

Summary of New York State Labor Laws Relating to Farm and Food Processing Employment*



* This summary is intended for:

- Growers and food processors
- Farm labor contractors
- Farm labor commissary operators

It lists only some of the laws that apply to food processing plants.

Contents

| | | |
|-------|--|------------|
| I. | Farm Labor Registration. | p. 3 - 6 |
| | A. Farm Labor Contractors | p. 3 - 4 |
| | B. Growers and Food Processors Using Contractors | p. 5 |
| | C. Growers and Food Processors Not Using Contractors | p. 5 - 6 |
| II. | Farm Labor Camp Commissaries | p. 6 |
| III. | Denial, Revocation and Suspension of Certificates and Permits | p. 7 |
| IV. | Wages | p. 7 - 8 |
| V. | Minimum Wage | p. 8 - 9 |
| VI. | Payroll Records and Wage Statements (Pay Stubs) | p. 9 - 10 |
| VII. | Child Labor | p. 10 - 11 |
| | A. Minors Working on Farms | p. 10 |
| | B. Minors Working in Food Processing Plants | p. 11 |
| VIII. | Penalties for Labor Law Violations | p. 11 - 12 |
| IX. | Drinking Water for Farm Workers | p. 12 |
| X. | Field Sanitation for Farm Workers | p. 12 |
| XI. | Workers' Compensation and Disability Insurance | p. 12 - 13 |
| XII. | Unemployment Insurance | p. 13 - 14 |
| XIII. | NYS Department of Labor, Division of Labor Standards – Contact Information | p. 14 |

I. Farm Labor Registration

A. Farm Labor Contractors

A contractor is someone who is paid for doing any of the following for a New York State grower or food processor:

- Recruit workers
- Transport workers
- Supply or hire workers
- Direct, supervise or control any workers you have recruited, transported, supplied or hired.

Farm Labor Contractor Certificate of Registration

You must have a Farm Labor Contractor Certificate of Registration from the Commissioner of Labor for each grower or food processor that employs you as a contractor.

- You must submit the *Application for Farm Labor Contractor Certificate of Registration* (LS 113.1) available at www.labor.ny.gov.
- On this form, you must furnish information on wages, working conditions, and housing.
- The grower/food processor must countersign your application. The grower/food processor will be stating that all the information in your application is true.
- You must have your fingerprints scanned at a Morpho Trust USA location in New York State (see instructions on forms LS 121 and LS 122) if this:
 - Is your first time applying;
 - The Department of Labor tells you another scan is required, periodically
- If you cannot have your fingerprints scanned at a Morpho Trust USA location in New York State, call (518) 457-1942 for assistance.

If your application is approved, the Department issues a *Farm Labor Contractor Certificate of Registration* to you for each grower/food processor that uses you.

- A *Certificate of Registration* is also issued to each grower or food processor, allowing them to use your services.
- No grower or food processor may hire you until you both have certificates, or until you have a *Temporary Receipt of Application for a Farm Labor Contractor Certificate of Registration* that allows you to be hired while the Department of Labor reviews your application.
- You must show your certificate(s) to the Commissioner of Labor's representative on request.

Application Summary

The Application Summary is a print-out of the information that you provided in your application. The Department of Labor will send you enough copies for every worker, in both English and Spanish.

- You must post a copy of the Application Summary in **both** languages in a visible spot in any place that houses the workers or at the job location if there is no common housing.

- The Grower/Processor or contractor (whoever employs the workers) and each worker must sign a copy of the Application Summary.
 - Give the worker one copy in English and one copy in Spanish if that is the worker's primary language.
 - Keep copies for your records.
- For workers whose primary language is neither English nor Spanish, use the English version.

Pay Notice and Work Agreement for Your Own Employees

This section applies to you, the contractor, when you are the employer of a worker. This includes, but is not limited to, your own bookkeeper, truck driver, commissary worker, or farm laborer.

NYS Labor Law requires you to give each of your own employees a written pay notice:

- At hiring
- In advance of any reduction in the rate of pay and
- Whenever there is a change in any of the information, unless it will be shown on the next paystub

You must give the pay notice in English, and also in the worker's primary language if a pay notice form in the primary language is posted on the NYS Department of Labor's website.

- You can use *Pay Notice and Work Agreement for Farm Workers* (LS 309). It is currently available in English and Spanish on our website www.labor.ny.gov. By the time you read this, another language may be offered.
- You can use your own form instead, so long as it contains at least the same information as the LS 309.

Sign the pay notice and work agreement with each worker, give each worker one copy, and keep one copy for your records.

Short-Term Jobs – 5 Days Or Less

A grower or food processor may hire a certified farm labor contractor for a short-term job of five days or less under the following conditions.

- Before starting work:
 - Each worker has been given a written pay notice and work agreement, from whomever will be the employer; and
 - The employer has posted, in a place visible to the workers, a copy of any generally applicable work agreement; and
- Within 24 hours of starting work, the contractor:
 - Submits a special *Supplemental Application Form*, (LS 392) countersigned by the grower or food processor, to the New York State Department of Labor; and
 - Posts a copy of the LS 392 at the job location.

Federal Migrant and Seasonal Agricultural Worker Protection Act

You must also obey the federal Migrant and Seasonal Agricultural Worker Protection Act. For more information, contact the nearest office of the U.S. Department of Labor, Wage and Hour Division.

B. Growers and Food Processors Using Contractors

Certificates of Registration for both Grower/Processor and Contractor

You may only hire a farm labor contractor who has a:

- *Farm Labor Contractor Certificate of Registration*, or a
- Temporary Receipt of Application for Farm Labor Contractor Certificate of Registration. This allows a contractor to provide workers to you while his/her application is being reviewed.

The certificate or temporary receipt must show the name of your farm or plant.

Certificates of Registration are issued to you and your contractor after the contractor's application is countersigned by you and approved by the Department of Labor.

Short-Term Jobs - 5 Days or Less

A grower or food processor may hire a certified farm labor contractor for five days or less if:

- Before starting work:
 - Each worker has been given a written pay notice and work agreement, from whomever will be the employer; and
 - The employer has posted, in a place visible to the workers, a copy of any generally applicable work agreement; and
- Within 24 hours of starting work, the contractor:
 - Submits a special *Supplemental Application Form* (LS 392) countersigned by the grower or food processor, to the New York State Department of Labor; and
 - Posts a copy of the LS 392 at the job location.

C. Growers and Food Processors Not Using Contractors

Grower or Processor Certificate of Registration

If you bring or are responsible for bringing five or more non H-2A out-of-state migrant workers into New York State, without using the services of a farm labor contractor:

- You must get a Certificate of Registration, from the Commissioner of Labor, each year, before the migrant workers are brought into the state.
- In your application, you must provide information on:
 - Wages,
 - Housing, and
 - Working conditions.
- Your certificate must be shown, upon request, to any duly authorized representative of the Commissioner of Labor.

You must also get a Certificate of Registration if you employ five or more non H-2A migrant workers who have been brought into the state by another grower or food processor.

Application Summary

The Department of Labor will print a summary of the application you submitted and will send you multiple copies in English and Spanish.

- You must post a copy of the Application Summary in both languages in a visible spot in any place that houses the workers or at the job location if there is no common housing.

- You and each worker must sign a copy of the Application Summary. Give the worker one copy in English and one copy in Spanish if that is the worker's primary language. Keep copies for your records.
- For workers whose primary language is neither English nor Spanish, use the English version.

Pay notice and work agreement

The Minimum Wage Order for Farm Workers has long required written work agreements between farm employers and farm workers. A new labor law effective April 9, 2011 requires all employers in all industries to give each employee a written pay notice.

To satisfy both requirements with one document, farm employers can use:

- *Pay Notice and Work Agreement for Farm Workers* (LS 309)
- The LS 309 form is currently available in English and Spanish on our website at www.labor.ny.gov. Another language may have been added by the time you read this.
- Or you can use your own document if it has at least the same information as the LS 309.

You must give the pay notice in English and in the worker's primary language if the Department of Labor has the form in that primary language on our website.

Give the pay notice and work agreement:

- At hiring
- In advance of any reduction in the rate of pay and
- Whenever there is a change in any of the information, unless it will be shown on the next paystub.

Sign the document with the worker. Give the worker a copy in English or in both languages if applicable. Keep copies for your records.

II. Farm Labor Camp Commissaries

If you operate a farm labor camp commissary where wares, merchandise, or food (including meals) will be sold to workers:

- You must get a permit each year from the Commissioner of Labor before you may open the commissary.
 - The permit must be posted visibly in the commissary.
- You must post, and keep posted, the current prices of all goods that are for sale or lease to workers in a visible place in the commissary.
 - This price list must be on a form supplied by the Department of Labor.
 - You may not charge more than the prices listed on the poster.
- You must keep a record of all charges made to each farm worker. This record must include the name of the grower or food processor who hired the worker.

III. Denial, Revocation, or Suspension of Certificates and Permits

The Commissioner of Labor may revoke, suspend or refuse to issue or renew a certificate or permit if the Commissioner finds that the applicant or holder of the permit or certificate:

- Has violated the Labor Law
- Has been convicted of any crime or offense related to his or her activity under the certificate or permit
- Has made misrepresentations or false statements in the application
- Has given false or misleading information to workers who are recruited or hired,
- Is not a person of good character or responsibility
- Is not, in fact, the real party of interest in any such application or certificate of registration or
- If the commissioner is notified by the State Department of Health that the applicant or permit or certificate holder has failed to comply with the State Sanitary Code for Migrant Labor Camps.

The Commissioner cannot revoke, suspend or refuse to issue or renew a certificate or permit unless the applicant or permit or certificate holder has been given an opportunity to be heard.

The Commissioner or authorized representative has the right to inquire by investigation or hearing into the circumstances surrounding the use of the permit or certificate.

- This inquiry is to make a determination as to the issuance, or denial of a certificate or permit.
- The investigation or hearing may include, but shall not be limited to, questioning of the applicant and other parties of interest.
- Your application can be denied if you do not list all other parties of interest in your application.

If the Commissioner denies or revokes your certificate or permit, you may not apply for a new one until 24 months from the date of the denial or revocation. Under certain conditions, the Commissioner may reduce the disqualification period.

You must submit any new application at least 90 days prior to the date that you plan to perform services in New York State.

IV. Wages

Frequency of payment

- Manual workers, such as most farm and food processing workers, must be paid weekly, within 7 days of the end of the work week.
- In some cases, it is lawful to pay manual workers every two weeks, but only if you pay in full up to and including the payday.
- Clerical and other non-manual workers must be paid at least twice a month, on regular paydays named in advance. They may be paid more frequently, such as weekly.

Deductions or charges

You may not make any deductions from wages except those that are required or authorized by law. These are:

- Social Security
- Medicare
- Withholding taxes
- Court-ordered deductions
- Deductions that the worker has authorized in writing for his or her benefit.

You may not make any charge against a worker's wages, or require a worker to make any payment by separate transaction from wages, unless the charge or payment would be permitted as a legal deduction from wages.

You may not deduct from wages, or charge workers separately for:

- Damage, spoilage or breakage
- Shortages or losses
- Cost of uniform garments
- Fines or penalties for lateness, misconduct, or quitting without notice

Final wages

If an employee is let go or resigns, you must pay the final wages no later than the regular payday for those wages.

- You must allow the employee to pick up the final wages in person.
- If the employee requests it, you must pay the final wages by mail.

V. Minimum Wage

New York State Minimum Wage Law

Effective December 31, 2015, the New York State minimum wage is \$9.00 per hour for both agricultural and non-agricultural operations.

To be covered by the minimum wage, farms must have paid at least \$3,000 in cash wages during the prior calendar year.

- *Part 190 Minimum Wage Order for Farm Workers* covers farms and those grading houses and processing plants operated by a farm that process only the farm's own products.
- *Part 142 Minimum Wage Order for Miscellaneous Industries and Occupations* covers commissaries and generally covers canneries, grading houses, and processing plants that process the products of more than one farm or are not operated by a farm. Workers covered by this wage order must receive overtime pay at 1½ times the worker's regular rate of pay for work over 40 hours in a week.

There are further details, not summarized here, on determining wage order coverage for work in canneries, grading houses, and processing plants that, while operated by a farm, process products from more than one farm.

The Minimum Wage Orders are available on our website at www.labor.ny.gov or by calling a phone number listed at the end of this publication.

Federal Minimum Wage Law

Since July 24, 2009, the federal minimum wage for farms is \$7.25 per hour.

Employers that hired agricultural workers for more than 500 days of any calendar quarter of the preceding calendar year are covered by the federal minimum wage.

For more information, contact the nearest office of the U.S. Department of Labor, Wage and Hour Division.

VI. Payroll Records and Wage Statements

Effective April 9, 2011, farm employers, like all other employers, must preserve their payroll records for six years. For each employee, the records must show:

- Employee name and address,
- Social Security number
- Total hours worked daily and weekly
- The wage rate
- The number of units produced daily and weekly, if paid by piece rate
- The size or weight of the piece rate unit
- Gross wages
- All deductions
- Credits claimed (such as for meals, lodging, payments in kind)
- Net wages and
- Copies of the signed pay notices/work agreements

For non-agricultural employees who are covered by the overtime pay requirements of the labor law, the records must also show:

- Regular hours worked
- Overtime hours worked
- The regular hourly rate of pay
- The overtime hourly rate of pay.

With every payment of wages, the employer must give the employee a wage statement (pay stub) showing:

- The dates of work covered by that payment of wages
- Full name and address of the employer
- Phone number of the employer
- Name of the worker
- Total hours worked
- Rates paid and the basis thereof (per hour, per piece, etc.)
- The size or weight of the piece rate unit, if paid by piece rate
- The number of units produced, if paid by piece rate
- Gross wages
- All deductions
- Credits claimed (for meals, lodging, payments in kind) and
- Net wages

For non-agricultural employees who are covered by the overtime pay requirements of the labor law, the wage statement (pay stub) must also show:

- Regular hours worked
- Overtime hours worked
- The regular hourly rate of pay and
- The overtime hourly rate of pay

The *Wage Statement* (LS 446) form is available on our website.

VII. Child Labor

A. Minors Working on Farms

Children aged 16 and 17

- May be employed on any farm without a farm work permit and without any hours restrictions, except during school hours.

Children aged 14 and 15

- May be employed on the home farm of their own parents or guardians without a farm work permit and without any hours restrictions, except during school hours.
- May be employed on another farm if they carry a Farm Work Permit issued by the school and signed by the employer. There are no hours restrictions, except during school hours.

Children aged 12 and 13

- May be employed on the home farm of their own parents or guardians without a farm work permit and without any hours restrictions, except during school hours.
- May be employed on another farm if they have a *Farm Work Permit – Special* (AT-25) and
 - Must be accompanied by, or present the written consent of, a parent or adult with whom they reside
 - May only engage in the hand harvest of berries, fruits and vegetables
 - May work no more than 4 hours a day
 - Their hours must fall between 7am and 7pm from June 21st through Labor Day and
 - Their hours must fall between 9am and 4pm from the day after Labor Day through the next June 20th

Children under 12

- May not be employed in connection with any trade, business or service, including the farm business of their own parents or guardians
- May do ordinary household and yard chores not connected with the business.

Prohibited farm work for children under age 16

- A list of hazardous farm work that children under 16 are prohibited from doing is found in the back of *Part 190 Minimum Wage Order for Farm Workers*. This publication is available on our website www.labor.ny.gov or from a phone number listed at the end of this publication.

B. Minors Working in Food Processing Plants

Persons must be at least 18 years old to work in a slaughtering, meat packing, or rendering establishment.

Children must be at least 16 years old to work in a food processing plant which is (a) off the farm or (b) on the farm but handles products grown on other farms.

Children must be at least 14 years old to work in a food processing plant which is on the farm and handles only products grown by the farmer.

You may employ a 16 or 17 year old in a food processing plant which is (a) off the farm or (b) on the farm but handles products grown on other farms:

- If the minor has given you an Employment Certificate (working papers) issued by a school, before starting work.
- Keep the employment certificate at the workplace while the minor is employed
- Employ the minor only within the permitted hours printed on the back of the certificate
- Return the certificate to the minor when employment ends.

You may employ a 16 or 17 year old in a food processing plant which is on the farm and handles only products grown by the farmer, without any Employment Certificate or hours restrictions, except not during school hours.

You may employ a 14 or 15 year old in a food processing plant which is on the farm and handles only products grown by the farmer, if the minor shows you, and carries while working, a Farm Work Permit which you must sign. There are no hours restrictions, except not during school hours.

Minors under 18 years of age are prohibited from certain hazardous tasks. They may not:

- Clean, oil or wipe machinery
- Operate power-driven meat processing machines
- Operate power-driven bakery products machines
- Operate balers or compactors or
- Operate or assist with power-driven hoisting apparatus

The above is only a partial list of prohibited tasks. For more details, look up “prohibited occupations” on our website at www.labor.ny.gov or contact the number listed at the end of this publication.

VIII. Civil Penalties for Labor Law Violations

If the Department of Labor finds an employer has failed to pay wages or benefits that are due an employee, the Department can charge the employer:

- The full amount of wages or benefits found due plus:
 - Liquidated damages up to 100% of the wages or benefits found due
 - Civil penalty up to 200% of the wages or benefits found due
 - Interest at 16% and

- Additional liquidated damages of 15% if an employer fails to pay a Departmental Order for 150 days

For non-monetary violations of labor law, such as the migrant registration laws, the farm labor camp commissary law, the record-keeping provisions, the wage statement provisions, the illegal deduction law, the meal period law, and the child labor laws, the Department can charge the employer:

- Up to \$1,000 for the first violation
- Up to \$2,000 for the second violation and
- Up to \$3,000 for the third or subsequent violation

IX. Drinking Water for Farm Laborers

Every grower or food processor must provide safe drinking water at each site where farm or food processing workers are working. The drinking water:

- Must be provided at the employer's expense
- May be in a portable container
- Must be reasonably accessible to the workers

X. Field Sanitation for Farm Workers

Every grower or food processor must provide toilet and hand-washing facilities for workers, including transportation to such facilities. Toilet and hand-washing facilities must be:

- At the employer's expense and
- Located together

If five or more people are working at the same site, the toilet and hand-washing facilities:

- Must be within a quarter mile walk or
- At the closest point accessible by motor vehicle.

Violation of this is a misdemeanor punishable by a fine of \$500 to \$1,000 on the first offense and \$1,000 to \$3,000 on the second or subsequent offense.

XI. Workers' Compensation and Disability Insurance

A. Farm employers

Workers Compensation Insurance

A farm employer must have Workers' Compensation Insurance for his/her farm workers if the employer paid \$1,200 or more in wages during the last calendar year.

Farm workers recruited or supplied by farm labor contractors are generally considered employees of the owner or lessee of the farm.

If you are a farmer who is not required to have Workers' Compensation Insurance, you may still want to purchase coverage. Many farmers buy Workers' Compensation Insurance or Employers' Liability Insurance with medical payments. This protects the farmer and the employees.

Insurance loss costs per \$100 of payroll for each employee for various types of farms can be found on the New York Compensation Insurance Rating Board web site at www.nycirb.org:

- Click on the link for "Underwriting"
- Search for "Farm"

For details, contact your insurance agent or:

New York Compensation Insurance Rating Board
733 3rd Ave
New York, NY 10017
Phone (212) 697-3535 Fax (212) 599-6594

Disability Benefits Insurance

Farm employers do not need to have Disability Benefits Insurance for their farm laborers (workers who perform farm-specific duties) but may cover them voluntarily.

Farm employers must have Disability Benefits Insurance for any employees who perform non-farm-specific duties, such as bookkeeping, truck driver, or retail sales.

B. Farm Labor Contractors

Farm labor contractors must have Workers' Compensation and Disability Benefits Insurance for some of their employees. This includes employees such as truck drivers and commissary workers.

C. Commissary Operators

Commissary operators must have Workers' Compensation and Disability Benefits Insurance for all of their employees.

Commissary Permits are not valid unless the commissary operator carries Workers' Compensation Insurance for all of his/her employees.

D. All employers

If an employer purchases Workers' Compensation Insurance, the employer must pay the full cost. It is illegal to require employees to pay any of the costs of workers compensation premiums or injuries.

For additional information, contact your insurance agent or visit the website of the NYS Workers Compensation Board at www.wcb.ny.gov.

XII. Unemployment Insurance

Agricultural workers, which include farm workers, are covered by unemployment insurance when their employer is required to pay unemployment insurance contributions by becoming liable under the UI Law. Agricultural employers become liable:

- As of the first day of the calendar quarter in which they pay wages of \$20,000 or more to agricultural workers, or
- As of the first day of the calendar year in which they employ ten or more agricultural workers on each of 20 days, each day being in a different week, during a calendar year or the preceding year, or
- As of the first day of the calendar quarter in which they pay any wages to agricultural workers in this State, if the employer is also liable under the Federal Unemployment Tax Act with respect to agricultural workers.

A farm labor contractor (crew leader) would also have to pay unemployment insurance contributions if they have met the conditions for liability above and if:

- The contractor is not the employee of the farm operator, and
 - The contractor holds a valid Certificate of Registration under the federal Farm Labor Contractor Registration Act of 1963, or
 - All of the crew operate or maintain mechanized equipment that the crew leader provides.

Agricultural employers who do not meet the conditions for liability may choose to cover their employees voluntarily.

Employers who are not sure if they are required to pay unemployment insurance contributions, or who wish to cover their employees voluntarily, should write to:

New York State Department of Labor
Unemployment Insurance Division, Liability and Determination Section
State Office Building Campus
Albany, New York 12240.

XIII. Contact Information

Visit the website of the NYS Department of Labor at www.labor.ny.gov

Send an e-mail to the NYS Department of Labor directly from our website's home page.

Contact the NYS Department of Labor at:

(518) 457-9000
(888) 469-7365
(800) 662-1220 (TTY/TTD)

For information or questions directly related to permit applications, call (518) 457-1942.