Inquiry Guide” does an excellent job of discussing what kind of pre-employment inquiries can and cannot be made; although based on Michigan state law, it can provide useful guidance on state and federal issues. The guide is available at [http://www.michigan.gov/documents/mdcr/Preemploymentguide62012\\_388403\\_7.pdf](http://www.michigan.gov/documents/mdcr/Preemploymentguide62012_388403_7.pdf).

While checking references for a candidate, bear in mind that there can be issues of privacy and potentially discriminatory behavior at this stage of the process as well. Ask for references and permission to contact them, as well as permission to contact “indirect references” (an “indirect reference” is a reference derived from another reference; typically, they are found by asking an applicant’s listed reference “is there someone else I should talk to about this candidate’s qualifications for the job?”). Be

consistent across all candidates to avoid discrimination issues. Before beginning your reference checks, see if your state has laws protecting references from liability for slander or libel – concern about a lawsuit from a disgruntled former employee can cause references to hold back in giving the full truth of their interactions with the employee.<sup>28</sup>

As a final note to the recruitment and interview process, remember that it is a good idea to carefully document the process and to take good notes. Be cautious in such notes, though. Make sure that they are relevant to the job as well – ask how it would look if such notes were put in front of a jury. Such notes are almost guaranteed to be requested as evidence should a discrimination case arise.

## Caution Regarding Negligent Hiring

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While the discussion to this point may have you afraid to ask anything of a candidate except to see their resume and to ask for their name, rank, and serial number, you must still diligently evaluate all of your potential employees. Not only does the prosperity of your farm and ranch depend on securing a quality workforce; your risk management strategy may hinge on it as well. Selecting a dangerous employee can not only put that employee's coworkers at risk, but also exposes the operation to liability if a third party is injured. Hiring an employee when you knew (or should have known) that the employee posed an unreasonable risk of harm to other employees or third parties can result in you or your business being held liable for the harm caused by that employee.<sup>29</sup>

## Tasks for a New Hire

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By this point, you have worked hard to assess your human resources and craft a good job description. You have beat the bushes for excellent candidates, conducted a thorough and fair interview process, and you now have the ideal person for the job. Now what? This section will explore some of the tasks ahead of the employer as they welcome their new employee to the job.

### Eligibility to Work in the U.S.

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

An issue that has received a great deal of attention in recent years, immigration law as it applies to employers comes from the Immigration Reform and Control Act of 1986 (IRCA).<sup>30</sup> While many employers may be intimidated by the concerns of immigration law, the IRCA also provides for one of the easiest and best defenses against such concerns: Form I-9.

All employers, regardless of their size or the nature of their business, are required to complete a Form I-9 for every employee.<sup>31</sup> The form is available for free download at [www.uscis.gov](http://www.uscis.gov). Importantly, you should only complete a Form I-9 with the employee *after* an offer of employment has been made. Otherwise, the I-9 form poses a great threat of national origin discrimination under the OADA and Title VII. However, you should also ensure that the form is completed on or before the employee's first day of work.

Both the employer and the employee have responsibilities when it comes to completing Form I-9. Employees must complete Section 1 of the form (although they can have assistance; the person providing such assistance must certify that they have helped the person provide true and accurate information).<sup>32</sup> Employees must also present documentation establishing both their identity and their authorization to work in the U.S.

Form I-9 has three lists of documents that an employee can provide: Lists A, B, and C.

- List A includes documents that establish both the identity of the person AND their authorization to work. If a person provides one of these documents, they do not have to provide any of the items listed in List B or List C.
- List B includes documents that establish the identity of the person, but do NOT have anything to do with their authorization to work.
- List C includes documents that establish a person's authorization to work in the U.S., but do NOT necessarily confirm identity.<sup>33</sup>

The characteristics of each of these lists are why someone must provide a document from *both* List B AND from List C; they must work together. Note that it is illegal discrimination to require a person to provide any one specific item from List A, B or C; the person must be allowed to choose whatever documentation they desire, so long as it is listed.<sup>34</sup>

As the employer, you have tasks to complete for Form I-9 as well. The employer will complete Section 2 of the form, "Employer Review and Verification." To do so, you must physically examine the documentation presented by the employee and ensure that the documents (1) appear to be genuine and (2) relate to the individual. A full "CSI" forensic analysis of the documents is not required – the employer must simply use a good faith, reasonable evaluation of the documentation provided. Employers can also use the US Citizenship and Immigration Services E-Verify system to electronically compare a person's

documents to records from the Department of Homeland Security and the Social Security Administration. For information on the E-Verify system and to enroll, visit [www.uscis.gov](http://www.uscis.gov). The E-Verify system has the advantage of providing instant verification of an employee's eligibility, and is free to use. Strongly consider using E-Verify for your operation.

Form I-9 does not have to be submitted; it is to be retained by the employer. The form must be retained for three years after the date of hire, or one year after the person's employment is terminated, whichever is longer.<sup>35</sup>

The benefits of properly completing a Form I-9 are numerous, but perhaps foremost among them are the legal protection it provides against the allegation of illegal hiring of someone who is not authorized to work in the U.S. Under federal regulations:

*An employer or a recruiter or referrer for a fee for employment who shows good faith compliance with the employment verification requirements of §274a.2(b) of this part shall have established a rebuttable affirmative defense that the person or entity has not violated section 274A(a)(1)(A) of the Act with respect to such hiring, recruiting, or referral.*<sup>36</sup>

On the other hand, failing to follow the I-9 procedures and hiring an unauthorized worker can lead to significant penalties provided under:

- Knowingly hiring an unauthorized alien: first offense not less than \$275 and not more than \$2,200 per each unauthorized alien
- Second offense - \$2,200 - \$5,500
- More than two offenses - \$3,300 - \$11,000
- A pattern or practice of violations can lead to a \$3,000 and/or imprisonment for six months.<sup>37</sup>

For an excellent and very thorough guide to handling the I-9 process, consult the USCIS "Handbook for Employers: Instructions for Completing Form I-9," available at <http://www.uscis.gov/files/form/m-274.pdf>.

### **The H-2A Visa Process**

Sometimes, there may not be enough labor available for your farm or ranch, particularly if you need larger numbers of employees for short periods of time (seasonal labor). To address this issue, the USCIS has the "H-2A" visa process for temporary agricultural workers. Under this process, qualifying employers can bring citizens of other countries to the United States.

Before an agricultural employer can bring foreign citizens to work in the U.S., they have to submit a "temporary labor certification application" to the U.S. Department of Labor (USDOL). Doing so requires showing three conditions will be satisfied:

- The employment offered is temporary or seasonal (and not permanent employment).
- There are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work.
- Employing foreign citizens will not negatively impact the wages and working conditions of U.S. workers employed in similar work.

Once the certification is completed and received from USDOL, the employer then submits form I-129 to the USCIS.<sup>38</sup> If the I-129 application is approved, workers from other countries will be able to apply for an H-2A visa allowing them to work for the agricultural employer through the U.S. Embassy or Consulate for their country; they will also have to get permission to enter the U.S. through the U.S. Customs and Border Protection station at a U.S. port of entry.<sup>39</sup>

The USDOL labor certification will specify how long the foreign workers are allowed to remain in the United States, though extensions may be requested in one-year increments; the maximum time an H-2A worker can remain in the United States is 3 years.<sup>40</sup>

If you think the H-2A program may be needed to help you fulfill your operation's labor needs, consult an immigration law attorney to help you navigate the H-2A application process.

### **New Employee Hire Reporting**

The Federal New Hire Reporting System is administered by the Office of Child Support Enforcement.<sup>41</sup> There are no agricultural exemptions to this requirement, as all employers must comply if they would be required to submit a W-2 to that employee.<sup>42</sup> The U.S. Department of Health and Human Services Office of Child Support Enforcement maintains a listing of

all state new hire reporting websites that you can use to help find your state's reporting requirements here: <http://www.acf.hhs.gov/css/resource/state-new-hire-reporting-websites>.

### *Workplace Notices*

A significant number of notices need to be brought to the attention of new hires, often in the form of postings (posters) placed in a conspicuous area accessible to all employees. These requirements vary by employer (for example, the Family Medical Leave Act [FMLA] only applies to employer with 50 or more employees, so smaller employers would not have to post FMLA notices). You can use the USDOL Poster Advisor to determine what posting requirements apply to your business by visiting this website: <http://webapps.dol.gov/elaws/posters.htm>. Copies of most federal posters are available for download here: <https://www.dol.gov/oasam/boc/osdbu/sbrefa/poster/matrix.htm>. You should also check with your state employment commission or department of labor to determine if any additional state posting requirements apply to your operation.

# Section 3:

## Managing, Developing, and Incentivizing Your Employees

### *Managing, Developing, and Incentivizing Your Employees*

Once your farm and ranch welcomes its new hire, the work is far from over. Now the employer has to work on training, motivating, and monitoring his or her workforce.

#### **Orienting and Training Employees**

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Employee turnover is costly. In the first few weeks on a job a new employee will become accustomed to the business culture, and will decide if the job is a good fit for him or her. By this point, you have spent a significant amount of time and effort to find the best person for the job, and it is important to keep that employee on the right track. Someone currently in the organization (often the owner/operator) needs to be in charge of orienting the new employee to the organization. Primary goals of the orientation process include quickly fostering a sense of belonging and fit within the organization, creating a sense of the overall scope and vision of the organization, and clarifying specific expectations of the particular position.

New employees expect and deserve training and development. Thus, you should not let your hectic schedule keep you from investing the time needed to orient a new employee from the very beginning. A well-planned and thorough approach to orienting an employee to a new position will help the employee to quickly get accustomed to the operation and become a key contributor more quickly.

Proper training of new employees also has important implications for the farm and ranch's risk management as well. Failing to train employees around the farm or ranch is particularly important due to the many workplace hazards present. Placing an employee in a position where they may cause harm to themselves or others can give rise to a claim of "negligent hiring" or "negligent entrustment." Negligent hiring is discussed above in section 2.D. A claim for "negligent entrustment" can arise when a party who owns or controls a piece of equipment allows a second party to operate that equipment when the first party knew, or should have known, that the second party is careless, reckless, and incompetent, and an injury results.<sup>43</sup>

With that said, new employee training and orientation is an area where many agricultural producers fall short. Often farmers wait until the last minute to hire a new employee, and that person is then thrown into the fray of a busy season. Remember, many potentially excellent employees have little or no experience in the agricultural industry. It can take several days for a new employee to become oriented into the business, and in agriculture a person may need to see a full year of an operation in order to get a feel for the various activities around the farm.

The most important part of the training process is good communication between managers, existing employees, and newer members of the team. Develop an orientation schedule and a training plan that spells out who will teach the new employees each of the various tasks. Orientation involves learning the organizational structure, business policies, and other rules and expectations associated with the work environment. Training involves making sure the specific tasks outlined in the job description can be done well. When designing a training program for the farm, remember to keep these points in mind:

- Include owners or top managers.
- Encourage questions.
- Provide a farm map and glossary of the farm's terms. This should include names and "shorthand" used for locations, items, and procedures. Every farm has its own language – where exactly is the "Ferguson 40" anyway? And what do you mean when you want me to "grease all the zerks?"

For each specific task in your training program, be sure to include the following steps:

- Make sure the employee is at ease and the work place is well prepared.
- Tell the employee how to do the task.
- Show the employee how to do the task.
- Monitor the employee as he or she does the task, and allow plenty of time and answer questions.
- Review the work with the employee.

Lastly, make sure that all employees are treated equitably with respect to training opportunities. Giving employees training that, in turn, improves their opportunities for advancement or increased pay based on protected characteristics is another way that a discrimination claims can arise.<sup>44</sup>

## **Motivating, Leading, and Directing Employees**

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Motivating, leading, and directing employees within an organization is all about establishing trust and respect within the employee-employer relationship. Communicating clear expectations and providing frequent and effective feedback is essential. Employees are often more likely to hear negative feedback from supervisors rather than positive feedback. Sharing good news and providing that positive feedback will help maintain more effective relationships in the organization.

### *The Importance of Communication*

Managers need to keep in mind that all employees are motivated by both economic and non-economic factors. Employers sometimes tend to think only about pay and benefits. Obviously the economic factors are important and the business must offer a fair and competitive compensation package. However, non-economic motivational factors such as challenging work, a feeling of accomplishment, recognition, increased responsibility and the opportunity of career advancement may be just as important. Communication is the key. Great managers excel at communicating with their employees.

A basic element of open communication is trust. As people, we all have a “bank account” with respect to our relationships. A history of honesty, courtesy, kindness, and fulfilling commitments are like “deposits” to this account, while betrayal, disrespect, and threats are like “withdrawals.”<sup>45</sup> Relationships with high trust bank account balances can handle difficult discussions about important issues in a much smoother fashion, again reinforcing the importance of communication in the employer-employee relationship.

Following are a few communication skills that managers or potential employers sometimes need to be reminded of as they begin having conversations.

- Remember to focus on the positive, and be mindful of what’s best for the overall organization.
- Spend a moment thinking about the bigger picture before saying anything.
- Bring up topics in the context of “I” or “we,” in order to avoid the perception of blaming the other person. For example, “when the combine broke down in the middle of harvest, I felt very out of control and did not know what to do,” might be a more effective way to open a conversation about how to move forward than “when you broke the combine in the middle of harvest it created a real crisis for the whole farm.”
- Actively listen. Watch the reactions of people while they are talking, and ask questions to clarify meaning. This not only assures that the message is received clearly, but also shows the speaker that you are genuinely focused on their message at the moment.
- When it is your turn to speak, if it is important, say it more than once, and ask questions to ensure that others understand your meaning. As you are speaking, try to read the impact you are having on the listeners. Are they tense, or are they relaxed? What is their body language telling you?
- When you have scheduled time for important discussions, put forth the extra effort to remove any roadblocks to effective communication. Select a quiet location, and attempt to circumvent interruptions such as phone calls, or walk in visitors.

Finally, everyone can benefit from a reminder to work at good communication skills every day. Practicing good communication skills habitually when engaged in day-to-day interactions will most certainly increase the likelihood that good skills will rise to the surface when the conversations are more critical.

### *Generational Traits in Communication*

Examining and understanding generational differences has become an important part of maximizing organizational effectiveness. Each group brings strengths that can enrich a farming business. However, each generation is motivated differently, aspires to different personal and professional goals, and interprets business practices differently. Understanding those differences leads to more effective communication and ultimately can lead to more success in implementing the business strategy.

The senior living generation (those born from about 1920 through the end of World War II in 1945), maintains control of a large percentage of the business assets (and in many cases the management) on farms and ranches today, although some of that control is now moving to the more senior members of the Baby Boomer generation. Many of these individuals

experienced the great Depression, the Dust Bowl, and several significant wars so they grew up in difficult times and developed a strong work ethic. Traditional value systems and the importance of extended family are deeply instilled. Their perception is that strong leadership moves people and organizations forward, so the command and control organizational system is a perfectly acceptable way to run the business, and subordinates should accept decisions made by the leaders.<sup>46</sup>

The “Baby Boomers” (generally considered to be those born between 1946 and 1964) experienced the Cold War, the civil rights and women’s movements, and the Vietnam War. They question the integrity of leadership, and evolved with a very career-driven mentality to prove their worth. They expect to work hard, but also expect to be compensated fairly, and their perception of family is more nuclear than extended. From a business perspective, they are motivated by broad participation in leadership and decision making. These “older” workers may well provide a valuable pool of potential farm employees. Previous work experience can bring valuable skills and work habits to the organization, however, they may have deeply instilled work habits or methods from years of previous employment that may not fit your organization. They may need to be provided somewhat more flexibility than younger employees due to other life commitments. In the orientation and training process, be thorough, but remember they have probably been around various work environments before so avoid boring them with concepts they already know.

The Generation X’ers (born from 1964 to 1980) experienced the introduction of personal computers, MTV, and Operation Desert Storm. Many grew up with single, or AWOL parents in an era of rapid change. They developed a sense of family among friends and a “survivor” mentality. Their perception of family includes more of a blend, as well as extending to friends. From a business perspective they tend to be self reliant, non-committed to the organization, and unimpressed with authority. Finding creative ways to instill commitment to your overall business, and gaining their respect for your leadership and management abilities will help to bring out the best long term performance from this cohort.

Finally, Generation “NeXt” (sometimes called the “Millennial” generation) was born after 1980 and grew up experiencing numerous violent public events, including the Oklahoma City bombing, the Columbine massacre (made all the more terrifying given its setting in a school), and 9/11. These individuals also grew up with very busy, arguably over-planned agendas. They are incredibly technologically adept, and they often view others as advocates for their own personal views, feeling somewhat entitled to much of what they desire. Their sense of family likely includes more un-related friends than it does actual relatives. From a business perspective they have not yet developed a commitment to work (or schedules for that matter), and they have little understanding of those who are less technologically savvy than they are. They expect immediate responses because they grew up in a completely connected world. Numerous authors have written extensively on the “NeXt” generation, and have indicated that they are perhaps more different from previous generations than any generation ever studied extensively.<sup>47</sup> This will increasingly be the generation that will make up most of the workforce pool. The NeXt generation presents some interesting challenges to their often older employer-managers. They have a tendency to feel a sense of entitlement, are entertainment-oriented, have a short time horizon with expectations of immediate gratification which can conflict with expectations in the workplace. They often have incorrect preconceived notions regarding what employment means, often expecting the work environment to mimic their development years. As a generality, it has been said that generation NeXt has a “workforce readiness” issue.<sup>48</sup>

While much has been written about the societal and educational causes of this issue, suffice it to say that it is a well-documented issue with which potential employers are faced. This lack of workforce readiness is perhaps what has contributed to very high rates of job unhappiness and record high rates of job turnover, obviously at great expense to employers.<sup>49</sup> Answers to the issue are difficult to find. Clear communication of workplace expectations, and the difference between the workplace and previous experiences that generation Millennials have had is likely one key to successful work experiences, so place additional emphasis during the orientation process on teaching company expectations and work routines. Many Millennials highly prize flexibility in job schedules, which agriculture can sometime provide, but also underscore the fact that there are periods such as planting and harvest that may require “all hands on deck” and afford no flexibility in scheduling. Provide more frequent training to younger employees than might otherwise be required. Finally, accommodating their need for challenging work and quick reward when appropriate can motivate younger employees.

The point of this discussion is that examining and understanding generational differences is an important part of facilitating effective business communication. One fairly simple suggestion for employers is to simply go to their local library and check out a sample of the wealth of literature on the subject of generational differences. The important point to remember is to choose resources that are fairly recent, so they include the youngest generations that will be involved in the discussions.



## Managing Day-to-Day Employment Issues

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### Handling Payday

Ignoring for the moment the sometimes-difficult task of making payroll, let's look at the legal issues associated with workers' paychecks (see above for payroll withholding issues).

Most states have a requirement for the maximum payroll period (*i.e.* how often employees must be paid). The USDOL has compiled these requirements here: <https://www.dol.gov/whd/state/payday.htm#foot15>. A number of states also have paycheck rules requiring the employer to provide the employee with a statement that shows all of the deductions from the employee's paycheck, such as the withholdings for taxes, insurance, and so forth.<sup>50</sup> Consult with your state's department of labor or employment commission to see if there are specific payroll check and statement requirements for your state.

Maintaining a regular payday and good documentation of your paychecks benefits both you and your employees by improving employee morale and encouraging you to keep good financial records associated with your payroll.

### Minimum Wages and Overtime

The federal Fair Labor Standards Act<sup>51</sup> (FLSA) governs the minimum wages of workers and also specifies when they must be paid for working more than 40 hours per week. Currently, the federal minimum wage is \$7.25 per hour, and overtime (defined as the number of hours worked in excess of 40 hours in a seven-day period) must be compensated at a rate of one-and-a-half times that of the employee's regular hourly rate.<sup>52</sup> Perhaps no area of labor law is as permeated with agricultural exceptions as the minimum wage and overtime provisions of the FLSA. To start, the FLSA defines "agriculture" as follows:<sup>53</sup>

*"Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended [12 USCS § 1141j(g)], the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as 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.*

Before going into the numerous exceptions to the FLSA's minimum wage and overtime provisions, we need to examine the agricultural operations that *are* subject to the minimum wage and overtime rules. The employees of an enterprise whose annual gross volume of sales made or business done is \$500,000 or more (exclusive of excise taxes at the retail level that are separately stated) are all subject to the FLSA on an "enterprise basis."<sup>54</sup> In other words, a farm with \$500,000 or more of annual gross sales must pay all of its employees minimum wages and overtime.<sup>55</sup> On the other hand, a number of ways exist for agricultural employees to be exempt from minimum wage and overtime requirements<sup>56</sup> (these are the exemptions provided by Section 213 of the Federal Fair Labor Standards Act (29 U.S.C. § 213), mentioned above):

- First, an employer who did not use more than 500 man-days of agricultural labor during any calendar quarter of the preceding year is exempt from both the minimum wage and overtime rules of the FLSA.

*To understand this rule, it is important to understand the concept of a "man-day." A "man-day" is any day in which an employee performs agricultural labor for not less than one hour.<sup>57</sup> For example: In a given calendar quarter – let's say July, August, and September – Pete has two full-time hired employees who work at least one hour per day six days per week. He also currently has 12 migrant workers employed through a Farm Labor Contractor who worked at least one hour per day six days a week for five weeks. Pete's man-days of labor for the calendar quarter are: Full time (2 workers x 6 days per week x 13 weeks) = 156 man days. Migrant (12 workers x 6 days per week x 5 weeks) = 360 man days. Thus, Pete has used 516 man days of labor during the calendar quarter.<sup>58</sup> Note that your spouse and children do not count when calculating man-days.<sup>59</sup>*

- Second, employees who are the parent, spouse, child, or other member of his employer's immediate family are exempt from both minimum wage and overtime requirements.<sup>60</sup>
- Third, many (but not all) piece-rate laborers may be exempt from the minimum wage and overtime rules of the FLSA, depending on the circumstances of their work.<sup>61</sup>
- Fourth, if such employee is principally engaged in the range production of livestock, they may also be exempt from the minimum wage and overtime requirements of the FLSA. In this context, "range production" means grazing operations on wide expanses of land, where the computation of hours would be extremely difficult.<sup>62</sup>

As a “catchall” provision, the FLSA also provides that all agricultural employees are exempt from overtime.<sup>63</sup>

Importantly, independent contractors are not covered by minimum wage or overtime requirements.<sup>64</sup> Courts usually look at the following factors to see if someone is an “independent contractor.”<sup>65</sup>

- the degree of control exerted by the alleged employer over the worker;
- the worker’s opportunity for profit or loss;
- the worker’s investment in the business;
- the permanence of the working relationship; and
- the degree of skill required to perform the work.

The Department of Labor has an overtime pay calculator that can help both employers and employees, available at <http://www.dol.gov/elaws/otcalculator.htm>. In addition, it should be noted that states may have higher minimum wages than the federal minimum wage. You can see your state’s minimum wage amount at the USDOL Wage and Hour Division state summary page: <https://www.dol.gov/whd/minwage/america.htm>.

A willful violation of the FLSA can be fined by up to \$10,000 or imprisonment for up to six months or both.<sup>66</sup> Employers can also be responsible for damages in the amount of unpaid wages or overtime compensation, plus that amount again as liquidated damages, *plus* attorneys fees.<sup>67</sup>

### *Recordkeeping*

If an agricultural employer used less than 500 man-days of labor in the preceding calendar year, they do not have to keep any FLSA employee records, unless they anticipate that they will trigger that standard this calendar year.<sup>68</sup> However, for an employee who is subject to either minimum wage or minimum wage/overtime requirements (and remember that in agriculture, there are many employees who are NOT subject to those requirements), the following records have to be kept for three years:<sup>69</sup>

- Name in full
- Social security number
- Home address with zip code
- Date of birth (if the employee is under 19 years of age)
- Sex and occupation in which employed
- Time and day of week on which the employee’s workweek begins
- Regular hourly rate of pay for any workweek in which overtime compensation is due
- Hours worked in each workday and totals hours worked in each workweek
- Total daily or weekly straight-time earnings or wages due
- Total premium pay for overtime hours
- Total additions or deductions from wages paid each pay period
- Total wages paid each pay period
- Date of payment and the pay period covered by payment

Many states also have employee recordkeeping requirements; be sure to consult with your state department of labor or employment commission to see if any state recordkeeping requirements apply to your operation, as well.<sup>70</sup>

### *When Children Work on the Farm or Ranch*

Children frequently work alongside their parents on the farm or ranch, and may even work in agricultural operations without their parents. Children, and their employers, are subject to a number of special labor rules.

First, a child of any age can be employed by his or her parent at any time in any occupation on a farm owned or operated by that parent.<sup>71</sup> If, however, children are working for someone other than a parent, the following are the minimum age standards for children in agricultural employment.<sup>72</sup>

- Age 16 or older: can perform any farm job, INCLUDING agricultural occupations declared hazardous by the Secretary of Labor, at any time (including school hours).
- Age 14: minimum age for employment outside of school hours in any agricultural occupation EXCEPT those declared hazardous by the Secretary of Labor.
- Age 12-13: may be employed outside of school hours with written parental consent on a farm where the parent is also employed.

- Under age 12: may be employed outside of school hours with parental consent on a farm where employees are exempt from the federal minimum wage provisions.

At this point, it is important to discuss those farm jobs regarded as “hazardous” by U.S. Department of Labor regulations. The following are such jobs, as defined by the federal Occupational Safety and Health Administration (OSHA):<sup>73</sup>

- Operating a tractor of over 20 horsepower (measured at the PTO), or connecting or disconnecting an implement or any of its parts to or from such a tractor
- Operating or working on (and this includes merely TOUCHING) a corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, feed grinder, crop dryer, forage blower, auger conveyor, unloading mechanism of a non-gravity type self-unloading wagon, power post hole diggers, power post drive, nonwalking type rotary tiller;
- Operating a trencher, earthmoving equipment, forklift, power saw
- Working in a yard, pen, or stall with a bull, boar or stud horse maintained for breeding purposes or a sow/cow with nursing young (calves with umbilical cord)
- Working on a ladder or scaffold over 20 feet in height
- Driving a bus, truck or automobile when transporting passengers or riding on a tractor
- Working inside an anaerobic environment (grain storage, silo, manure pit, or horizontal silo while packing)
- Handling or using a blasting agent
- Transporting, transferring, or applying anhydrous ammonia

In addition to these restrictions, children also cannot work more than 8 hours in a day or 48 hours in a week.<sup>74</sup>

Children are also subject to special recordkeeping requirements. An employer of a minor under the age of 18 must keep the following records:<sup>75</sup>

- Name in full
- Place where the minor lives while employed
- Date of birth
- Written consent of the parent, if written consent is required to employ the minor on the farm

Violation of the child labor rules can carry significant penalties. Employers who violate the child labor requirements of the FLSA can face a penalty of up to \$11,000 for each employee who is the subject of a violation.<sup>76</sup> If the violation results in the death or serious injury of an employee under 18 years of age, the penalty increases to \$50,000 and may be doubled if the violation was repeated or willful.<sup>77</sup> Willful violations can be punished by a fine of up to \$10,000 and/or imprisonment of up to six months.

### *Safety Practices and Regulations for the Farm and Ranch*

As mentioned previously, the farm and ranch carry their own unique workplace hazards. The most recent Centers for Disease Control data shows 374 farm workers were killed in 2012, and an average of 113 young people (age 20 or less) die on farms annually. On average, 167 farm workers experience a lost-time work injury per day, making agriculture one of the most hazardous industries in the nation. Clearly, safety should be of utmost importance on your farming operation, and you must work to create a culture and expectation of safety on your operation. Direct benefits of sound safety practices on the farm or ranch included reduced worker illnesses, injuries, or even deaths. Economic benefits include reductions in medical expenses, insurance premiums, and lost production. In addition, a safer workplace improves morale and productivity.

Specific steps that can be taken to improve farm safety include the following:

- Make your employees aware of farming hazards and prepare them for emergency situations such as fires, vehicle accidents, chemical exposures, electrical hazards, etc.
- Make sure operators are familiar with operator’ manuals and product labels for equipment and products used in their jobs.
- Keep equipment in good repair, and make sure guards are in place.
- Communicate safety hazards and emergency procedures with employees.

For more tips on how you can improve the safety of your farm workplace, see the Occupational Health and Safety Administration (OSHA) fact sheet “Farm Safety,” available at [http://www.osha.gov/OshDoc/data\\_General\\_Facts/FarmFactS2.pdf](http://www.osha.gov/OshDoc/data_General_Facts/FarmFactS2.pdf).

The Occupational Safety and Health Act serves as the primary law governing workplace safety. The reach of this Act is fairly broad, but as with many of the laws discussed here, it also has significant agricultural exemptions. For the purposes of the Act, “employer” is defined as “a person engaged in a business affecting commerce who has employees.”<sup>78</sup> The regulations implementing the act specifically address agriculture by noting that any agricultural employer with one or more employees is subject to the act, but members of the employer’s immediate family are NOT covered by the Act.<sup>79</sup> Further limiting the application of the Act to agriculture, Congress has frequently added riders to annual appropriation bills prohibiting OSHA from enforcing the provisions of the Act against agricultural employers with ten employees or less.<sup>80</sup> Nevertheless, farm employers of any size would be wise to work within the OSHA guidelines, as doing so can greatly improve farm safety and reduce the risks (both medical and economic) of on-farm injuries.

The Act imposes what is called the “general duty” clause on all parties that meet the Act’s definition of “employer.” The general duty clause states: “Each employer 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...”<sup>81</sup> In short, the general duty clause establishes a duty for all employers to provide a safe workplace and to work to minimize the risk of harm to his or her employees.

Besides the general duty clause, the Act also provides another important means of encouraging workplace safety. The Act also requires all employers to “comply with occupational safety and health standards promulgated under this chapter.”<sup>82</sup> While the general duty clause creates an “umbrella” that covers a broad range of circumstances, the occupational safety and health standards target specific activities. These standards establish procedures, specify safety equipment, and require employers to communicate with their employees about the hazards involved with specific tasks.

The OSHA standards for several circumstances unique to agriculture are found at 29 C.F.R. Part 1928. Standards found there include:

- Grain handling facilities – 29 C.F.R. § 1910.272
- Temporary labor camps – 29 C.F.R. § 1910.142
- Field sanitation (providing water and sanitary facilities in fields where hand labor is used) - 29 C.F.R. § 1928.110.
- Storage and handling of anhydrous ammonia – 29 C.F.R. § 1910.111(a),(b)
- Logging operations – 29 C.F.R. § 1910.266
- Slow-moving vehicles – 29 C.F.R. § 1910.145
- Hazard communication – 29 C.F.R. § 1910.1200
- Requirements for ROPS and seatbelts on tractors manufactured after October 25, 1976 – 29 C.F.R. Subpart C.  
— Tractor operators must also be given operating instructions compliant with 29 C.F.R. Part 1928, Subpart C, Appendix A.
- Guarding of Agricultural Equipment – 29 C.F.R. § 1928.57
- Requirements regarding cadmium – 29 C.F.R. § 1910.1027

These standards apply to farms that are subject to the Act (see discussion regarding agricultural exemptions above). For links to each of these standards, see Appendix 4. Oklahoma State University also hosts a website with a large collection of resources regarding farm safety, available at <http://oces.okstate.edu/delaware/agriculture/farm-safety>

In addition to following the OSHA standards, employers must also keep records regarding workplace fatalities, injuries, and illnesses.<sup>83</sup> For more information on OSHA recordkeeping requirements and forms, see the “OSHA Recordkeeping Handbook,” available at <http://www.osha.gov/recordkeeping/handbook/index.html>.

### *Workers Compensation in Agriculture*

Workers compensation laws are often very complex, and vary significantly from state to state. To determine what requirements apply to your agricultural operation, consult the USDOL Division of Federal Employee’s Compensation website compiling all state workers compensation officials here: <https://www.dol.gov/owcp/dfec/regs/compliance/wc.htm>.

### *The Family Medical Leave Act in Agriculture*

The Family Medical Leave Act (FMLA), 29 U.S.C. §§ 2601, *et seq.*, allows employees of covered employers to unpaid leave from work to attend to specified medical and family matters. Under the FMLA, an “employer” is someone “who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.”<sup>84</sup> As a result, only the largest agricultural employers are likely to be impacted by the FMLA.<sup>85</sup> Employers to whom FMLA applies must allow eligible employees a total of 12 workweeks of leave during any 12 month period for specific medical or family events.<sup>86</sup>

## Evaluating Employees' Performance

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As employees settle into their new positions at the farm and ranch, it is critical that you provide timely and constructive feedback on their performance. This feedback is vital to maximizing human resource development for the enterprise, whether by rewarding excellent service, or disciplining (and in some case, dismissing) employees who fail to meet expectations.

### Conducting Positive Evaluations

Performance evaluations are often viewed as a necessary evil. However, if the agricultural operation makes a large investment in human capital, it is important that managers take appropriate steps to make sure that their human assets are functioning well. Given that a core component of employee satisfaction is feedback, performance evaluation is an important management function.

A positive approach to performance evaluation starts with well established performance expectations. Present expectations frequently and plainly. When possible, establish expectations in writing. Then provide feedback relative to those expectations on an ongoing basis. Informal constant coaching and feedback increases communication and helps to clarify expectations. Good performance is reinforced and a spirit of cooperation and teamwork is fostered.

Avoid the mistake of only providing feedback when performance has fallen short of expectations or when the employee has made a mistake. Obviously, those situations need to be addressed, but putting a positive spin on such situations in the form of improved performance through change will more likely lead to long term improved performance. Supplement informal feedback with a formal performance review scheduled well ahead of time to discuss performance relative to previously established expectations, elicit feedback from the employee, and establish expectations for the future.

### Discipline and Discharge

An inevitable fact of life for any manager is that sometimes it is necessary to discipline an employee and occasionally it may be necessary to terminate an employee. Remember, new employees may have inherited overly defensive and often unproductive habits from previous employment that need to be addressed. There may also be issues of inadequate skill or knowledge, or lack of motivation. Misconduct can be in the form of inadequate effort, inappropriate relations with co-workers, mishandling of company property, violence, or safety violations. When the need arises for discipline, following a few practical guidelines can smooth the often emotionally charged process.

- First, let the employee know of their specific deficiencies both verbally and in writing.
- Confirm that the rule violated, or the poor performance, is directly related to the operation of the business, and that the expected performance is well with reason.
- Be very clear about what must be done to improve.
- Provide the employee the opportunity to correct the problem, and inform of consequences if there is no improvement.
- Make sure that rules and expectations are applied fairly to all employees.

A four step process is often used involving (A) a verbal correction (B) a first written correction (C), a second written correction with perhaps a suspension or decision making leave time, and finally (D) termination of employment.

Keeping thorough employee records, conducting regular evaluations, providing feedback to employees, and applying disciplinary procedures fairly and consistently are all important steps both to avoid potential discrimination issues, and to facilitate the employer's ability to discharge an employee when necessary.

Many states follow an "employment at will" doctrine, which means "an employer may discharge an employee for good cause, for no cause or even for cause morally wrong, without being thereby guilty of a legal wrong."<sup>87</sup> In other words, either an employee or an employer can terminate the employment relationship at will.<sup>88</sup> There are, however, exceptions to this rule. An employer cannot terminate an employee for a discriminatory reason. If there is an employment contract between the employer and employee, terminating the employee may be a breach of that contract. Finally, an employer cannot terminate an employee if doing so would violate a "clear and compelling public policy," *i.e.* terminating an employee for doing something clearly supported by public policy or for refusing to do something clearly against public policy.<sup>89</sup>

Remember, though, the assumption is that an employer can terminate an employee for *any* reason, so long as these rules are not violated. Clearly, there is no law or rule against terminating an employee for poor job performance. Failing to terminate an employee that continually fails to perform up to the defined standards for his or her job can mean decreased performance from your other employees as well. Worse yet, failing to terminate an employee that is not performing his or her tasks in a safe manner can result in injury to them and/or to others as well. Tragedy can result in such cases, compounded by potential legal liability for the harm caused by the negligent employee.<sup>90</sup> As a result, sometimes it is not only prudent to fire an employee – it may be necessary.

When terminating an employee, remember to be completely honest with the individual. Select an appropriate time and venue that will not distract other employees nor unduly embarrass the employee being terminated. During the termination meeting, provide the employee with the specific reasons for their discharge. Be brief, and be clear about when employment will be terminated. Make arrangements to collect any company property in the possession of the employee, and make arrangements to change passwords, access codes, or other security measures if necessary to prevent unauthorized access to company property or materials. Additionally, make arrangements to give the employee his or her final paycheck in accordance with the requirements of your state's payday laws.

## Compensation

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### *Considerations in Designing Compensation Plans*

Hopefully, you will not have to spend much time worrying about how to terminate employees, and rather you can spend more time wondering how to compensate your competent, hard-working employees.

When it comes to compensation many farm managers ask “What do I have to pay?” Perhaps a better question is “What message do I want my compensation package to send?” Direct compensation includes the salary plus any performance-based bonuses. Indirect compensation is far more varied including such things as health insurance, retirement programs, leave, housing, child care, and a variety of other things. Creative employers understand that it's not all about money, it's about meeting employee needs.<sup>91</sup> Smaller businesses such as most farms and ranches provide an environment where managers can get to know their employees better, and thus develop a more thorough understanding of individual needs.

For example, your employees may have needs that provide opportunities for creative compensation. Child care and health benefits send the message that you value family. Longevity bonuses say you value employees who stay with the business. Parties and special events let employees know that you appreciate it when employees go the extra mile. Flexible hours may be important to a working single parent. A recent graduate may be looking for stable work and a place to live. Periodic use of farm equipment for personal use may be important to certain employees.

The most important consideration is fairness. Internal equity refers to fairness between employees of the same business, while external equity refers to relative fairness compared to competing employers. If either internal or external equity is violated, a business will likely experience employee dissatisfaction and employees will either reduce performance or leave.<sup>92</sup>

Incentive programs are often used to supplement base wages. Remember, bonuses increase labor productivity *only* if they are closely tied to a performance factor that the employee can control. Performance bonuses can be a significant motivator if they enable you employees to see and feel the results of their good work, but they can be frustrating and even counter-productive if bonuses are reduced or eliminated by factors that the employee can do nothing about.

At the end of the day, devising an overall compensation and incentive program involves two-way communication between the employer and the employee. From the employee's perspective, what are their needs?

- Pay
- Health insurance
- Leave
- Flexibility in work hours and days
- Housing
- Child care
- Retirement savings

Similarly, what does the employer need from their compensation program?

- Recruit new employees
- Motivate current employees
- Reward well performing employees
- Build employee loyalty

These are all points you should discuss with your management stakeholders and your employees, as many are quite specific to your operation's resources and needs. We'll discuss two of these elements in more detail below – retirement savings and health insurance.

## *Retirement Plans and Options for Farm Employees*

An important fringe benefit to offer to your employees is a retirement plan. The following material discusses a variety of retirement plans that can be established for employees as well as for self-employed individuals. It is important to discuss the plans and plan options with a retirement planner to determine which plan will offer the greatest benefit based upon the business. A retirement planner will provide guidance when establishing the plan as well as making sure that the requirements of the plan are followed in order to avoid penalties. For additional information concerning the various types of retirement plans click on the following website: [https://www.irs.gov/retirement-plans/plan-sponsor/types-of-retirement-plans-1?\\_ga=1.84121625.1077102639.1420666301](https://www.irs.gov/retirement-plans/plan-sponsor/types-of-retirement-plans-1?_ga=1.84121625.1077102639.1420666301)

- Individual Retirement Account (IRA) based retirement plans are fairly flexible and easy to establish. The three common types of IRA based plans that can be established for employees are as follows.
- Payroll Deduction IRA plans which can be established as either a Traditional IRA or Roth IRA.
- Simplified Employee Pension (SEP) plan
- Savings Incentive Match Plan for Employees (SIMPLE)

### ***Payroll Deduction IRA***

Payroll Deduction IRAs are created by the employee who then directs the employer to deduct the contribution from the employees pay and deposits the contribution into the IRA. The IRA can be either a Traditional or Roth IRA. The employer or business does not get a deduction for the contribution to the retirement account. The employee may or may not get a deduction for the contribution to a Traditional IRA and will not get a deduction for the contribution to a Roth IRA in a payroll deduction plan. A summary of a portion of the rules follow.

### ***Traditional Individual Retirement Accounts (IRA)***

A traditional IRA is a simple option for both the employer and the employee. In order to contribute to a traditional IRA, the contributor must have taxable compensation which is earned income such as wages, salary, or business income. Contributions may be deducted from gross income if both the taxpayer and spouse are not covered by another employer offered retirement plan. Contributions to a traditional IRA are limited to the greater of \$5,500 (\$6,500 if age 50 or older) or taxable compensation. IRA earnings are not taxed until they are withdrawn and withdrawals can start as early as age 59 ½ but must begin at age 70 ½. Withdrawal before age 59 ½ can and often will result in a penalty being owed.

### ***Roth IRA***

A Roth IRA is another simple option for both the employer and the employee. In order to contribute to a Roth IRA, the contributor must have taxable compensation which is earned income such as wages, salary, or business income the same as with a traditional IRA. But unlike a traditional IRA, contributions are not deductible from gross income. Contributions to a Roth IRA are limited to the greater of \$5,500 (\$6,500 if age 50 or older) or taxable compensation. Roth IRA earnings as well as withdrawals are not subject to income tax and the original owner does not have to take any withdrawals. However withdrawal before age 59 ½ can and often will result in a penalty being owed.

### ***Simplified Employee Pension (SEP) IRA***

A SEP IRA allows for a larger annual contribution. The contribution limit is 25 percent or the business' net income with an upper limit of \$53,000 for 2016. The limit is inflation adjusted so it will be important to be informed of changes to maximize the benefits. In addition, the annual contributions can be adjusted to reflect changes in income. All earnings are sheltered from taxes until withdrawn at retirement. Another benefit of a SEP IRA is that a sole-proprietor without any employees can establish a SEP plan. This type of plan does add some complexity as additional full-time employees are hired.

### ***Savings Incentive Match Plan for Employees (SIMPLE) IRA***

A SIMPLE IRA plan works well when a business in the early years. It is a form of a Traditional IRA and is designed for small business. It can be established for the self-employed owner as well as employees. As additional employees are added the same plan can be invested in thus no changes are needed. The main difference of this plan is the matching component. This means the employer must make a contribution for the employee on a dollar for dollar match up to 3 percent of salary or a flat rate of 2 percent of pay even if the employee does not make a contribution. The maximum contribution to a SIMPLE plan is \$12,500 a year (\$15,500 if you're 50 or over).

These plans are the simpler retirement plans to establish and administer for the small business owner and the employees. It is important to visit with a certified retirement professional and your income tax professions to determine what plan will work best. A good publication for examining the rules and requirements for a variety of plans is “Choosing a Retirement Solution for Your Small Business” which can be found at the following link. <https://www.irs.gov/pub/irs-pdf/p3998.pdf>

### *Health Insurance for Farm Employees*

The implementation of the Affordable Care Act (ACA) has made numerous changes in the health insurance plans offered to employees. All employers need to be aware of the new requirements when offering group health plans to their employees. As an employer, all employees must have minimal essential coverage or qualify for an exemption allowing them not to have minimum essential coverage. These plans must comply with the new rules and employers need to follow the guidelines in order to avoid the penalties associated with noncompliance. You can go to the following website to access information about the ACA: <https://www.healthcare.gov/>

The rules of the ACA are quite detailed and much too cumbersome to cover in a great amount of detail in this material. Our discussion here will focus on the basics for the two groups of employers as they are separated according to the ACA. These two are the Applicable Large Employer (ALE) and the Small Employer. It is extremely important to work closely with your tax professional to ensure that you are complying with all the rules and requirements of the ACA. Failure to comply can be expensive.

All businesses are divided into two groups. The small business group employs less than 50 full-time employees and the large business group employs 50 or more full-time or full-time equivalent employees. The small employer must meet the rules of the employee mandate while a large employer must meet the rules of the employer provisions.

An Applicable Large Employer is a business that employed 50 or more full-time employees or full-time equivalent employees during the previous tax year. Therefore a business that employed 50 full-time employees in 2016 must provide minimum essential coverage for the employees in 2017. Failure to provide such coverage may be subject to an employer shared responsibility payment (ERSP) payable to the IRS.

Minimum essential coverage means any of the following:

- Coverage under an eligible employer sponsored health plan.
- Coverage under a plan offered in an individual state marketplace.
- Coverage under a government program such as Medicare, Medicaid, Veterans Affairs, Department of Defense, etc.
- Coverage under a grandfathered health plan in which an individual was enrolled in prior to March 23, 2010.
- Coverage under a plan that the Department of Health and Human Services recognizes and deems suitable.

The employer shared responsibility payment applies to employers that do not offer minimum essential coverage or offers coverage to less than 95 percent of the full-time employees and their dependents. In addition, if any employee receives a premium tax credit to help pay for Marketplace coverage, then the employer is required to make the shared responsibility payment. But keep in mind that these rules only apply to businesses that employ 50 or more full time employees.

If the business has fewer than 50 employees during the prior tax year, the requirements that apply to ALE's go away. Small employers are not subject to the employer shared responsibility payment and are not required to offer health insurance coverage because of size. However all of the employees including all self-employed individuals must meet the rules under the individual mandate to avoid penalties. Employees of a small employer must make an individual shared responsibility payment if they do not have qualifying insurance or if they are not exempt from having minimum essential coverage as previously discussed.

The complexity of the Affordable Care Act increases the importance of consulting with you income tax preparer. Keep them informed of changes in the family and business situation. Individual and dependent coverage is required. Non-compliance with the rules and regulations can be extremely expensive. In addition, consult with you tax preparer before making any changes to ensure that compliance is maintained. In addition, go to the [https://www.irs.gov/affordable-care-act/individuals-and-families/health-care-law-and-you?\\_ga=1.104062848.1077102639.1420666301](https://www.irs.gov/affordable-care-act/individuals-and-families/health-care-law-and-you?_ga=1.104062848.1077102639.1420666301) website to get additional information concerning the ACA.

## **Your Employer Reputation: Being the Place Where Everyone Wants to Work**

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The challenge as a farmer or rancher is to provide an employment opportunity that is attractive to people who have numerous other employment alternatives. Building a reputation of being an excellent place to work is a long-term challenge. With that said, there are opportunities to capitalize on the advantages that many employees see in farm work, such as diversity, and



opportunity to work outside. Keeping the perspective of the employees in mind is important. Allowing reasonable work hours and flexibility, keeping equipment in good repair, providing adequate training and opportunity for communication will go a long way.

Following are a few characteristics of outstanding employers:

- They like, enjoy, and appreciate their employees.
- They use written job descriptions.
- They provide training.
- They show trust.
- They notice employees doing the right things, and they say thank you.
- They develop pride in the organization as a whole.
- They celebrate successes.
- They communicate clearly and often.
- They compensate fairly.
- They seek out and provide the most sought after informal benefits.
- They provide for internal advancement
- They make the business family friendly.
- They show pride for advancing employees, even if the advancement is to another organization.

# Section 4:

## Dealing with Difficult Employment Issues

### *Dealing with Difficult Employment Issues*

Sometimes, issues arise that pose employers with unique challenges. In this section, we examine some of those issues and how they can be handled by farm and ranch employers.

#### **Discrimination issues**

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Regardless of whether you face a hiring, promotion, training, or termination decision, you should always ask yourself whether there are any potential discrimination concerns at issue. Here, we will discuss a number of the anti-discrimination laws at the state and federal level. Bear these rules in mind, and with a little horse sense, you can avoid many common mistakes.

#### *Handling Discrimination Concerns*

Discrimination issues can arise at any point in the employment relationship – during recruitment and hiring, during the tenure of the employee, and of course, if the employee is let go. Thus, as you prepare to engage a new employee, it is as good a time as any to review a range of federal and Oklahoma laws dealing with discrimination and their application to the agricultural Sector.

Under federal law (and many state laws as well), “discrimination” can include adverse actions in hiring, firing, promoting, disciplining, compensating, and training employees based on a “protected characteristic.”<sup>93</sup> Protected characteristics are race, color, religion, sex, national origin, age, genetic information, physical disability, and veteran status. As an example, then, refusing to promote someone because of their race, or failing to give employees of a certain age the same training opportunities as other employees can constitute illegal discrimination. Let’s look in more detail at some of the discrimination laws that can apply to employers.

#### *Title VII of the Federal Civil Rights Act*

Title VII of the Federal Civil Rights Act of 1964 (the federal law will be referred to as “Title VII”), is the primary federal law dealing with employment discrimination, although there are numerous other federal laws dealing with other forms of discrimination as well; these other laws are discussed below.

#### *Racial / Color Discrimination*

Title VII prohibits discrimination against job applicants or employees based on race and color.<sup>94</sup> However, neither law defines specifically what is meant by “race” or “color.” Perhaps the best guidance on the topic, then, comes from the EEOC Compliance Manual, which explains “race” as including ancestry, physical characteristics, race-linked illnesses, culture, association, and “reverse” discrimination (discrimination against a majority race).<sup>95</sup> “Color” is described as “pigmentation, complexion, or skin shade or tone.”<sup>96</sup> Thus, treating an applicant or employee differently based on any of these traits can be regarded as a discriminatory action.

#### *Religious Discrimination and Accommodation*

Discriminating against an applicant or an existing employee on the basis of religion is prohibited under Title VII. Recall again that while Title VII applies only to employers with 15 or more employees,<sup>97</sup> many states have “parallel” statutes similar in effect to Title VII and apply even if an employer only has one employee.<sup>98</sup> Discrimination against applicants or employees based on religion clearly includes refusing to hire someone because of their religion, hiring only members of a certain religion (although there are obvious exceptions to this rule – religious organizations like churches can take applicants’ and employees’ religious beliefs into consideration<sup>99</sup>), or making promotional, training, or compensation decisions based on employees’ religious beliefs or practices. Further, coercing an employee to abandon, alter, or adopt a religious practice as a condition of their employment can also be considered discrimination under Title VII, and likely under parallel state laws as well.<sup>100</sup> Title VII further requires that employers make reasonable accommodations to handle situations in which an employee’s practice of their religious

beliefs conflict with their work. For example, if an employee's religion prohibits them from working on certain days or requires observance of certain holidays, an employer should work with that employee and with others to make reasonable efforts to accommodate those needs, so long as doing so does not cause an undue hardship to the employer.<sup>101</sup>

### Sexual Harassment

While discrimination based on any of the protected traits under Title VII can pose a number of “landmines” for employers, discrimination based on sex can be one of the most challenging to handle and avoid. However, with a little training and a dollop of common courtesy, these mines can be readily defused.

First, it is important to note that sexual harassment is regarded as discrimination based on sex within the context of Title VII.<sup>102</sup> Sexual harassment can take two forms: *quid pro quo* and *hostile environment*. *Quid pro quo* sexual harassment occurs when an employer or supervisor asks for sexual favors as a condition of obtaining or continuing employment or for other job-related matters such as promotions.<sup>103</sup> The elements of a *quid pro quo* claim of sexual harassment are:

- the employee was a member of a protected class (and note: while we often think of “harassment” in the context of sexual harassment, harassment based on any protected trait, such as race, national origin, or religion can constitute a discriminatory act as well);
- the employee was subjected to unwelcome sexual harassment in the form of sexual advances or requests for sexual favors;
- the harassment complained of was based on sex;
- the employee's submission to the unwelcome advances was an explicit or implied condition for receiving job benefits or that the employee's refusal to submit to a supervisor's sexual demands resulted in a tangible job detriment; and
- the existence of *respondeat superior* liability (meaning the situation was such that the employer should be held liable for damages).<sup>104</sup>

“Hostile environment” harassment consists of unwanted comments or advances, coarse joking, and similar conduct. To make a hostile environment claim, a prospective plaintiff must show the following elements:

- the plaintiff belongs to a protected group;
- the plaintiff was subject to unwelcome sexual harassment;
- the harassment complained of was based upon sex;
- the harassment complained of affected a “term, condition, or privilege” of employment; and
- the employer knew or should of known of the harassment and failed to take remedial action.<sup>105</sup>

*Quid pro quo* harassment is more likely to be a problem in the interview process than hostile environment harassment (since a claim for hostile environment harassment may require demonstrating a pattern of conduct, and such patterns may not have time to form in the course of an interview procedure). Nevertheless, you should be on guard against anything that could lead to either kind of claim in the interview process. While you may worry that it is difficult to know what is “sexual harassment” and what isn't, you will likely find that with just a moment's thought, you instinctively know what conduct is and is not appropriate for the interview.

### Disability Discrimination

The Americans with Disabilities Act (“ADA”) prohibits discrimination against a job candidate or employee based on a physical disability.<sup>106</sup> The federal ADA applies to employers with 15 employees or more,<sup>107</sup> but check your state for applicable laws fitting all employers.<sup>108</sup>

In the context of the interview and application process, the ADA does not allow you to “conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.”<sup>109</sup> In other words, you cannot require a candidate for a job to take a medical examination, nor can you ask them questions about their medical history. At first, this rule can be alarming. You may be thinking “my employees are going to be working on a farm and ranch – I have to know if they can handle the physical labor involved.” Fortunately, there is a way for you to determine if an employee can handle those tasks while still complying with the applicable laws.

An employer *can* determine the ability of an applicant to perform job-related functions.<sup>110</sup> While you should avoid asking questions about medical history and disabilities during the interview process, you can ask an applicant about whether they can perform the tasks required for the job in question. The Federal Equal Employment Opportunity Commission (EEOC) has phrased the issue this way:

*Employers may ask about an applicant's ability to perform specific job functions. For example, an employer may state the physical requirements of a job (such as the ability to lift a certain amount of weight, or the ability to climb ladders), and ask if an applicant can satisfy these requirements.*<sup>111</sup>

Employers can also ask an applicant to describe or demonstrate how they would perform specific tasks required by the job.<sup>112</sup>

The disability discrimination laws require you to make “reasonable accommodations” for employees unless doing so would constitute an “undue hardship.”<sup>113</sup> The law defines reasonable accommodation as:

*Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and...job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.*<sup>114</sup>

“Undue hardship” has a rather lengthy definition, but it is also an important one as it specifies circumstances in which employers will and will not be required to make modifications to their workplace or work practices. In short, regulators will look at several factors to determine whether an accommodation would pose an “undue hardship.” These factors include:

- How complex and/or expensive would the needed accommodation be?
- What are the financial resources of the facility involved?
- How many people are employed at the facility?
- How would the expense of the accommodation affect the finances of the facility?
- What kind of operations occur at the facility?
- What are the characteristics of the facility's workforce?
- Is the facility part of a business that involves several other facilities under one company?<sup>115</sup>

In the context of the recruitment and interview process, you should focus on the actual requirements of the job – what weights must be lifted? What motions must an employee make? In what conditions will employees have to work (heat, cold, hours, etc.)? While you can ask a candidate to demonstrate their ability to perform actual job tasks, you should not require the candidate to demonstrate capabilities that are beyond the actual scope of the job in question.

### **Age Discrimination**

At the Federal level, the Age Discrimination in Employment Act (ADEA) prohibits discrimination on the basis of age against persons over 40 years of age.<sup>116</sup> The ADEA applies to employers with 20 or more employees,<sup>117</sup> but remember to look for state laws that apply to employers with one or more employees.<sup>118</sup>

To avoid problems with age discrimination during the recruitment and interview process, steer clear of any questions that would reveal information about age. While you can ask if an applicant is at least 18 years of age (as many licenses and other legal requirements specify that employees must be 18 or older), avoid asking questions such as “when did you graduate from high school,” “how old are your children,” or “when do you intend to retire?”

### **Discrimination Based on Genetic Information**

New laws at both the state and federal level prohibit employers from discriminating against applicants or current employees based on genetic information about the employee. Before discussing these laws, though, we should first discuss what is meant by the term “genetic information.” For example, in Oklahoma, the Oklahoma Anti-Discrimination Act defines it as

*[I]nformation derived from the results of a genetic test...[but not including] family history, the results of a routine physical examination or test, the results of a chemical, blood or urine analysis, the results of a test to determine drug use, the results of a test for the presence of the human immunodeficiency virus, or the results of any other test commonly accepted in clinical practice at the time it is ordered.*<sup>119</sup>

At the federal level, the Genetic Information Nondiscrimination Act of 2008 (“GINA”)<sup>120</sup> uses a somewhat similar definition:

*The term “genetic information” means, with respect to any individual, information about (i) such individual’s genetic tests, (ii) the genetic tests of family members of such individual, and (iii) the manifestation of a disease or disorder in family members of such individual.*<sup>121</sup>

While GINA and some state laws prohibit employers from engaging in discriminatory acts based on an applicant’s or employee’s genetic information, the laws handle the issue differently. Under the OADA (which applies to all Oklahoma employers even if they only have one employee), genetic information is simply treated as another protected characteristic, just like race, color, religion, national origin, and other traits are.<sup>122</sup> GINA, on the other hand, applies to employers with fifteen or more employees<sup>123</sup> and sets forth more specific requirements. While GINA prohibits discriminatory practices with respect to hiring, compensation, termination, etc. based on genetic information, it also prohibits employers from “requesting, requiring, or purchasing genetic information with respect to an employee or a family member of the employee.”<sup>124</sup>

You may be asking yourself why, as a farmer or rancher, you would ever want to have genetic information about your employees or how you would ever come to have it. For most of us, this is not a yet a concern. However, employers that provide health insurance or other health-related benefits to their employees may, whether accidentally or on purpose, get access to genetic information about their employees. As health care costs continue to rise, there may be increasing pressure to use such information to avoid hiring or to discharge employees who may represent higher medical costs to their employers. This is precisely the reason the genetic information provisions of OADA and GINA were enacted. In short, employers should simply avoid requesting genetic information about applicants or employees in much the same way they should avoid unnecessary inquiries into their disability status under the ADA.

### **Discrimination Based on Veteran Status**

The Uniformed Services Employment and Reemployment Rights Act (USERRA) is a federal law that applies to all employers, regardless of size.<sup>125</sup> In essence, the USERRA prohibits discrimination against a person “on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.”<sup>126</sup> However, discharge because of dishonorable or bad conduct or conviction by court-martial makes the employee ineligible for the protections of the USERRA.<sup>127</sup>

As a result of these requirements, steer clear of questions regarding military service, although one may ask whether a candidate has received a dishonorable or bad conduct discharge or conviction under court-martial.

### **Discrimination Based on Criminal Records**

As with any other issue, employers need to be sure that if they are asking a candidate about their conviction record, it is because there is a specific and valid reason for the question, such as the fact that the employee will work with vulnerable people such as children or the elderly or that the employee will be in a position of trust (for example, conviction of fraud or embezzlement may be important if the job in question involved handling finances). Setting an outright bar on employment based on a conviction may not be discriminatory by definition, but it will also be viewed with a very skeptical eye by regulators.<sup>128</sup>

In almost any case, asking about an arrest is likely to be problematic since a number of cases have established that blacks and Hispanics are arrested at rates higher than their representation in the population, and thus such questions are likely to have an indirectly discriminatory effect. Asking about convictions is slightly less problematic if, again, the inquiry is directly related to the job in question. However, studies have also shown that conviction rates are also disproportionate for blacks and Hispanics relative to their representation in the population.

Some state laws prohibit an employer requiring an applicant or employee to disclose any information in their criminal record that has been expunged (meaning that the information has been sealed by the court, typically done for arrests that never resulted in a conviction, a conviction that was overturned, a minor offense occurring several years in the past, and in some other circumstances<sup>129</sup> nor can applicants or employees be required to answer any questions regarding expunged criminal records; in fact, some states permit applicants and employees to state that expunged events never occurred.<sup>130</sup>

### **Discrimination Based on Credit Checks**

Increasingly, credit reports and credit scores seem to be used almost everywhere, and some employers have begun to request a credit report as part of an overall “background check” on new employees. While one can hardly blame employers for using an abundance of caution in today’s world, a great deal of caution must be taken in using credit checks on applicants and employees. As mentioned elsewhere, inquiries into applicants’ or employee’s backgrounds may not be, in and of themselves, discriminatory, they can give rise to a claim of “disparate impact” discrimination if they would affect persons with protected

characteristics differently from others. As mentioned elsewhere in this handbook, credit checks have been shown in some cases to have disparate impacts, and these impacts have been noted by the EEOC.<sup>131</sup> Given these concerns, employers are generally advised to use credit checks only for applicants and employees who will have significant financial responsibilities or who will routinely handle significant amounts of funds.

At the federal level, the Fair Credit Reporting Act (FCRA)<sup>132</sup> governs credit reporting through consumer reporting agencies. Typically, the FCRA comes into play when someone such as an employer requests a “consumer report” (also known as a “credit check” or “credit report” and which may include a credit score) on another person. Under the FCRA, a consumer report is defined as:

*any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for —*

*(A) credit or insurance to be used primarily for personal, family, or household purposes;*

*(B) employment purposes*

*(C) any other purpose authorized under [15 U.S.C. § 1681b].<sup>133</sup>*

In the vast majority of circumstances, an employer will not try to collect credit information directly, but will instead rely on a “consumer reporting agency” (also known as a “credit bureau”) to provide the information. The FCRA defines a consumer reporting agency as:

*any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.<sup>134</sup>*

While the FCRA authorizes a consumer reporting agency to provide a consumer report to an employer if that information will be used for employment purposes,<sup>135</sup> the consumer reporting agency can only provide such a report if the employer has (A) provided a “clear and conspicuous” disclosure to the applicant or employee that a credit report will be requested (and such a disclosure must stand alone, i.e. it must be its own document that is not made part of any other documents or forms), and (B) the applicant or employee has provided a written authorization for the employer to request the consumer report.<sup>136</sup>

If the consumer report reveals information that causes an employer to take adverse action against that person (such as not offering employment to an applicant or disciplining/terminating an existing employee), then, *before taking such adverse action*, the employer must provide the applicant or employee with a copy of the consumer report that was obtained by the employer, and must also provide the applicant or employee with a written statement of their rights under the FCRA.<sup>137</sup> The Federal Trade Commission (FTC) has prepared a document that can be used for this purpose, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre35.pdf>.

## Covert Video Issues

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The use of undercover videos by animal rights activists is ongoing across the United States. This poses significant hazards for livestock operations in the form of biosecurity risks if trespassers have been in contact with other livestock populations, as well as safety risks simply caused by trespassers present on property. However, some parties seek access to farms and ranches by securing employment on the agricultural operation. How should farm and ranch employers safeguard themselves against hiring an employee who is applying for ulterior motives? Below are some tips:

### Screening Prospective Employees

Several techniques that apply to almost any agricultural employee can be used to reduce the risk of hiring an employee who may be seeking employment for suspect reasons.

- **Google the employee's name.** This seems like a simple item to include on a list of hiring practices, but it can be extremely effective. Several farmers who have been subject to undercover investigations by animal rights groups have said that had they taken the time to run a google search before hiring the employee, the entire situation likely could have been avoided as the search would have shown connections between the employee and animal rights organizations.

- **Look for a social media presence by the employee.** This, too, seems like a simple step, but it is amazing the information people share on social media. Check to see if the applicant has a Facebook page, a blog, a Twitter account, an Instagram account, etc. This step, which is free of charge to the employer, could help to avoid hiring someone seeking to cause problems for the farmer.
- **Confirm references are legitimate and contact each of them.** At the outset, it is important for employers to contact references for a potential job applicant in order to determine if they are, in fact, references. Sometimes, activists list fake references based upon the assumption that farmers will never make these phone calls. Additionally, activists seeking employment in order to record undercover video footage use false contact information for references. For example, an applicant might list prior employment at a certain company, but then list his or her roommate as being his or her supervisor and providing the roommate's phone number rather than the number of the prior employer. In order to catch an applicant in this type of situation, employers should research each company listed on a reference list and compare the phone numbers given with the phone numbers available publicly for the company.
- **Complete a background check.** Employers should consider running a background check on applicants for jobs on the farm. Importantly, the employer must comply with the Fair Credit Reporting Act and all state laws related to background checks for employment purposes. To ensure compliance with the laws in a specific state, farmers should seek legal counsel from an attorney licensed in their jurisdiction.
- **Seek specific information in the job application.** Seek information including a list of all prior names and aliases and any association or affiliation with animal rights groups.
- **Require signature under penalty of perjury.** Require that all applicants sign their completed application and state, under penalty of perjury, that all information is true and accurate to the best of their knowledge. This may allow perjury charges to be pursued if it turns out later that false information was obtained.
- **Beware of common warning signs.** There are numerous commonalities among those activists seeking employment on farms in order to obtain undercover video footage for which the employer should be aware of. Although certainly each of these signs could be innocent, it is still a good list of characteristics for farmers to be aware of. The common warning signs include: (1) seeking employment below the employee's skill level; (2) previous jobs are wholly out of character with employment being sought; (3) volunteering to work for no pay; (4) seeking short term work; (5) newly obtained driver's license; (6) employees seeking jobs because they have always wanted to see how something was done.

### *Enacting and Enforcing Animal Care and Handling Policies for Your Operation*

Even if you aren't able to screen people seeking employment on your operation for the wrong reasons, you can still make sure there is nothing to hide by crafting and consistently enforcing sound animal care and handling policies for your operation.

Consider the following:

- **Develop detailed animal care and handling policies.** Topics to consider include general animal handling, dealing with downed cows, euthanasia procedures, and identifying when medical treatment is necessary.
  - Producers often work with veterinarians or industry groups, such as the National Dairy Farmers Assuring Responsible Management (FARM) Program or Merck Animal Health's Dairy Care365™, to develop these policies. For example, FARM offers a dairy animal care manual and a third-party compliance system to ensure the effectiveness of policy implementation. Dairy Care 365 provides many standard operating procedures written and ready for customization, while Extension programs also often publish animal care and handling guidelines.
    - Another important provision to consider is one requiring that all observations of animal abuse be reported immediately if at all possible, and within a short time frame (many operators use 48 hours) to a designated person or persons if immediate notification is not possible. This will help ensure that employees witnessing abuse will speak up immediately, rather than allowing abuse to continue.
    - Importantly, a copy of the final policies should be given to each employee upon hiring, and the employer should obtain a signed acknowledgment from each employee stating that he or she has reviewed, understood, and will abide by each policy.
- **Provide proper equipment and tools.** It is equally important to ensure that employees have access to the proper tools and equipment identified in such policies. For example, dairies and feedlots often have a policy for moving downed animals that involves the use of a sled. If the operation does not have a sled available, that written policy is basically worthless. In more than one undercover video investigation, the failure to have the necessary equipment for policy compliance has been discovered.
- **Offer on-going training.** Having new employees review and sign off on animal care and handling policies is important, but not sufficient. In addition, livestock operators should conduct ongoing employee training. Having a veterinarian come to the farm to meet with employees and offer hands-on demonstrations may be useful. Many

- states offer Extension programs related to animal care and handling techniques. Additionally, various industry groups offer training materials on topics that may be useful for employees. Examples include the FARM Program and the Beef Quality Assurance Program animal handling and stockmanship training. The University of Minnesota Dairy Stockmanship website offers short YouTube videos on animal handling that could be integrated into training.
- Employers should require all employees to sign a form verifying they have attended such training programs and understood the information presented.
  - **Consider recording and photography policies.** Employers may want to consider written policies banning the use of any cameras or other recording devices in working areas. Given the prevalence of cell phones with video cameras, some farms have prohibited the use of cell phones unless written permission is obtained from the employer.
    - Additionally, producers may consider adopting a policy stating that any recording or photos taken on the premises is the property of the dairy, and must be immediately turned over to a designated owner or manager.
    - Finally, for those operators in states with animal protection (sometimes referred to as “ag gag”) statutes, the language prohibiting the use of certain devices or capturing of videos or photographs should mirror the statutory language in the applicable state. States currently with statutes include Idaho, Utah, Iowa, Kansas, Missouri, Montana, North Dakota, North Carolina and South Carolina.
  - **Conduct your own undercover investigations.** One interesting and useful idea is for owners to conduct their own periodic on-farm undercover investigations. These can be done by trusted employees, third party evaluators, or even friends or neighbors. This will ensure employees are following farm policies, and give the owner an opportunity to see how the operation runs on a day-to-day basis – rather than just when the boss is looking over an employee’s shoulder. It also provides a good opportunity to evaluate individual employees, and take necessary actions against those who may not be adequately caring for the animals.
  - **Enlist trusted employees.** Often, livestock operations have one or more long-term, trustworthy employees. Operators should consider enlisting these employees to help keep watch for any animal abuse, violation of policies, videotaping or photographing, or any other suspicious behavior. People often act very differently in front of management or owners than they might around their co-workers, so having eyes and ears “on the ground” may prove very beneficial.

### *Responding to a Crisis Situation*

What happens if, despite your very best efforts to create policies and a culture focused on animal well-being, video surfaces that shows animals being mistreated on your operation?

- **Have a crisis response team in place.** Long before a crisis situation, dairy operators should assemble a crisis response team. This team should include a variety of professionals including attorneys, veterinarians, a spokesperson with media training, and a social media and press inquiry manager. This type of team can be utilized in a variety of situations, including undercover videos, food safety emergencies, and manure spills.
- **Develop a communications policy.** Having a plan in place for how, when, and who will handle various issues during a crisis is critical. Oftentimes, farms are bombarded with media requests, questions from milk purchasers, inflammatory comments on social media, phone calls from industry groups...the list continues on. Having a plan for who will handle each type of issue is critical. Likewise, it is equally important to have a policy on who is not to speak. For example, a farm will likely want to release one official statement, rather than having numerous employees posting statuses on Facebook or updates on Twitter. Having a written plan for how this whirlwind of activity will be handled will be extremely helpful.
- **Engage in detailed recordkeeping.** In the event that an operation ends up defending itself in court (or even in the court of public opinion), the more evidence of good animal care that a farm can produce, the better. Farms should keep written record of all trainings, certificates, extension programs, or other steps they take to ensure top quality animal care. Likewise, all employee trainings should be carefully documented. Having care and health inspections from veterinarians on file can also be very beneficial. Document any animal welfare audits or evaluations conducted on your farm. Finally, farms should keep track of any certificates, licenses, or awards given to the operation, owners, or employees related to animal care, health, and handling.
- **Store up good will in the community and industry.** In talking with operators who have faced an undercover video situation, many of them report that having goodwill built up prior to the video was critical in their ability to survive.
  - For example, farms having a reputation for excellent animal care, or who are involved as leaders in programs like 4-H or FFA are often defended by outside third-parties in the event questions do arise regarding animal care.
  - Additionally, voluntary participation in livestock animal welfare programs or third-party audits is something to consider, as participation can help educate operators and employees and shows a commitment to good animal care practices.



Operators should consider the following steps if a video is released:

- **Notify and involve your spokesperson.** This person should have been identified as part of the crisis response team and, ideally, will have undertaken media training. There are various opportunities to obtain this type of training offered by different firms and groups throughout the country. One example is the Dairy Management Inc. crisis training drills held periodically in different locations.
- **Send a spoliation letter requiring the activist group to keep the entire video.** Oftentimes, activists will record hours upon hours of videos, yet release only a minute of edited footage. Having access to all video shot by the activist may aid the farm in providing context for certain actions, may show the activist actually participating or encouraging abuse, and may provide evidence of good animal care practices captured on tape.
- **Consider seeking an injunction against the video being played.** Consult with your attorney to determine if there are legal grounds or reasons for an injunction against the video being played. Grounds commonly argued in this type of situation include trade secrets, security concerns, and potential jury bias. While these issues may not be present in every situation, and there may be strategic reasons for not seeking an injunction, this issue should be carefully considered with your attorney.
- **Open the barn doors.** Instead of allowing the activist video to be the only view the public has of a farm, consider inviting reporters and the public to come view the farm themselves. As one example, when an undercover video broke involving a poultry farm in the Midwest, the activist group held a press conference and invited the local media. The farm's attorney, who was not invited to the press conference, waited in the hall and upon its conclusion, invited all of the reporters present to visit the farm themselves anytime. One reporter came, and on the nightly news reported that none of the claims made by activists were verified during the reporter's impromptu visit. This proactive step is an example of diffusing the situation at the outset and immediately cast doubt upon the activists' claims.

In conclusion, the best way to protect your farm or ranch against the release of video or photographs that casts your operation in a negative light is to adhere to the highest standards of care and create a culture that supports that standard of care. In any case, investing some time, effort, and expense on the front end to avoid hiring an activist will be far less costly than it will be to seek to recover from an undercover video once it has been released. Additionally, because there are numerous state and federal laws related to employment, farmers should contact a licensed attorney in their jurisdiction to ensure all hiring practices meet the applicable requirements.

## **Conclusion**

In this handbook, the authors have examined the human resource process for agricultural employers from the recruitment and hiring process, to getting the employee on the job and guiding them through their work, and concluding with the employee's evaluation. In short, with a little homework, agricultural employers can avoid many of the legal risks involved in human resource issues, and can cultivate a workforce that finds the farm a rewarding place to work. And that's good for everyone's bottom line.

## Appendix 1 Employer Checklist

<b>Before the Recruitment and Interview Process</b>	
	Develop the farm's vision/mission statement
	Assess current human resources: assets and needs
	Develop job description
	Obtain Federal Employer Identification Number (EIN) via Form SS-4
	Enroll in Federal tax withholding system
	Prepare accounting and deposit systems for Federal and state tax withholding
	Register with state tax agency for any needed tax withholding
	Register with IRS/state employment commission for unemployment tax filing if needed
<b>Recruitment and Interviews</b>	
	Train recruiters and interviewers regarding the business, HR needs, and recruitment media
	Train recruiters and interviewers regarding permissible and impermissible interview questions
	Administer written job applications and job-based skills tests/demonstrations
	Administer interviews
	Check references (if interviewee grants permission)
	Compile interview records for file
	Destroy any records that may contain private information of candidates not chosen (ex. SSNs)
<b>As Soon as a New Employee is Hired</b>	
	Prepare Form I-9 with employee
	Have employee prepare Form W-4 (Withholding Allowance Certificate)
	Report hiring through Federal New Hire Reporting Service
	Provide required workplace notices
	Provide employee training
	Prepare file for required employee records
<b>Payday</b>	
	Calculate employee pay, ensuring that applicable minimum wage/overtime rules are applied
	Withhold required state and federal taxes
	Provide payday statement detailing basis of pay and all withholdings
<b>Employee Evaluation / Discipline / Termination</b>	
	Conduct employee evaluations
	Discuss employee evaluation with employee; outline plan for improvement if needed
	Provide verbal correction for problematic performance or behavior
	Provide written correction for problematic performance or behavior
	Provide second written correction with possible suspension
	Terminate employee
<b>Termination</b>	
	Conduct termination meeting to discuss reason for action
	Recover all company property from employee
	Change passwords/codes/access to sensitive areas or materials

## Appendix 2

### Troublesome Interview Questions

Don't ask:	Instead, ask:
<b>National origin questions</b>	
Are you a citizen of the United States	If you were offered this job, could you prove your eligibility to work in the United States?
Where were you born?	[Irrelevant]
Where did you learn to speak Spanish?	[Irrelevant]
Who is your closest personal relative we should contact in case of an emergency	Is there anyone you would like us to contact in case of an emergency?
What is your maiden name?	Is there any other name by which your references would know you?
<b>Religion</b>	
What is your religion?	This position may require you to work on weekends and holidays. Would you be able to handle that? (NOTE: If religious observances require a person not to work on certain days, accommodations may need to be made).
Where do you go to church?	[No suitable substitute]
To what social, community, or religious groups do you belong?	[No suitable substitute][Note that this question is likely irrelevant and can lead to numerous discriminatory problems]
<b>Disability</b>	
Do you have children that you need to take to day care? (Also goes to gender discrimination)	This position may require travel and work in the evenings. Would you be able to handle that?
Do you have any health-related issues that would prevent you from doing this job?	This job requires that you can perform [physical task]. Could you perform that task?
Are you taking any prescription drugs?	[No suitable substitute]
Are you a drug addict or alcoholic?	[No suitable substitute]
How tall are you? How much do you weigh?	This job requires you to work on equipment in confined spaces. Could you perform that task?
Have you ever filed for workers' compensation insurance? (Also goes to workers' compensation retaliation)	[No suitable substitute]
<b>Age</b>	
How old are you?	If hired, could you give me proof that you are over 18 years of age?
When did you graduate from high school?	Tell me about your education and experience.
Disparate impact	
Have you ever been arrested?	Have you ever been convicted of a felony?
<b>Don't ask:</b>	<b>Instead, ask:</b>

Fair Credit Reporting/Fair Debt Collection Practices/Disparate Impact	
Have you ever declared bankruptcy or had your wages garnished?	[No suitable substitute; you can conduct a credit check on employees if (1) done in accordance with all state and federal laws and (2) if good credit is necessary to perform the essential functions of the job]
Do you own or rent?	How long have you lived in this area?
Gender/Sexual Harassment	
Are you married?	Irrelevant
Are you pregnant or do you plan to become pregnant? How many children do you have?	[No suitable substitute]
Are you married/single/divorced/engaged?	[No suitable substitute]
Do you think you can supervise men/women?	How well have you worked with men and women?
Veteran Status	
Have you ever served in the military?	What skills and experience do you have that could help in this position?
Have you ever received a discharge from the military?	Was your separation from active duty for reasons other than an honorable discharge?

## References

Paul Falcone, *The Hiring and Firing Question and Answer Book* 109-113 (AMACOM 2002)

Linda A. Hill, *Hiring an Employee* 42 (Harvard Business Press 2008)

Joseph D. Levesque, *Complete Manual for Recruiting, Hiring & Retaining Quality Employees* 218 (Prentice Hall 1996)  
 Oklahoma State University Career Services, *Legal vs. Illegal Questions*, available at [https://www.myinterfase.com/okstate/resources/resource\\_view.aspx?token=9WUr9NaJInwdwYEOS0WrA%3d%3d](https://www.myinterfase.com/okstate/resources/resource_view.aspx?token=9WUr9NaJInwdwYEOS0WrA%3d%3d)

Tyler M. Paetkau, *Hiring and Firing* 26 (Entrepreneur Press 2007)

Fred S. Steingold, *The Employer's Legal Handbook* 1/26 (Nolo Press 1994)

For an excellent summary of what kind of pre-employment inquiries can and cannot be made, see the Michigan Department of Civil Rights "Pre Employment Inquiry Guide), available at [http://www.michigan.gov/documents/mdcr/Preemploymentguide62012\\_388403\\_7.pdf](http://www.michigan.gov/documents/mdcr/Preemploymentguide62012_388403_7.pdf)  
 (last visited August 10, 2011).

From "Legal vs. Illegal Questions," OSU Career Services Fact Sheet, available at [https://www.myinterfase.com/okstate/resources/resource\\_view.aspx?token=9WUr9NaJInwdwYEOS0WrA%3d%3d](https://www.myinterfase.com/okstate/resources/resource_view.aspx?token=9WUr9NaJInwdwYEOS0WrA%3d%3d)

## Appendix 3

### Federal Workplace Notice Requirements

The U.S. Department of Labor provides the “elaws Poster Advisor” which allows you to answer questions about your business, and in turn provides information on the specific federal notices that may be required for you. You can access the Poster Advisor at <http://www.dol.gov/elaws/posters.htm> . Be sure to check with your state employment agency to determine any state-specific posting requirements as well.

You must post this notice ...	... if you meet these requirements	Link to notice
<b>Federal Notices</b>		
“Equal Employment is the Law”	You employ 15 or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year	Main Poster: <a href="http://www1.eeoc.gov/employers/upload/eeoc_self_print_poster.pdf">http://www1.eeoc.gov/employers/upload/eeoc_self_print_poster.pdf</a> Supplement: <a href="http://www1.eeoc.gov/employers/upload/eeoc_gina_supplement.pdf">http://www1.eeoc.gov/employers/upload/eeoc_gina_supplement.pdf</a>
Employee Polygraph Protection Act	Applies to all employers	<a href="https://www.dol.gov/whd/regs/compliance/posters/eppac.pdf">https://www.dol.gov/whd/regs/compliance/posters/eppac.pdf</a>
Fair Labor Standards Act	You are subject to the Fair Labor Standards Act (see section VI.D)	<a href="http://www.dol.gov/whd/regs/compliance/posters/wh1386Agrcltr.pdf">http://www.dol.gov/whd/regs/compliance/posters/wh1386Agrcltr.pdf</a>
Occupational Safety and Health Act	Applies to all employers	<a href="http://www.osha.gov/Publications/osha3165.pdf">http://www.osha.gov/Publications/osha3165.pdf</a>
Uniformed Services Employment and Reemployment Rights Act	Applies to all employers	<a href="http://www.dol.gov/vets/programs/userra/USERRA_Private.pdf">http://www.dol.gov/vets/programs/userra/USERRA_Private.pdf</a>
Family Medical Leave Act	You employ 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year	<a href="http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf">http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf</a>

## Appendix 4

### Links to OSHA Standards for Agricultural Safety Regulations

To access the OSHA regulations that apply to each of the following activities, use the URL to the right (or if you are reading this document in PDF format, click on the appropriate hyperlink). To go to the master listing of OSHA regulations, visit [http://www.osha.gov/pls/oshaweb/owasrch.search\\_form?p\\_doc\\_type=STANDARDS&p\\_toc\\_level=0&p\\_keyvalue=&p\\_status=CURRENT](http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=0&p_keyvalue=&p_status=CURRENT)

Activity	Regulatory Reference	Link
Grain Handling Facilities	29 C.F.R. § 1910.272	<a href="http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=9874">http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=9874</a>
Temporary Labor Camps	29 C.F.R. § 1910.142	<a href="http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=9791">http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=9791</a>
Field Sanitation	29 C.F.R. § 1928.110	<a href="http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=10959">http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=10959</a>
Storage and Handling of Anhydrous Ammonia	29 C.F.R. § 1910.111(a),(b)	<a href="http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=9757">http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=9757</a>
Logging Operations	29 C.F.R. § 1910.266	<a href="http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=9862">http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=9862</a>
Slow-moving Vehicles	29 C.F.R. § 1910.145	<a href="http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=9794">http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=9794</a>
Hazard Communication (MSDS Sheets)	29 C.F.R. § 1910.1200	<a href="http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=10099">http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=10099</a>
Tractor Safety Systems	29 C.F.R. 1928.51(b)	<a href="http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=10957">http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=10957</a>
Tractor Operating Instructions	29 C.F.R. Part 1928, Subpart C, Appendix A	<a href="http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=10961">http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=10961</a>
Guarding of Agricultural Equipment	29 C.F.R. § 1928.57	<a href="http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=10958">http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=10958</a>
Handling Cadmium	29 C.F.R. § 1910.1027	<a href="http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=10035">http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&amp;p_id=10035</a>

## *Appendix 5 – Forms*



**Note:** Form SS-4 begins on the next page of this document.

## Change to Fax-TIN Numbers

There is a change to the Instructions for Form SS-4 (Rev. February 2016). On page 2, under the **"Where to File or Fax"** table, the Fax-TIN numbers have changed.

<b>If you have a principal place of business, office or agency, or legal residence in the case of an individual, located in:</b>	<b>File or Fax to:</b>
One of the 50 states or the District of Columbia	Internal Revenue Service Attn: EIN Operation Cincinnati, OH 45999 Fax: (855) 641-6935
If you have no legal residence, principal place of business, or principal office or agency, in any state:	Internal Revenue Service Attn: EIN Operation Cincinnati, OH 45999 Fax: (855) 215-1627 (within the U.S.) Fax: (304) 707-9471 (outside the U.S.)

These changes will be included in the next revision of the Instructions for Form SS-4.

# Application for Employer Identification Number

(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)

OMB No. 1545-0003

EIN

▶ See separate instructions for each line. ▶ Keep a copy for your records.

Type or print clearly.	<b>1</b> Legal name of entity (or individual) for whom the EIN is being requested	
	<b>2</b> Trade name of business (if different from name on line 1)	<b>3</b> Executor, administrator, trustee, "care of" name
	<b>4a</b> Mailing address (room, apt., suite no. and street, or P.O. box)	<b>5a</b> Street address (if different) (Do not enter a P.O. box.)
	<b>4b</b> City, state, and ZIP code (if foreign, see instructions)	<b>5b</b> City, state, and ZIP code (if foreign, see instructions)
	<b>6</b> County and state where principal business is located	
	<b>7a</b> Name of responsible party	<b>7b</b> SSN, ITIN, or EIN
<b>8a</b> Is this application for a limited liability company (LLC) (or a foreign equivalent)? . . . . . <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>8b</b> If 8a is "Yes," enter the number of LLC members . . . . . ▶	
<b>8c</b> If 8a is "Yes," was the LLC organized in the United States? . . . . . <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>9a Type of entity</b> (check only one box). <b>Caution.</b> If 8a is "Yes," see the instructions for the correct box to check.		
<input type="checkbox"/> Sole proprietor (SSN) _____ <input type="checkbox"/> Estate (SSN of decedent) _____ <input type="checkbox"/> Partnership _____ <input type="checkbox"/> Plan administrator (TIN) _____ <input type="checkbox"/> Corporation (enter form number to be filed) ▶ _____ <input type="checkbox"/> Trust (TIN of grantor) _____ <input type="checkbox"/> Personal service corporation _____ <input type="checkbox"/> National Guard <input type="checkbox"/> State/local government <input type="checkbox"/> Church or church-controlled organization _____ <input type="checkbox"/> Farmers' cooperative <input type="checkbox"/> Federal government/military <input type="checkbox"/> Other nonprofit organization (specify) ▶ _____ <input type="checkbox"/> REMIC <input type="checkbox"/> Indian tribal governments/enterprises <input type="checkbox"/> Other (specify) ▶ _____ Group Exemption Number (GEN) if any ▶ _____		
<b>9b</b> If a corporation, name the state or foreign country (if applicable) where incorporated	State	Foreign country
<b>10 Reason for applying</b> (check only one box)		
<input type="checkbox"/> Started new business (specify type) ▶ _____ <input type="checkbox"/> Banking purpose (specify purpose) ▶ _____ <input type="checkbox"/> Hired employees (Check the box and see line 13.) <input type="checkbox"/> Changed type of organization (specify new type) ▶ _____ <input type="checkbox"/> Compliance with IRS withholding regulations <input type="checkbox"/> Purchased going business <input type="checkbox"/> Other (specify) ▶ _____ <input type="checkbox"/> Created a trust (specify type) ▶ _____ <input type="checkbox"/> Created a pension plan (specify type) ▶ _____		
<b>11</b> Date business started or acquired (month, day, year). See instructions.	<b>12</b> Closing month of accounting year	
<b>13</b> Highest number of employees expected in the next 12 months (enter -0- if none). If no employees expected, skip line 14.	<b>14</b> If you expect your employment tax liability to be \$1,000 or less in a full calendar year <b>and</b> want to file Form 944 annually instead of Forms 941 quarterly, check here. (Your employment tax liability generally will be \$1,000 or less if you expect to pay \$4,000 or less in total wages.) If you do not check this box, you must file Form 941 for every quarter. <input type="checkbox"/>	
<b>15</b> First date wages or annuities were paid (month, day, year). <b>Note.</b> If applicant is a withholding agent, enter date income will first be paid to nonresident alien (month, day, year) . . . . . ▶		
<b>16</b> Check <b>one</b> box that best describes the principal activity of your business.		
<input type="checkbox"/> Construction <input type="checkbox"/> Rental & leasing <input type="checkbox"/> Transportation & warehousing <input type="checkbox"/> Accommodation & food service <input type="checkbox"/> Wholesale-agent/broker <input type="checkbox"/> Real estate <input type="checkbox"/> Manufacturing <input type="checkbox"/> Finance & insurance <input type="checkbox"/> Other (specify) ▶ _____ <input type="checkbox"/> Wholesale-other <input type="checkbox"/> Retail		
<b>17</b> Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided.		
<b>18</b> Has the applicant entity shown on line 1 ever applied for and received an EIN? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If "Yes," write previous EIN here ▶		

Third Party Designee	Complete this section <b>only</b> if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.	
	Designee's name	Designee's telephone number (include area code)
	Address and ZIP code	Designee's fax number (include area code)
Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.		Applicant's telephone number (include area code)
Name and title (type or print clearly) ▶		Applicant's fax number (include area code)
Signature ▶	Date ▶	

## Do I Need an EIN?

File Form SS-4 if the applicant entity does not already have an EIN but is required to show an EIN on any return, statement, or other document.<sup>1</sup> See also the separate instructions for each line on Form SS-4.

IF the applicant...	AND...	THEN...
Started a new business	Does not currently have (nor expect to have) employees	Complete lines 1, 2, 4a–8a, 8b–c (if applicable), 9a, 9b (if applicable), and 10–14 and 16–18.
Hired (or will hire) employees, including household employees	Does not already have an EIN	Complete lines 1, 2, 4a–6, 7a–b (if applicable), 8a, 8b–c (if applicable), 9a, 9b (if applicable), 10–18.
Opened a bank account	Needs an EIN for banking purposes only	Complete lines 1–5b, 7a–b (if applicable), 8a, 8b–c (if applicable), 9a, 9b (if applicable), 10, and 18.
Changed type of organization	Either the legal character of the organization or its ownership changed (for example, you incorporate a sole proprietorship or form a partnership) <sup>2</sup>	Complete lines 1–18 (as applicable).
Purchased a going business <sup>3</sup>	Does not already have an EIN	Complete lines 1–18 (as applicable).
Created a trust	The trust is other than a grantor trust or an IRA trust <sup>4</sup>	Complete lines 1–18 (as applicable).
Created a pension plan as a plan administrator <sup>5</sup>	Needs an EIN for reporting purposes	Complete lines 1, 3, 4a–5b, 9a, 10, and 18.
Is a foreign person needing an EIN to comply with IRS withholding regulations	Needs an EIN to complete a Form W-8 (other than Form W-8ECI), avoid withholding on portfolio assets, or claim tax treaty benefits <sup>6</sup>	Complete lines 1–5b, 7a–b (SSN or ITIN optional), 8a, 8b–c (if applicable), 9a, 9b (if applicable), 10, and 18.
Is administering an estate	Needs an EIN to report estate income on Form 1041	Complete lines 1–6, 9a, 10–12, 13–17 (if applicable), and 18.
Is a withholding agent for taxes on non-wage income paid to an alien (i.e., individual, corporation, or partnership, etc.)	Is an agent, broker, fiduciary, manager, tenant, or spouse who is required to file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons	Complete lines 1, 2, 3 (if applicable), 4a–5b, 7a–b (if applicable), 8a, 8b–c (if applicable), 9a, 9b (if applicable), 10, and 18.
Is a state or local agency	Serves as a tax reporting agent for public assistance recipients under Rev. Proc. 80-4, 1980-1 C.B. 581 <sup>7</sup>	Complete lines 1, 2, 4a–5b, 9a, 10, and 18.
Is a single-member LLC	Needs an EIN to file Form 8832, Classification Election, for filing employment tax returns and excise tax returns, or for state reporting purposes <sup>8</sup>	Complete lines 1–18 (as applicable).
Is an S corporation	Needs an EIN to file Form 2553, Election by a Small Business Corporation <sup>9</sup>	Complete lines 1–18 (as applicable).

<sup>1</sup> For example, a sole proprietorship or self-employed farmer who establishes a qualified retirement plan, or is required to file excise, employment, alcohol, tobacco, or firearms returns, must have an EIN. A partnership, corporation, REMIC (real estate mortgage investment conduit), nonprofit organization (church, club, etc.), or farmers' cooperative must use an EIN for any tax-related purpose even if the entity does not have employees.

<sup>2</sup> However, do not apply for a new EIN if the existing entity only (a) changed its business name, (b) elected on Form 8832 to change the way it is taxed (or is covered by the default rules), or (c) terminated its partnership status because at least 50% of the total interests in partnership capital and profits were sold or exchanged within a 12-month period. The EIN of the terminated partnership should continue to be used. See Regulations section 301.6109-1(d)(2)(iii).

<sup>3</sup> Do not use the EIN of the prior business unless you became the "owner" of a corporation by acquiring its stock.

<sup>4</sup> However, grantor trusts that do not file using Optional Method 1 and IRA trusts that are required to file Form 990-T, Exempt Organization Business Income Tax Return, must have an EIN. For more information on grantor trusts, see the Instructions for Form 1041.

<sup>5</sup> A plan administrator is the person or group of persons specified as the administrator by the instrument under which the plan is operated.

<sup>6</sup> Entities applying to be a Qualified Intermediary (QI) need a QI-EIN even if they already have an EIN. See Rev. Proc. 2000-12.

<sup>7</sup> See also *Household employer* on page 4 of the instructions. **Note.** State or local agencies may need an EIN for other reasons, for example, hired employees.

<sup>8</sup> See *Disregarded entities* on page 4 of the instructions for details on completing Form SS-4 for an LLC.

<sup>9</sup> An existing corporation that is electing or revoking S corporation status should use its previously-assigned EIN.

# Form W-4 (2016)

**Purpose.** Complete Form W-4 so that your employer can withhold the correct federal income tax from your pay. Consider completing a new Form W-4 each year and when your personal or financial situation changes.

**Exemption from withholding.** If you are exempt, complete only lines 1, 2, 3, 4, and 7 and sign the form to validate it. Your exemption for 2016 expires February 15, 2017. See Pub. 505, Tax Withholding and Estimated Tax.

**Note:** If another person can claim you as a dependent on his or her tax return, you cannot claim exemption from withholding if your income exceeds \$1,050 and includes more than \$350 of unearned income (for example, interest and dividends).

**Exceptions.** An employee may be able to claim exemption from withholding even if the employee is a dependent, if the employee:

- Is age 65 or older,
- Is blind, or
- Will claim adjustments to income; tax credits; or itemized deductions, on his or her tax return.

The exceptions do not apply to supplemental wages greater than \$1,000,000.

**Basic instructions.** If you are not exempt, complete the **Personal Allowances Worksheet** below. The worksheets on page 2 further adjust your withholding allowances based on itemized deductions, certain credits, adjustments to income, or two-earners/multiple jobs situations.

Complete all worksheets that apply. However, you may claim fewer (or zero) allowances. For regular wages, withholding must be based on allowances you claimed and may not be a flat amount or percentage of wages.

**Head of household.** Generally, you can claim head of household filing status on your tax return only if you are unmarried and pay more than 50% of the costs of keeping up a home for yourself and your dependent(s) or other qualifying individuals. See Pub. 501, Exemptions, Standard Deduction, and Filing Information, for information.

**Tax credits.** You can take projected tax credits into account in figuring your allowable number of withholding allowances. Credits for child or dependent care expenses and the child tax credit may be claimed using the **Personal Allowances Worksheet** below. See Pub. 505 for information on converting your other credits into withholding allowances.

**Nonwage income.** If you have a large amount of nonwage income, such as interest or dividends, consider making estimated tax payments using Form 1040-ES, Estimated Tax for Individuals. Otherwise, you may owe additional tax. If you have pension or annuity income, see Pub. 505 to find out if you should adjust your withholding on Form W-4 or W-4P.

**Two earners or multiple jobs.** If you have a working spouse or more than one job, figure the total number of allowances you are entitled to claim on all jobs using worksheets from only one Form W-4. Your withholding usually will be most accurate when all allowances are claimed on the Form W-4 for the highest paying job and zero allowances are claimed on the others. See Pub. 505 for details.

**Nonresident alien.** If you are a nonresident alien, see Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens, before completing this form.

**Check your withholding.** After your Form W-4 takes effect, use Pub. 505 to see how the amount you are having withheld compares to your projected total tax for 2016. See Pub. 505, especially if your earnings exceed \$130,000 (Single) or \$180,000 (Married).

**Future developments.** Information about any future developments affecting Form W-4 (such as legislation enacted after we release it) will be posted at [www.irs.gov/w4](http://www.irs.gov/w4).

## Personal Allowances Worksheet (Keep for your records.)

<b>A</b>	Enter "1" for <b>yourself</b> if no one else can claim you as a dependent . . . . .	<b>A</b>				
<b>B</b>	Enter "1" if: <span style="font-size: 2em; vertical-align: middle;">{</span> <ul style="list-style-type: none"> <li>• You are single and have only one job; or</li> <li>• You are married, have only one job, and your spouse does not work; or</li> <li>• Your wages from a second job or your spouse's wages (or the total of both) are \$1,500 or less.</li> </ul>	<b>B</b>				
<b>C</b>	Enter "1" for your <b>spouse</b> . But, you may choose to enter "-0-" if you are married and have either a working spouse or more than one job. (Entering "-0-" may help you avoid having too little tax withheld.) . . . . .	<b>C</b>				
<b>D</b>	Enter number of <b>dependents</b> (other than your spouse or yourself) you will claim on your tax return . . . . .	<b>D</b>				
<b>E</b>	Enter "1" if you will file as <b>head of household</b> on your tax return (see conditions under <b>Head of household</b> above) . . . . .	<b>E</b>				
<b>F</b>	Enter "1" if you have at least \$2,000 of <b>child or dependent care expenses</b> for which you plan to claim a credit . . . . . ( <b>Note:</b> Do <b>not</b> include child support payments. See Pub. 503, Child and Dependent Care Expenses, for details.)	<b>F</b>				
<b>G</b>	<b>Child Tax Credit</b> (including additional child tax credit). See Pub. 972, Child Tax Credit, for more information. • If your total income will be less than \$70,000 (\$100,000 if married), enter "2" for each eligible child; then <b>less "1"</b> if you have two to four eligible children or <b>less "2"</b> if you have five or more eligible children. • If your total income will be between \$70,000 and \$84,000 (\$100,000 and \$119,000 if married), enter "1" for each eligible child . . . . .	<b>G</b>				
<b>H</b>	Add lines A through G and enter total here. ( <b>Note:</b> This may be different from the number of exemptions you claim on your tax return.) ▶	<b>H</b>				
<table border="0" style="width: 100%;"> <tr> <td style="width: 15%; vertical-align: top;">For accuracy, <b>complete all worksheets that apply.</b></td> <td style="width: 5%; vertical-align: middle; font-size: 2em;">{</td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> <li>• If you plan to <b>itemize</b> or <b>claim adjustments to income</b> and want to reduce your withholding, see the <b>Deductions and Adjustments Worksheet</b> on page 2.</li> <li>• If you are <b>single and have more than one job</b> or are <b>married and you and your spouse both work</b> and the combined earnings from all jobs exceed \$50,000 (\$20,000 if married), see the <b>Two-Earners/Multiple Jobs Worksheet</b> on page 2 to avoid having too little tax withheld.</li> <li>• If <b>neither</b> of the above situations applies, <b>stop here</b> and enter the number from line H on line 5 of Form W-4 below.</li> </ul> </td> </tr> </table>				For accuracy, <b>complete all worksheets that apply.</b>	{	<ul style="list-style-type: none"> <li>• If you plan to <b>itemize</b> or <b>claim adjustments to income</b> and want to reduce your withholding, see the <b>Deductions and Adjustments Worksheet</b> on page 2.</li> <li>• If you are <b>single and have more than one job</b> or are <b>married and you and your spouse both work</b> and the combined earnings from all jobs exceed \$50,000 (\$20,000 if married), see the <b>Two-Earners/Multiple Jobs Worksheet</b> on page 2 to avoid having too little tax withheld.</li> <li>• If <b>neither</b> of the above situations applies, <b>stop here</b> and enter the number from line H on line 5 of Form W-4 below.</li> </ul>
For accuracy, <b>complete all worksheets that apply.</b>	{	<ul style="list-style-type: none"> <li>• If you plan to <b>itemize</b> or <b>claim adjustments to income</b> and want to reduce your withholding, see the <b>Deductions and Adjustments Worksheet</b> on page 2.</li> <li>• If you are <b>single and have more than one job</b> or are <b>married and you and your spouse both work</b> and the combined earnings from all jobs exceed \$50,000 (\$20,000 if married), see the <b>Two-Earners/Multiple Jobs Worksheet</b> on page 2 to avoid having too little tax withheld.</li> <li>• If <b>neither</b> of the above situations applies, <b>stop here</b> and enter the number from line H on line 5 of Form W-4 below.</li> </ul>				

----- Separate here and give Form W-4 to your employer. Keep the top part for your records. -----

Form <b>W-4</b> Department of the Treasury Internal Revenue Service	<h2 style="margin: 0;">Employee's Withholding Allowance Certificate</h2> <p style="margin: 0;">▶ <b>Whether you are entitled to claim a certain number of allowances or exemption from withholding is subject to review by the IRS. Your employer may be required to send a copy of this form to the IRS.</b></p>	OMB No. 1545-0074  <span style="font-size: 2em; font-weight: bold;">2016</span>
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<b>1</b> Your first name and middle initial	Last name	<b>2</b> Your social security number
Home address (number and street or rural route)		<b>3</b> <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withhold at higher Single rate. <b>Note:</b> If married, but legally separated, or spouse is a nonresident alien, check the "Single" box.
City or town, state, and ZIP code		<b>4</b> If your last name differs from that shown on your social security card, check here. You must call 1-800-772-1213 for a replacement card. ▶ <input type="checkbox"/>
<b>5</b> Total number of allowances you are claiming (from line <b>H</b> above <b>or</b> from the applicable worksheet on page 2)	<b>5</b> _____	
<b>6</b> Additional amount, if any, you want withheld from each paycheck	<b>6</b> \$ _____	
<b>7</b> I claim exemption from withholding for 2016, and I certify that I meet <b>both</b> of the following conditions for exemption. <ul style="list-style-type: none"> <li>• Last year I had a right to a refund of <b>all</b> federal income tax withheld because I had <b>no</b> tax liability, <b>and</b></li> <li>• This year I expect a refund of <b>all</b> federal income tax withheld because I expect to have <b>no</b> tax liability.</li> </ul> If you meet both conditions, write "Exempt" here . . . . . ▶ <b>7</b> _____		

Under penalties of perjury, I declare that I have examined this certificate and, to the best of my knowledge and belief, it is true, correct, and complete.

<b>Employee's signature</b> (This form is not valid unless you sign it.) ▶	<b>Date</b> ▶
<b>8</b> Employer's name and address (Employer: Complete lines 8 and 10 only if sending to the IRS.)	<b>9</b> Office code (optional)
<b>10</b> Employer identification number (EIN)	

**Deductions and Adjustments Worksheet**

**Note:** Use this worksheet *only* if you plan to itemize deductions or claim certain credits or adjustments to income.

- 1** Enter an estimate of your 2016 itemized deductions. These include qualifying home mortgage interest, charitable contributions, state and local taxes, medical expenses in excess of 10% (7.5% if either you or your spouse was born before January 2, 1952) of your income, and miscellaneous deductions. For 2016, you may have to reduce your itemized deductions if your income is over \$311,300 and you are married filing jointly or are a qualifying widow(er); \$285,350 if you are head of household; \$259,400 if you are single and not head of household or a qualifying widow(er); or \$155,650 if you are married filing separately. See Pub. 505 for details . . . . . **1** \$ \_\_\_\_\_
- 2** Enter:  $\left\{ \begin{array}{l} \$12,600 \text{ if married filing jointly or qualifying widow(er)} \\ \$9,300 \text{ if head of household} \\ \$6,300 \text{ if single or married filing separately} \end{array} \right\}$  . . . . . **2** \$ \_\_\_\_\_
- 3** **Subtract** line 2 from line 1. If zero or less, enter “-0-” . . . . . **3** \$ \_\_\_\_\_
- 4** Enter an estimate of your 2016 adjustments to income and any additional standard deduction (see Pub. 505) . . . . . **4** \$ \_\_\_\_\_
- 5** **Add** lines 3 and 4 and enter the total. (Include any amount for credits from the *Converting Credits to Withholding Allowances for 2016 Form W-4* worksheet in Pub. 505.) . . . . . **5** \$ \_\_\_\_\_
- 6** Enter an estimate of your 2016 nonwage income (such as dividends or interest) . . . . . **6** \$ \_\_\_\_\_
- 7** **Subtract** line 6 from line 5. If zero or less, enter “-0-” . . . . . **7** \$ \_\_\_\_\_
- 8** **Divide** the amount on line 7 by \$4,050 and enter the result here. Drop any fraction . . . . . **8** \_\_\_\_\_
- 9** Enter the number from the **Personal Allowances Worksheet**, line H, page 1 . . . . . **9** \_\_\_\_\_
- 10** **Add** lines 8 and 9 and enter the total here. If you plan to use the **Two-Earners/Multiple Jobs Worksheet**, also enter this total on line 1 below. Otherwise, **stop here** and enter this total on Form W-4, line 5, page 1 **10** \_\_\_\_\_

**Two-Earners/Multiple Jobs Worksheet (See *Two earners or multiple jobs* on page 1.)**

**Note:** Use this worksheet *only* if the instructions under line H on page 1 direct you here.

- 1** Enter the number from line H, page 1 (or from line 10 above if you used the **Deductions and Adjustments Worksheet**) **1** \_\_\_\_\_
- 2** Find the number in **Table 1** below that applies to the **LOWEST** paying job and enter it here. **However**, if you are married filing jointly and wages from the highest paying job are \$65,000 or less, do not enter more than “3” . . . . . **2** \_\_\_\_\_
- 3** If line 1 is **more than or equal to** line 2, subtract line 2 from line 1. Enter the result here (if zero, enter “-0-”) and on Form W-4, line 5, page 1. **Do not** use the rest of this worksheet . . . . . **3** \_\_\_\_\_

**Note:** If line 1 is **less than** line 2, enter “-0-” on Form W-4, line 5, page 1. Complete lines 4 through 9 below to figure the additional withholding amount necessary to avoid a year-end tax bill.

- 4** Enter the number from line 2 of this worksheet . . . . . **4** \_\_\_\_\_
- 5** Enter the number from line 1 of this worksheet . . . . . **5** \_\_\_\_\_
- 6** **Subtract** line 5 from line 4 . . . . . **6** \_\_\_\_\_
- 7** Find the amount in **Table 2** below that applies to the **HIGHEST** paying job and enter it here . . . . . **7** \$ \_\_\_\_\_
- 8** **Multiply** line 7 by line 6 and enter the result here. This is the additional annual withholding needed . . . . . **8** \$ \_\_\_\_\_
- 9** Divide line 8 by the number of pay periods remaining in 2016. For example, divide by 25 if you are paid every two weeks and you complete this form on a date in January when there are 25 pay periods remaining in 2016. Enter the result here and on Form W-4, line 6, page 1. This is the additional amount to be withheld from each paycheck **9** \$ \_\_\_\_\_

**Table 1**

**Table 2**

Married Filing Jointly		All Others		Married Filing Jointly		All Others	
If wages from <b>LOWEST</b> paying job are—	Enter on line 2 above	If wages from <b>LOWEST</b> paying job are—	Enter on line 2 above	If wages from <b>HIGHEST</b> paying job are—	Enter on line 7 above	If wages from <b>HIGHEST</b> paying job are—	Enter on line 7 above
\$0 - \$6,000	0	\$0 - \$9,000	0	\$0 - \$75,000	\$610	\$0 - \$38,000	\$610
6,001 - 14,000	1	9,001 - 17,000	1	75,001 - 135,000	1,010	38,001 - 85,000	1,010
14,001 - 25,000	2	17,001 - 26,000	2	135,001 - 205,000	1,130	85,001 - 185,000	1,130
25,001 - 27,000	3	26,001 - 34,000	3	205,001 - 360,000	1,340	185,001 - 400,000	1,340
27,001 - 35,000	4	34,001 - 44,000	4	360,001 - 405,000	1,420	400,001 and over	1,600
35,001 - 44,000	5	44,001 - 75,000	5	405,001 and over	1,600		
44,001 - 55,000	6	75,001 - 85,000	6				
55,001 - 65,000	7	85,001 - 110,000	7				
65,001 - 75,000	8	110,001 - 125,000	8				
75,001 - 80,000	9	125,001 - 140,000	9				
80,001 - 100,000	10	140,001 and over	10				
100,001 - 115,000	11						
115,001 - 130,000	12						
130,001 - 140,000	13						
140,001 - 150,000	14						
150,001 and over	15						

**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. Internal Revenue Code sections 3402(f)(2) and 6109 and their regulations require you to provide this information; your employer uses it to determine your federal income tax withholding. Failure to provide a properly completed form will result in your being treated as a single person who claims no withholding allowances; providing fraudulent information may subject you to penalties. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation; to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws; and to the Department of Health and Human Services for use in the National Directory of New Hires. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The average time and expenses required to complete and file this form will vary depending on individual circumstances. For estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.



**Employment Eligibility Verification**  
**Department of Homeland Security**  
 U.S. Citizenship and Immigration Services

**USCIS**  
**Form I-9**  
 OMB No. 1615-0047  
 Expires 08/31/2019

▶ **START HERE:** Read instructions carefully before completing this form. The instructions must be available, either in paper or electronically, during completion of this form. Employers are liable for errors in the completion of this form.

**ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

**Section 1. Employee Information and Attestation** *(Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)*

Last Name (Family Name)		First Name (Given Name)		Middle Initial	Other Last Names Used (if any)	
Address (Street Number and Name)			Apt. Number	City or Town		State ZIP Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number [ ][ ] - [ ][ ] - [ ][ ][ ][ ]		Employee's E-mail Address		Employee's Telephone Number	

**I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.**

**I attest, under penalty of perjury, that I am (check one of the following boxes):**

<input type="checkbox"/> 1. A citizen of the United States	
<input type="checkbox"/> 2. A noncitizen national of the United States <i>(See instructions)</i>	
<input type="checkbox"/> 3. A lawful permanent resident (Alien Registration Number/USCIS Number): _____	
<input type="checkbox"/> 4. An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy): _____ Some aliens may write "N/A" in the expiration date field. <i>(See instructions)</i>	
<i>Aliens authorized to work must provide only one of the following document numbers to complete Form I-9:          An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.</i>	
1. Alien Registration Number/USCIS Number: _____ <b>OR</b> 2. Form I-94 Admission Number: _____ <b>OR</b> 3. Foreign Passport Number: _____ Country of Issuance: _____	QR Code - Section 1 Do Not Write In This Space

Signature of Employee	Today's Date (mm/dd/yyyy)
-----------------------	---------------------------

**Preparer and/or Translator Certification (check one):**

I did not use a preparer or translator.     A preparer(s) and/or translator(s) assisted the employee in completing Section 1.  
*(Fields below must be completed and signed when preparers and/or translators assist an employee in completing Section 1.)*

**I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.**

Signature of Preparer or Translator		Today's Date (mm/dd/yyyy)	
Last Name (Family Name)		First Name (Given Name)	
Address (Street Number and Name)		City or Town	State ZIP Code

Employer Completes Next Page



**Employment Eligibility Verification**  
**Department of Homeland Security**  
 U.S. Citizenship and Immigration Services

**USCIS**  
**Form I-9**  
 OMB No. 1615-0047  
 Expires 08/31/2019

**Section 2. Employer or Authorized Representative Review and Verification**

*(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")*

<b>Employee Info from Section 1</b>	Last Name (Family Name)	First Name (Given Name)	M.I.	Citizenship/Immigration Status
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List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
Document Title		Document Title		Document Title
Issuing Authority		Issuing Authority		Issuing Authority
Document Number		Document Number		Document Number
Expiration Date (if any)(mm/dd/yyyy)		Expiration Date (if any)(mm/dd/yyyy)		Expiration Date (if any)(mm/dd/yyyy)
Document Title		Additional Information		QR Code - Sections 2 & 3 Do Not Write In This Space
Issuing Authority				
Document Number				
Expiration Date (if any)(mm/dd/yyyy)				
Document Title				
Issuing Authority				
Document Number				
Expiration Date (if any)(mm/dd/yyyy)				

**Certification:** I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): \_\_\_\_\_ (See instructions for exemptions)

Signature of Employer or Authorized Representative		Today's Date(mm/dd/yyyy)	Title of Employer or Authorized Representative	
Last Name of Employer or Authorized Representative	First Name of Employer or Authorized Representative		Employer's Business or Organization Name	
Employer's Business or Organization Address (Street Number and Name)		City or Town	State	ZIP Code

**Section 3. Reverification and Rehires** *(To be completed and signed by employer or authorized representative.)*

<b>A. New Name (if applicable)</b>			<b>B. Date of Rehire (if applicable)</b>
Last Name (Family Name)	First Name (Given Name)	Middle Initial	Date (mm/dd/yyyy)

**C.** If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.

Document Title	Document Number	Expiration Date (if any) (mm/dd/yyyy)
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**I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.**

Signature of Employer or Authorized Representative	Today's Date (mm/dd/yyyy)	Name of Employer or Authorized Representative
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## LISTS OF ACCEPTABLE DOCUMENTS

### All documents must be UNEXPIRED

Employees may present one selection from List A  
or a combination of one selection from List B and one selection from List C.

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
<ol style="list-style-type: none"> <li>1. U.S. Passport or U.S. Passport Card</li> <li>2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)</li> <li>3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa</li> <li>4. Employment Authorization Document that contains a photograph (Form I-766)</li> <li>5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status:               <ol style="list-style-type: none"> <li>a. Foreign passport; and</li> <li>b. Form I-94 or Form I-94A that has the following:                   <ol style="list-style-type: none"> <li>(1) The same name as the passport; and</li> <li>(2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.</li> </ol> </li> </ol> </li> <li>6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI</li> </ol>	OR	<ol style="list-style-type: none"> <li>1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address</li> <li>2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address</li> <li>3. School ID card with a photograph</li> <li>4. Voter's registration card</li> <li>5. U.S. Military card or draft record</li> <li>6. Military dependent's ID card</li> <li>7. U.S. Coast Guard Merchant Mariner Card</li> <li>8. Native American tribal document</li> <li>9. Driver's license issued by a Canadian government authority</li> <li style="text-align: center;"><b>For persons under age 18 who are unable to present a document listed above:</b></li> <li>10. School record or report card</li> <li>11. Clinic, doctor, or hospital record</li> <li>12. Day-care or nursery school record</li> </ol>	AND	<ol style="list-style-type: none"> <li>1. A Social Security Account Number card, unless the card includes one of the following restrictions:               <ol style="list-style-type: none"> <li>(1) NOT VALID FOR EMPLOYMENT</li> <li>(2) VALID FOR WORK ONLY WITH INS AUTHORIZATION</li> <li>(3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION</li> </ol> </li> <li>2. Certification of Birth Abroad issued by the Department of State (Form FS-545)</li> <li>3. Certification of Report of Birth issued by the Department of State (Form DS-1350)</li> <li>4. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal</li> <li>5. Native American tribal document</li> <li>6. U.S. Citizen ID Card (Form I-197)</li> <li>7. Identification Card for Use of Resident Citizen in the United States (Form I-179)</li> <li>8. Employment authorization document issued by the Department of Homeland Security</li> </ol>

**Examples of many of these documents appear in Part 8 of the Handbook for Employers (M-274).**

**Refer to the instructions for more information about acceptable receipts.**



## References / End Notes

- 1 See Andrea Johnson and Katrina Grider, SECURING HIRING SUCCESS, EASY GUIDES TO EMPOWER BUSINESS, Texas Bar CLE (Austin, November 19, 2010).
- 2 See Rodney Jones and Sarah Fogelman, FARM AND RANCH STRATEGIC PLANNING (VISIONING AND GOAL SETTING) (2005), available at <http://www.ksre.ksu.edu/library/agec2/mf2695.pdf>
- 3 Gigi DiGiacomo, *et al.*, BUILDING A SUSTAINABLE BUSINESS: A GUIDE TO DEVELOPING A BUSINESS PLAN FOR FARMS AND RURAL BUSINESSES MISA REFERENCE, Minnesota Institute for Sustainable Agriculture (2003)
- 4 See Richard Stup, JOB DESCRIPTIONS: THE BUILDING BLOCK OF ORGANIZATIONS. Penn State Dairy Alliance, 2002 available at <http://www.extension.iastate.edu/NR/rdonlyres/E831BB62-9F52-4EEB-9AD2-A561F4E5FB24/133737/Jobdescriptions.pdf>.
- 5 For an excellent discussion of the importance of job descriptions in the legal context, see generally Johnson and Grider.
- 6 IRS Publication 15-A, “Employer’s Supplemental Tax Guide, available at <http://www.irs.gov/pub/irs-pdf/p15a.pdf>.
- 7 For assistance in determining their allowances, employees can consult IRS Publication 505, “Tax Withholding and Estimated Tax” available at <http://www.irs.gov/pub/irs-pdf/p505.pdf> and IRS Publication 919, “How Do I Adjust My Tax Withholding” available at <http://www.irs.gov/pub/irs-pdf/p919.pdf>.
- 8 26 U.S.C. § 3111.
- 9 26 U.S.C. § 3102.
- 10 The details of Federal withholding for agricultural employers are laid out in IRS Publication 51, Circular A, “Agricultural Employer’s Tax Guide” available at <http://www.irs.gov/publications/p51/index.html>. Also, please note that these rules do not apply to hand-harvest laborers who are paid on a piece-rate basis; however, the wages paid to such laborers are counted in determining whether the \$2,500 payroll limit has been reached.
- 11 See IRS Topic 751 – Social Security and Medicare Withholding Rates, available at <https://www.irs.gov/taxtopics/tc751.html>.
- 12 See IRS Publication 15, Employer’s Tax Guide, p. 34.
- 13 See IRS Topic 757, “Forms 941 and 944 – Deposit Requirements” available at <https://www.irs.gov/taxtopics/tc757.html>.
- 14 See generally IRS Notice 96-10 and IRS Topic 757, “Forms 941 and 944 – Deposit Requirements” available at <https://www.irs.gov/taxtopics/tc757.html>.
- 15 Tax Foundation, “State Individual Income Tax Rates and Brackets for 2016,” Publication No. 500, available at [http://taxfoundation.org/sites/taxfoundation.org/files/docs/TaxFoundation\\_FF500.pdf](http://taxfoundation.org/sites/taxfoundation.org/files/docs/TaxFoundation_FF500.pdf).
- 16 New Hampshire and Tennessee tax only dividend and interest income rather than wage and salary income. See note 15 above.
- 17 68 Okla. Stat. § 2385.2(A).
- 18 68 Okla. Stat. § 2385.1(e)(1) excludes “remuneration paid... for services paid to an employee in connection with farming activities where the amount paid is Nine Hundred Dollars (\$900.00) or less monthly” from the definition of “wages.” 68 Okla. Stat. § 2385.2(A) requires the deduction and withholding of wages by “every employer making payment of wages.”

19 68 Okla. Stat. § 2385.3.

20 40 OKLA. STAT. § 1-210(5).

21 Gisela Bradley, EMPLOYMENT ISSUES, Texas Bar CLE (Austin, November 19, 2010), p.6:

22 *Griggs v. Duke Power Co.*, 401 U.S. 424, 431-432 (1971)

23 See “EEOC FILES NATIONWIDE HIRING DISCRIMINATION LAWSUIT AGAINST KAPLAN HIGHER EDUCATION CORP.” available at <https://www.eeoc.gov/eeoc/newsroom/release/11-3-15b.cfm>

24 See Equal Employment Opportunity Commission, “Employment Tests and Selection Procedures,” [https://www.eeoc.gov/policy/docs/factemployment\\_procedures.html](https://www.eeoc.gov/policy/docs/factemployment_procedures.html).

25 See Equal Employment Opportunity Commission, *supra* note 24

26 Andrea Johnson and Katrina Grider, SECURING HIRING SUCCESS, EASY GUIDES TO EMPOWER BUSINESS, p. 11. Texas Bar CLE (Austin, November 19, 2010).

27 See *EEOC v. General Dynamics Corp.* 999F.2d 113 (5<sup>th</sup> Cir 1993).

28 For example, Oklahoma law protects employers from liability from responding to reference requests so long as their former employee has consented to using them as a reference and that the former employer acts in good faith. See 40 OKLA. STAT. § 61.

29 See, e.g. *Mistletoe Exp. Serv., Inc. v. Culp*, 353 P.2d 9 (Okla. 1959).

30 8 U.S.C. § 1324a *et seq.*

31 8 C.F.R. § 274a.2.

32 8 C.F.R. § 274a.2(b)(1)(A).

33 See 8 C.F.R. § 274a.2(b)(V)(A).

34 See the Immigration and Nationality Act, 8 U.S.C. § 274B(A)(6); 8 C.F.R. § 274a.1(l)(2)

35 8 C.F.R. § 247a.2(b)(2)(i)(A)

36 8 C.F.R. § 274a.4.

37 8 C.F.R. § 274a.10.

38 USCIS, “H-2A Temporary Agricultural Workers,” <https://www.uscis.gov/working-united-states/temporary-workers/h-2a-temporary-agricultural-workers>.

39 USCIS, “H-2A Temporary Agricultural Workers,” <https://www.uscis.gov/working-united-states/temporary-workers/h-2a-temporary-agricultural-workers>.

40 USCIS, “H-2A Temporary Agricultural Workers,” <https://www.uscis.gov/working-united-states/temporary-workers/h-2a-temporary-agricultural-workers>.

41 42 U.S.C. § 653. See <http://www.acf.hhs.gov/programs/cse/newhire/employer/private/newhire.htm> for more information.

42 42 U.S.C. § 653A(a)(2)(A), 40 OKLA. STAT. § 2-802 (establishing Oklahoma reporting requirement), 26 U.S.C. § 3401(d) (definition of “employer”), 40

43 *See Green v. Hariss*, 70 P.3d 866, 868 (Okla. 2003), *Clark v. Turner*, 2004 OK CIV APP 69, ¶32.

44 *See generally* JOSEPH D. LEVESQUE, COMPLETE MANUAL FOR RECRUITING, HIRING & RETAINING QUALITY EMPLOYEES (Prentice Hall 1996)

45 *See* Don Hofstrand, MAKING FAMILY BUSINESS DECISIONS, Iowa State University Extension File C4-72 (2007).

46 W. Strauss and N. Howe, GENERATIONS. New York: Quill (1991).

47 *See* M. Taylor, 2006. GENERATION NEXt COMES TO COLLEGE: 2006 UPDATES AND EMERGING ISSUES. In A COLLECTION OF PAPERS ON SELF STUDY AND INSTITUTIONAL IMPROVEMENT, 2006 Vol.2, ed. S.E. Van Kollenburg, 99-107. Chicago: The Higher Learning Commission. *See, also*, J.M. Twenge. GENERATION ME. New York: Free Press (2006).

48 *See* Schneider, C. G., and R. Miller, 2005. LIBERAL EDUCATION OUTCOMES. Washington D.C.: Association of American Colleges and Universities.

49 Dychtwald, K., T.J. Erickson, and R Morison. WORKFORCE CRISIS, Boston: Harvard Business School Press (2006).

50 *See, e.g.* 40 OKLA. STAT. §165.2.

51 29 U.S.C. §§ 201 et seq.

52 29 U.S.C. § 206(a)(1)(C), 29 U.S.C. § 207(a)(1). Oklahoma has incorporated the federal minimum wage by statutory reference at 40 OKLA. STAT. § 197.2.

53 29 U.S.C. §203(f).

54 203(s)(1)(A) (definition of “enterprise”); 29 U.S.C. § 206(a) (minimum wage); 29 U.S.C. § 207(a) (maximum hours).

55 *See also* Department of Labor Child Labor Bulletin No. 102, p. 2.

56 Most of these exemptions are specified at 29 U.S.C. § 213(a)(6).

57 29 U.S.C. § 203(u).

58 Example from Personal Correspondence with Jason Resnick, 4/27/2010.

59 29 U.S.C. § 203(e)(3),(u).

60 29 U.S.C. § 213(a)(6).

61 *See* 29 U.S.C. § 213(a)(6).

62 *See* 29 C.F.R. § 780.329.

63 29 U.S.C. §213(b)(12).

64 *See* 29 U.S.C. § 203(d) (definition of “employer”).

65 *See Herr v. Heiman*, 75 F.3d 1509, 1512 (10th Cir. 1996), *citing Dole v. Snell*, 875 F.2d 802 (10th Cir. 1989).

66 29 U.S.C. § 216(a).

67 29 U.S.C. § 216(a),(b).

68 29 C.F.R. 516.33(a).

69 29 C.F.R. § 516.2, 29 C.F.R. §516.5.

70 For example, Oklahoma law requires records to be kept for employees. The regulations of the Oklahoma Department of Labor require any employer subject to the Oklahoma Minimum Wage Act or any other provision of the Labor title of the Oklahoma Statutes to keep records of all of their employees, along with the “wages, hours, and other conditions and practices of employment maintained by [the employer]” and to keep such records for as long as the employee is employed by the farm and for five years after the employee leaves or is terminated. OKLA. ADMIN. CODE § 380:30-3-3(d).

71 29 C.F.R. § 570.2, definition of “oppressive child labor” found at 29 U.S.C. § 203(l). Oklahoma has adopted the FLSA child labor standards through statutory reference at 40 OKLA. STAT. § 71.

72 29 C.F.R. § 570.2(b).

73 29 C.F.R. § 570.71.

74 *See also* 29 C.F.R. § 570.35 (restriction of hours for children 14 and 15 years of age – includes restriction that student cannot work during school hours).

75 29 U.S.C. 516.33(f).

76 29 C.F.R. § 579.11(a)(1)(i)(A).

77 29 C.F.R. § 579.11(a)(1)(B).

78 29 U.S.C. § 652(5)

79 29 C.F.R. § 1975.4(b)(2)

80 *See* Public Law 102-170; November 22, 1991; *see also* N. Harl, ed. Agricultural Law Manual. p. 3-13, § 3.03[1].

81 29 U.S.C. § 654(a).

82 *Id.*

83 29 U.S.C. § 657(c); 29 C.F.R. § 1904.4(a).

84 29 U.S.C. § 2611(4)(A)(i).

85 *See* Jack Runyan, Summary of Federal Laws and Regulations Affecting Agricultural Employers (2000), *available at* [http://www.ers.usda.gov/webdocs/publications/ah719/19051\\_ah719fm\\_1\\_.pdf](http://www.ers.usda.gov/webdocs/publications/ah719/19051_ah719fm_1_.pdf)

86 29 U.S.C. § 2612(a)(1).

87 *See, e.g. Hayes v. Eateries, Inc.*, 905 P.2d 778 (Okla. 1995), *citing Burk v. K-Mart*, 770 P.2d 24, 26 (Okla. 1989).

88 *See e.g. Hayes*, 905 P.2d at 781, *citing Singh v. Cities Service Oil Company*, 554 P.2d 1367, 1369 (Okla. 1976).

89 *See e.g. Burk v. K-Mart*, 770 P.2d at 28-29. The *Burk* rule may be difficult for employers to define, as its definition does not easily lend itself to black-and-white lines. As stated in *Burk*, it is a violation of public policy “where an employee is discharged for refusing to act in violation of an established and well-defined public policy or for performing an act consistent with a clear and compelling public policy.” *Id.* at 29.

- 90 *See Jordan v. Cates*, 935 P.2d 289, 292 (Okla. 1987), stating:  
In Oklahoma it is well settled that to impose liability on an employer for its employee's intentional tort that (1) the relationship of master and servant must exist and (2) the tortious act must have been committed while the employee was acting within the scope of employment. *Rodebush v. Oklahoma Nursing Homes, Ltd.*, 867 P.2d 1241, 1244 (Okla.1993); *Brown v. Ford*, 905 P.2d 223, 230 (1995). Oklahoma's jurisprudence also holds that punitive or exemplary damages may be awarded against the principal for a servant's act under the doctrine of respondeat superior. *McDonald v. Bruhn*, 190 Okla. 682, 126 P.2d 986, 988 (1942); *Holmes v. Chadwell*, 169 Okla. 191, 36 P.2d 499, 500 (1934).
- 91 R. Schuler, *MANAGING HUMAN RESOURCES*. Cincinnati Ohio, South-Western College Publishing (1998).
- 92 Gregory Billikopf, *Labor MANAGEMENT IN AGRICULTURE: CULTIVATING PERSONNEL PRODUCTIVITY*. Agricultural Extension: University of California. Available at <http://www.cnr.berkeley.edu/ucce50/ag-labor/7labor/00.pdf> (last accessed August 10, 2011).
- 93 *See* 42 U.S.C. § 2000e-2(a).
- 94 25 OKLA. STAT. § 1302, 42 U.S.C. § 2000e-2(a),
- 95 *See* EEOC Compliance Manual Section 15-II, available at <http://www.eeoc.gov/policy/docs/race-color.pdf>.
- 96 *See* EEOC Compliance Manual Section 15-III.
- 97 42 U.S.C. § 2000e(b).
- 98 *See, e.g.* 25 OKLA. STAT. § 1301(1)(a).
- 99 *See* EEOC COMPLIANCE MANUAL, Section 12-II(D), available at <http://www.eeoc.gov/policy/docs/religion.pdf>.
- 100 *See* EEOC COMPLIANCE MANUAL, Section 12-III(A), *see also* 25 OKLA. STAT. § 1302.
- 101 *See* EEOC COMPLIANCE MANUAL, Section 12-IV.
- 102 *See Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 73 (1986) (hostile environment sexual harassment held actionable under Title VII of the Civil Rights Act; *see also Collier v. Insignia Financial Group*, 981 P.2d 321, 325 (Okla. 1999).
- 103 *See Collier*, 981 P.2d at 325, note 11.
- 104 *See, e.g. Highlander v. K.F.C. Nat. Management Co.*, 805 F.2d 644, 648 (6th Cir. 1986), *citing Downes v. Federal Aviation Administration*, 775 F.2d 288, 291-292 (Fed. Cir. 1985).
- 105 *See e.g. Smith v. St. Louis University*, 109 F.3d 1261, 1264 (8th Cir. 1997).
- 106 25 Okla. Stat. § 1302(A), 42 U.S.C. § 12112(a)
- 107 42 U.S.C. § 12111(5)(A)
- 108 *See e.g.* 25 OKLA. STAT. § 1301(1)(a).
- 109 42 U.S.C. § 12112(d)(2)(A).
- 110 42 U.S.C. § 12112(d)(2)(B).
- 111 EEOC Notice Number 915.002, *ENFORCEMENT GUIDANCE: PREEMPLOYMENT DISABILITY-RELATED QUESTIONS AND MEDICAL EXAMINATIONS* (1995), available at <http://www.eeoc.gov/policy/docs/preemp.html>.

112 *See id.*

113 42 U.S.C. § 12112(a), (b)(5)(A), 25 OKLA. STAT. § 1302.

114 42 U.S.C. § 12111(9).

115 42 U.S.C. §12111(10) defines “undue hardship” as follows:  
The term “undue hardship” means an action requiring significant difficulty or expense...In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include— (i) the nature and cost of the accommodation needed under this chapter; (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility; (iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and (iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

116 29 U.S.C. § 631(a), 623(a).

117 29 U.S.C. § 630(b).

118 25 OKLA. STAT. § 1301(1)(a).

119 25 OKLA. STAT. § 1301(7)

120 42 U.S.C. §§ 2000ff *et seq.*

121 42 U.S.C. § 2000ff (4)(A).

122 *See* 25 OKLA. STAT. § 1302(A).

123 42 U.S.C. § 2000ff(3)(B).

124 42 U.S.C. § 2000ff-1(b).

125 *See, generally,* 38 U.S.C. §§ 4301 *et. seq.*, 20 C.F.R. § 1002.34(a).

126 20 C.F.R. § 1002.18.

127 20 C.F.R. §1002.135.

128 *See* EEOC POLICY STATEMENT ON THE ISSUE OF CONVICTION RECORDS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (1987), available at <http://www.eeoc.gov/policy/docs/convict1.html>.

129 *See, e.g.* 22 OKLA. STAT. § 18.

130 *See, e.g.* 22 OKLA. STAT. § 19(F).

131 *See* EEOC Compliance Manual Section 15-VI(B).

132 15 U.S.C. § 1681 *et. seq.*

133 15 U.S.C. § 1681a(d)(1).

134 15 U.S.C. § 1681aw(f).

135 15 U.S.C. § 1681b(a)(3)(B).

136 15 U.S.C. § 1681b(b). For an example of these disclosures and consent forms, *see* PAUL FALCONE, THE HIRING AND FIRING QUESTION AND ANSWER BOOK 176 (AMACOM 2002)

137 15 U.S.C. § 1681b(3)(A).



United States Department of Agriculture  
National Institute of Food and Agriculture

**Funded by USDA-NIFA through  
Southern Risk Management Education Center  
Project Number 12322**