

Action Plan for a Farm Worker Share Program

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Disclaimer: This guide does not provide legal advice or establish an attorney client relationship between the reader and author. Always consult an attorney regarding your specific situation.

An Action Plan for Farm Worker Share Programs

Congratulations! Tackling the legal aspects of a worker share program is no small feat and farmers deserve congratulations for wading into this subject. Worker shares have historically been a part of Community Supported Agriculture, and we appreciate your commitment to helping us all preserve these valuable opportunities by addressing our shared legal responsibilities.

How to use this resource:

This document only applies to volunteer workers who come to your farm on a regular basis and receive a share of your farm's product in return for their efforts. This document does NOT apply to workers who are completely uncompensated or to interns- those who work for the purpose of being trained in agriculture for a career.

You may have several potential obligations to your worker shares and each should be investigated separately. If your worker share is considered a volunteer under minimum wage law, he or she may still be an employee under workers' comp law. Read each section even if you think it doesn't apply to your program.

This document incorporates the flowcharts on the following page. The text should help you understand the basic outlines of the subject, and the flowcharts should help you move forward in resolving the issue.

Potential Legal Obligations for Worker Share Programs

1. Minimum Wage

Worker shares may need to receive the equivalent of minimum wage in farm products under state or federal minimum wage law. Minimum wage law usually applies to all individuals who do work for your farm. Although volunteers are generally not owed minimum wage, a worker share is not a "true" volunteer because a worker share receives food in return for his or her labor.

There is no clear answer as to whether a worker share is a volunteer or an employee under federal minimum wage law. A farm must consult with a qualified attorney to investigate this issue. Even then, there may be no clear answer because the court may not have considered a work situation like worker shares before. Because we do not know if worker shares are employees or volunteers under minimum wage law, a farmer plays it safe by assuming that all worker shares are employees.

As a guide, farmers should consult the “Minimum Wage Flowchart” to move forward with their individual analysis of their farm situation.

Please note that state and federal minimum wage laws and rates are separate. Although many states follow federal minimum wage law, there may be differences. If you are uncertain whether you meet an exception, the safest route is to make sure your worker shares are receiving the equivalent of minimum wage for all hours worked.

2. *Workers’ Compensation*

Even though your worker shares may have an exception from minimum wage, (for example, because they are volunteers under the law or because your farm qualifies for an exception to federal and state minimum wages) you may still be required to carry workers’ compensation. Do not assume that if your worker share is exempt from minimum wage that workers’ compensation is not required. Different laws may define “employee” in different ways.

Further, some states may require that all volunteers be covered by workers’ compensation in addition to employees. You must investigate the workers’ compensation laws of your state.

Not only might workers’ compensation be required, its a good idea for any farm. Workers’ compensation is an insurance program that compensates workers for injuries they suffer during the course of the job. What many farmers do not realize is that workers’ compensation also protects the farm. If a worker share is injured and workers’ compensation is not available, that individual (or more likely, his or her health insurance company) can sue the farmer if he or she negligently caused the injury. However, if the worker share is covered by workers’ compensation, the farmer cannot be sued for negligence. The worker share must accept workers’ compensation.

Follow our flow chart to see where you stand. If you have any doubts about whether you qualify for an exception to workers’ compensation, the safest route is to buy the insurance. The penalties for not carrying workers’ compensation when it is required are very high and may include felony charges and a fine equal to triple the premium.

3. *Paying With Food: Payroll Taxes*

You may be required to pay the employer’s share of federal or state payroll taxes on your worker shares even though they receive only food for their labor. The value of the wages paid in food and housing may be exempt from Social Security, Medicare, and federal unemployment taxes as a commodity wage but

you need to consult with a qualified agricultural attorney licensed in your state to determine if this exception applies to the unique circumstances of many direct-to-consumer farms. If you cannot meet with an attorney, play it safe and pay the required taxes on the value of the compensation. In addition, issue your worker shares a W2 accounting for the value of the food provided.

A Worker Share Agreement

The status of a worker share under employment laws is uncertain. A formal agreement between worker share and farmer can be useful in guiding the outcome of a legal inquiry into a worker share's status. However, even if the farmer and worker share agree that the worker share is a volunteer and does not need to be paid the minimum wage, a court could find otherwise. An agreement is just one factor that a court would consider in making a decision about the obligations between farmer and worker share.

Regardless of any legal considerations, an agreement between farmer and worker share is a great idea anyways. Written agreements make it easier to shape expectations, to keep everyone safe, and to run an efficient worker share program. Please see our model worker share agreement online for more information on how to draft your own.

Minimum Wage Flowchart

This flowchart is designed to assist farmers who have decided to treat their worker shares as employees in determining if those workers should be paid minimum wage.

If a farmer already knows that they need to pay regular employees minimum wage, this flowchart is not useful. If you already need to pay minimum wage and are treating worker shares as employees, they need minimum wage as well.

Because of the agricultural exemptions present in federal and state minimum wage laws, a farm may not be required to pay minimum wage even though other employers must. If you are not certain whether regular employees would be owed minimum wage, this flowchart will help you ask the right questions and understand how federal and state minimum wage laws intersect. You will need to talk with your state's department of labor, your agricultural extension office, or an attorney, as well.

There may be other non-agriculture related circumstances that would exempt a farm from paying minimum wage to certain employees; this chart does not address those circumstances.

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Does your state have a minimum wage exemption for agricultural employers? Call your state workforce department or agricultural extension office for help investigating this question.

YES

NO

If it does, look into the exception. Pay careful attention to whether the exemption defines a "farm" or "agricultural labor" and make sure you meet those requirements as well as any hour or dollar threshold. Do you qualify for the exemption?

If your state has no agricultural exemption, you probably owe state minimum wage. (There may be a small business exemption unaddressed here). However, you still need to look into federal minimum wage, which is \$7.25 per hour. Is the state minimum wage equal to or higher than \$7.25?

YES

NO

YES

NO

If you meet the state exemption, your job is not done yet. You need to look into federal minimum wage as well.

If you don't meet the state exemption is the state minimum wage less than \$7.25 per hour? If not, then you probably owe the state minimum wage.

Then you don't need to worry about the federal minimum wage. You probably owe the state minimum wage rate.

Determine if you need to pay the higher federal minimum wage rate.

If the state rate is less than the federal, you need to see if you owe the federal rate.

Federal law exempts "small farms" from paying minimum wage to agricultural laborers. Small farms are those that use less than 500 "man-days" of labor in a calendar quarter. A man-day is any day in which a single employee shows up for at least one hour of work. If two employees show up for two hours of work, you have 2 "man-days." For assistance understanding this exception and tracking your man-days, see the online publication by Farmers' Legal Action Group titled "Farmers Guide to Farm Employees." Did your farm exceed the 500 man-day threshold last year?

If you meet the federal exemption as well, you are not obligated to pay minimum wage to interns and worker shares.

If you meet the federal exemption you owe the lesser state minimum wage.

If you don't meet the federal exemption, you owe the higher federal minimum wage.

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Workers' Compensation Flowchart

This flowchart is designed to assist farmers in determining if they should purchase workers' compensation for worker shares.

If a farmer already knows that they need workers' compensation for regular employees, this flowchart is not necessarily helpful. If you already have workers' compensation, adding coverage for worker shares will probably not add much to the premium. Talk with your agent for more information. If your insurance agent is not helpful, ask other farmers for a reference to an agent who is helpful. Insurance companies vary in their willingness to accommodate unconventional work situations.

Because of the agricultural exemptions present in many state workers' compensation laws, a farm may not be required to provide the insurance. If you are not certain whether regular employees would need workers' compensation, this flowchart will help you ask the right questions. You will need to talk with your state's department of labor, your state's workers' compensation administration office, or an attorney to get a complete answer.

There may be other non-agriculture related circumstances that would exempt a farm from providing workers' compensation such as a volunteer exception; this chart does not address those circumstances.

