



FARM COMMONS

# Hiring a Farm Employee in New Hampshire: Tax and Paperwork Checklist

LAST UPDATED:

September 16, 2016

FIRST PUBLISHED:

September 16, 2016

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## Introduction

Hiring a farm employee is an exciting moment. It means the farm is getting large enough and stable enough to take on additional help. On the downside, the paperwork requirements of hiring feel much less exciting. Getting familiar with the process early is a tremendous help. Farm owners should start preparing well before the new employee begins the first day of work. This checklist will help farmers understand the basic paperwork process for hiring a farm employee.

Although it's a useful starting point, this checklist does not explore every single area of farm employment law. It does not address workplace safety laws, in-kind wage rules, minor children, discrimination, and many other employment law matters. It's simply a concise checklist of select legal issues at the time of hiring. Farmers should also consult Farm Commons' other employment law resources for more information.

Farm Commons aims to help farmers get started, but moving through the checklist can lead to more questions than answers. On the positive side, knowing the right questions to ask is half the battle. Calling the relevant agency such as the New Hampshire Department of Labor, New Hampshire Department of Employment Security, Internal Revenue Service, or United States Department of Labor is an excellent next step when complications arise. Agency employees are trained experts and able to answer most questions. Some farmers will prefer to contact an attorney with experience in farm employment law, which is always a good choice, as well.

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This resource does not explore every single area of employment law.

## The Summary Checklist

- R Determine whether you must comply with Chapter 275 of the New Hampshire Statutes.
- R Prepare to maintain records including hours worked and wage payments made, and post notices.
- R Secure a workers' compensation policy and post notice.
- R Verify eligibility to work in the United States.
- R Set up to withhold federal income tax.

- R Set up to withhold Social Security and Medicare contributions from employee's wages.
- R Arrange to pay the farm's contribution to the employee's Social Security and Medicare account.
- R Arrange to pay federal and state unemployment tax, if required.
- R If you plan to offer less than the minimum wage (to interns, for example), verify your eligibility.
- R If you do not plan to provide overtime, verify your eligibility.

## The Detailed Checklist

- R Determine whether you must comply with Chapter 275 of the New Hampshire Statutes.

New Hampshire law provides many protections for employees including mandatory lunch times, mandatory days of rest, set pay frequencies and many other rules detailed in Chapter 275 of the New Hampshire Statutes. Included in this law is the obligation to display a poster notifying employees of the minimum wage and of all employment policies such as vacations, holidays, and more. The New Hampshire Department of Labor has a website with [links to the required posters and notices](#). **All the protections and obligations of Chapter 275 only apply to farms with 5 or more persons employed.** Farms with 5 or more individuals on the payroll must review Chapter 275 in detail and comply with it, including posting required notices. Farms with fewer than 5 individuals on the payroll do not have to post these notices or adhere to the other rules of Chapter 275. Farms subject to Chapter 275 should also pay close attention to the Chapter's rules requiring recordkeeping, including keeping records of all hours worked, wages paid and deductions made from wage payments.

- R Prepare to maintain records including hours worked and wage payments made, and post notices.

Farm employers must keep records including the full names, addresses, and occupations of all employees, except the farmers' children. This is a federal law

so it applies to farms regardless of whether Chapter 275 above applies. For each pay period, the farm must prepare documentation of the payments. For each individual, the farm must record the person's rate of pay, the total hours worked, and total wages received in that pay period. If the farm employs more than "500 man days" of labor (explained in detail in the minimum wage section), then the farm must also keep the following records for each employee, which must be kept for at least three years:

1. Social Security number.
2. Time and day of week when employee's workweek begins.
3. Hours worked each day.
4. Total hours worked each workweek.
5. Basis on which employee's wages are paid (e.g., "\$9 per hour", "\$440 a week", "piecework")
6. Regular hourly pay rate.
7. Total daily or weekly straight-time earnings.
8. Total overtime earnings for the workweek.
9. All additions to or deductions from the employee's wages.
10. Total wages paid each pay period.
11. Date of payment and the pay period covered by the payment.

The law does not require farms to use specific timesheets, necessarily. However, the farm must have some way to collect the information above so it can be reported on paystubs. A detailed timesheet regularly kept by the employee is the best way to collect accurate information. Detailed timesheets are also essential to demonstrate that the farm is eligible for exemptions from New Hampshire's Chapter 275 (detailed above) or the federal 500 man day exception (detailed below).

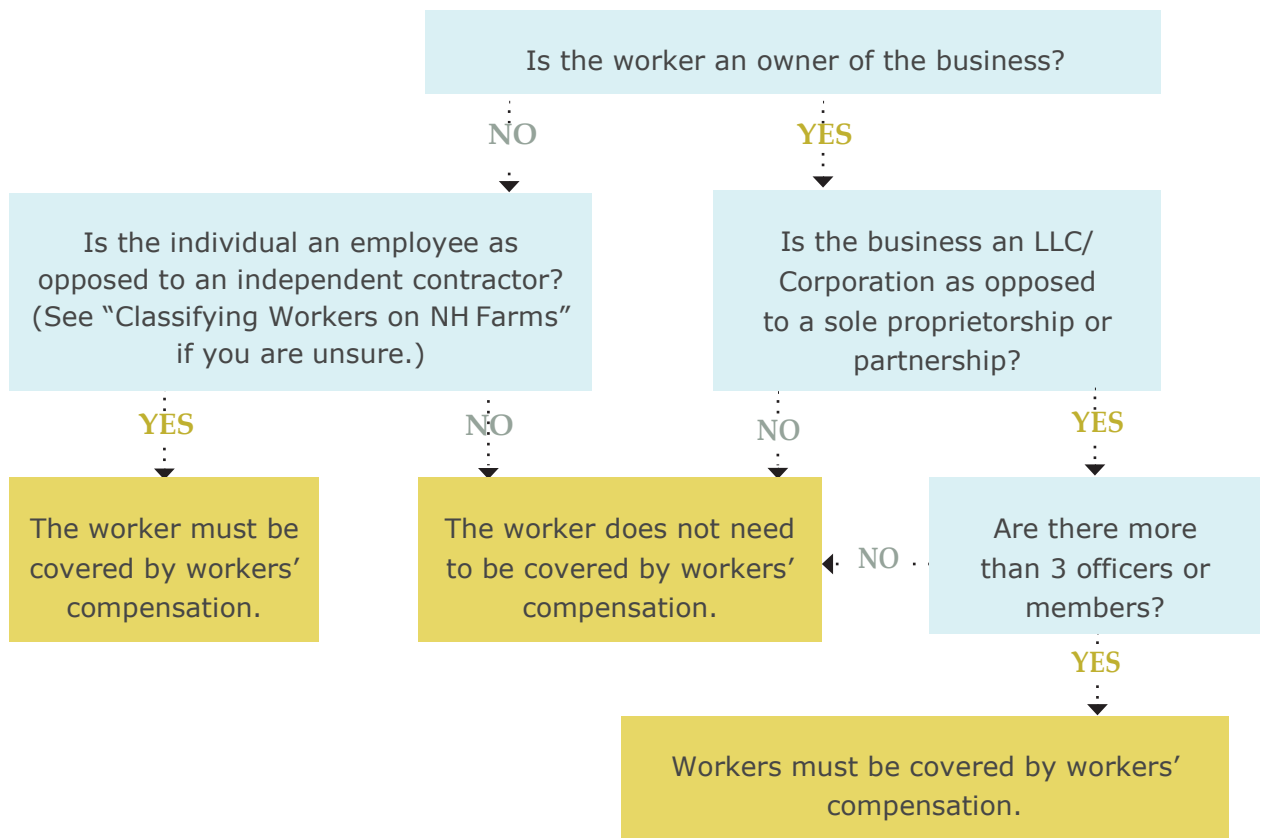
#### **R** Secure a workers' compensation policy and post notice.

New Hampshire requires that every business, including farm businesses, provide a workers' compensation insurance policy that covers each employee from the first day of work. This rule applies to part-time workers and employees of nonprofits.

The workers' compensation rule also applies to family members who are employed

by the farm business. Farm business owners do not have to cover themselves if the farm is a sole proprietorship or partnership. If the farm is organized as an LLC or corporation, the LLC members or corporate officers are required to cover themselves when the operation reaches or exceeds 4 members or officers. (Note, farm LLCs and corporations must still provide coverage for all employees immediately upon hire. The exception for members or officers only applies to members or officers.)

Workers' compensation is purchased through private insurance companies. The cost of the policy is determined by a number of factors including the classification of the labor performed, the frequency of injuries by workers performing that labor, and the total dollar value of the business' payroll, among other factors. For farm businesses that use only traditional employees and pay cash (not in-kind) wages, a quote is easy to come by. Farm businesses that pay wages in the form of food and lodging may have a harder time determining the value of their payroll and will need to work more closely with their insurance agent. Likewise, farms seeking coverage for interns, volunteers, and other non-traditional employees may need to work closely with their insurance agent to ensure coverage is secured for all individuals performing work for the farm. The following flowchart outlines a New Hampshire farm businesses' employment obligations.



Businesses are required to post a notice for employees stating that the employer is working under RSA 281-A, the New Hampshire workers' compensation law. The farm's workers' compensation insurance company should provide a copy of the necessary notices for the farm's usage.

#### **R** Verify eligibility to work in the United States.

Farms may only hire individuals who are eligible to work in the United States. The employer satisfies the duty to verify eligibility by properly completing Form I-9 (for employees not hired through a worker program). This form is available from the U.S. Citizenship and Immigration Services agency. It is available [online and instructions are included](#). The form is not submitted to the agency. Rather, the employer copies the necessary documentation and keeps the form on file. The completed forms should be kept for the longer of the following: a) three years after the worker began employment, or b) one year after the worker leaves the position. The forms and documentation must be available if an enforcement agency inspects the farm.

#### **R** Set up to withhold federal income tax.

Farms are required to withhold a percentage of an employee's wages and remit the withheld portion to the IRS for federal income tax purposes. A farm must begin withholding income tax when either of the following happen: The farm pays a total of \$2,500 or more in wages to all employees, OR any individual employee receives cash wages of \$150 per year or more. Most farms with an employee will have to withhold federal income tax.

To begin the withholding process, the farm needs a completed [IRS form W-4](#) from the employee. This form allows employees to choose the number of withholding exemptions. Form W-4 is not sent into an agency; it remains in the farm's files. The farm then uses the tax tables in [IRS Publication 15](#) (Employer's Tax Guide) to determine withholding per paycheck based on the individual's pay, exemptions, and payment frequency. The farm must record the amount withheld and remit it to the IRS. The due date is dependent on the total tax owed. For most farms, the tax must be deposited monthly. The IRS uses an online system, the Electronic Federal Tax Payment System (EFTPS), and deposits must be made electronically.

Farms must register with the EFTPS system ahead of time as it can take a few days to receive the passwords.

**R** Set up to withhold Social Security and Medicare contributions from employee's wages.

Most farms are required to withhold social security and Medicare tax from the worker's paycheck. The same rules apply as for withholding federal income tax: the obligation begins when the farm's total payroll for employees exceeds \$2,500 or an individual's wage exceeds \$150 per year. Where the amount of income tax to withhold is determined by using the IRS's tables, social security and Medicare tax is calculated as a percentage of the employee's wages for that pay period. The most recent percentage will be listed in [IRS Publication 51](#) (Agricultural Employer's Tax Guide). Currently, 6.2% of wages are withheld for social security and 1.45% for Medicare. Each time the employee receives a paycheck, a portion of the social security and Medicare taxes are withheld. This is then remitted to the IRS through the same EFTPS process used for remitting withheld income taxes.

**R** Arrange to pay the farm's contribution to the employee's Social Security and Medicare account.

The checklist item above explains that a portion of social security and Medicare tax owed by the employee must be withheld from the employee's paycheck. This checklist item discusses the social security and Medicare tax owed by the employer. **These are two different taxes- the employee is taxed and the employer is taxed.** The employee's tax is deducted from wages. The employer's tax is paid by the employer, and may not be deducted from wages. The taxes go to the same agency for the same ultimate purpose, but are separate.

The farm is taxed at the same threshold where the employee must be taxed. (See the \$2,500 or \$150 rule above.) Currently, the farm is taxed at the same rate as the employee, although this may change. Currently, 6.2% of wages are withheld for social security and 1.45% for Medicare. The most recent percentage will be listed in [IRS Publication 51](#) (Agricultural Employer's Tax Guide).

Although the employee's and employer's share of the social security and Medicare taxes are technically separate, they are deposited at the same time through the



IRS's EFTPS process.

Farms who work with a payroll service provider can escape the details of withholding and remitting taxes. Payroll service providers help employers determine which taxes are owed and assist in coordinating payment of the taxes. Farmers who can afford a payroll service may find it well worth the money.

#### **R** Arrange to pay federal and state unemployment tax, if required.

Unemployment tax is paid by the farm and is not deducted from an employee's wages. This tax contributes to a compensation fund available to individuals who have become unemployed. Most employers are required to pay unemployment tax immediately; however, farms are exempt until the operation reaches a certain size. New Hampshire and the federal government follow the same rules for farms. When a farm owes unemployment tax to the federal government, the farm will also owe it to the state.

The farm must begin paying federal unemployment tax when either of the following happens: 1) The farm pays wages of \$20,000 or more to farmworkers during any calendar quarter of the previous two years, OR, 2) the farm employed 10 or more workers for any part of a day (even if not at the same time during the day) during any 20 or more weeks in the last year, or in the year before that. After a farm crosses either threshold, the farm must begin paying into state and federal funds. The farm will pay federal unemployment tax on up to \$7,000 of each employee's wages. The tax is determined by percentage; the latest percentage is listed in [IRS Publication 51](#). Federal unemployment tax is paid through the same EFTPS procedures as income withholding and social security/Medicare taxes. State unemployment tax is owed on up to \$14,000 of each employee's wages. The current state rate is available by contacting the [New Hampshire Employment Security office](#).

**The above unemployment tax rule is for farm businesses assigning farm labor.** For non-farm enterprises (which may include diversified farms engaging in separate non-agricultural enterprises such as packing other farmers' produce, hosting on farm events and agri-tourism, and so on as discussed in the minimum wage section), farmers may need to follow the regular unemployment tax rules.

For non-farm businesses in New Hampshire, state unemployment tax is owed when either of the following happens: 1) the business has one or more employees

during some portion of a day in 20 different calendar weeks in either the current or prior year (whether consecutive weeks or not); OR 2) the business paid out \$1,500 or more in gross wages during any calendar quarter of the current or previous year. Non-farm businesses owe federal unemployment tax when the total annual payroll for that enterprise reaches \$1,000.

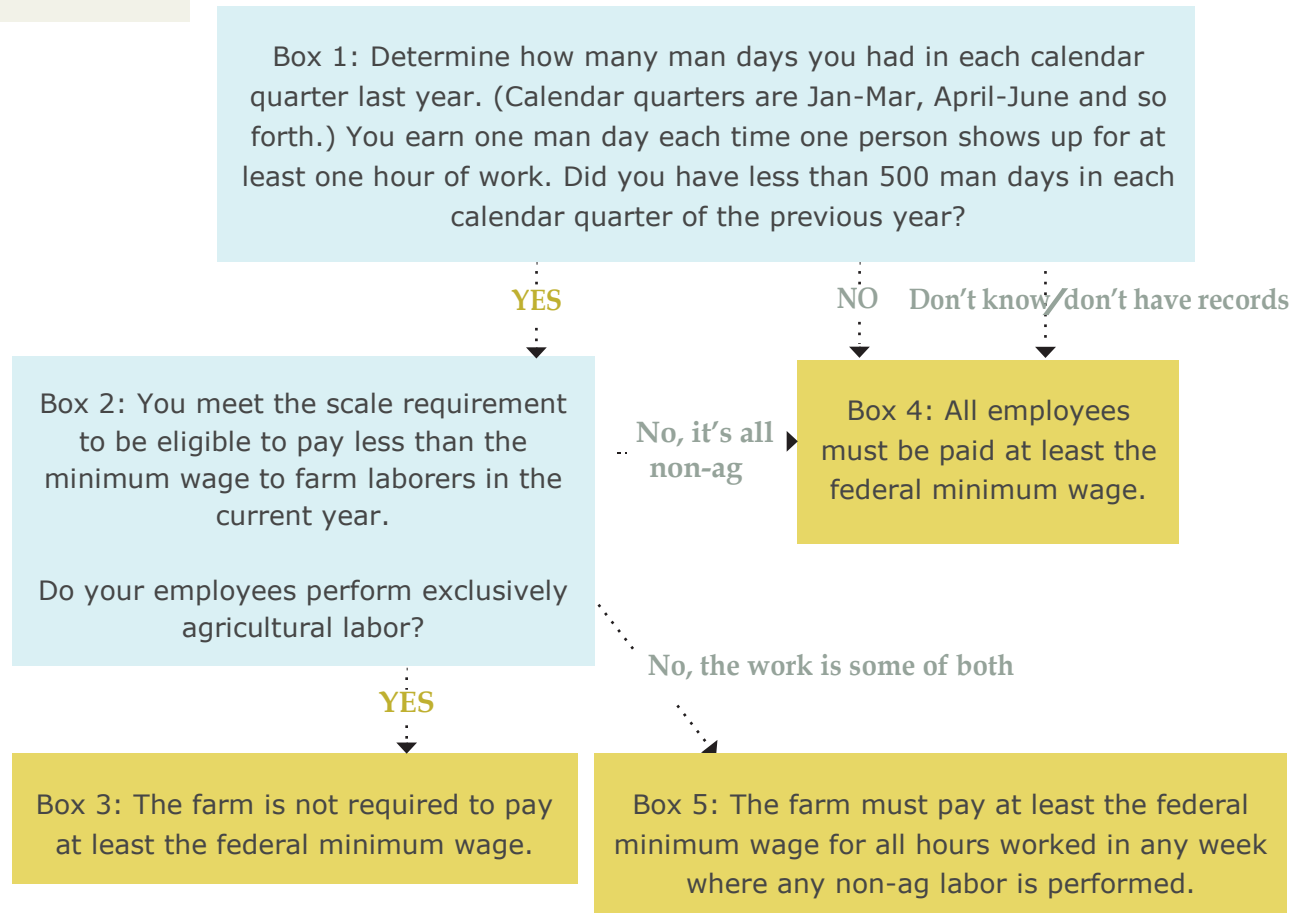
**R** If you plan to offer less than the minimum wage (to interns, for example), verify your eligibility.

Most farm businesses find that they need to offer at least the minimum wage to attract a qualified work force. Offering educational internships helps some operations recruit good workers while keeping payroll costs at a minimum. This can be a good strategy, but legal cautions apply. To start, farms considering offering internships should consult the “Managing Risks of Interns and Volunteers in New Hampshire” guide. Readers of the intern guide will learn that minimum wage law still applies to most farm internship positions. This section will help farmers determine if they are complying with minimum wage law.

The New Hampshire and federal minimum wage is currently set at \$7.25 per hour. Although most other businesses must pay at least the minimum wage, both New Hampshire and federal law provide an agricultural labor exemption to minimum wage requirements. Because federal law is more stringent, farmers must focus on federal law, which exempts employees who perform farm labor for farms under a certain size. New Hampshire farms with fewer than 500 “man days” of agricultural labor in each calendar quarter of the previous year do not have to pay at least the minimum wage. To put it another way, farms who used over 500 man days of agricultural labor in any calendar quarter of the last year must pay employees at least the minimum wage.

The rule sounds complicated. What is a man day? What is agricultural labor? These are important questions with detailed considerations. The flowchart below will help farmers breakdown the rule and determine whether the federal minimum wage applies to their farm. (Please do not use the flowchart without also reading the text below as it is necessary to effectively use the flowchart.)

## MINIMUM WAGE



Box 1: The first step is for a farm to determine how many man days the farm had in each calendar quarter last year. A man day is any day on which a person does at least one hour of work. Each person who works is counted as a separate man day. For example, if three individuals work for one hour each on the same day, the farm has three man days. If three individuals work for eight hours each on the same day, the farm still has three man days. As long as the person worked at least one hour, it doesn't matter how long they worked that day.

The spouse, children, and other members of the employer's immediate family are not counted when calculating man days. 500 man days roughly equates to about 5 to 6 full-time employees, considering many farms employ workers 6 or 7 days per week.

Now that we understand how a man day is calculated, we need to count them. Divide the calendar January through March, April through June, July through September, and October to December. Now, determine the number of man days in each calendar quarter. Do you have less than 500 man days in each one? If the answer is yes, the farm is eligible for the minimum wage exception as indicated by Box 2. If the answer is no, the farm is not eligible for the exception and must pay at least the minimum wage as indicated by Box 4.

These calculations require careful recordkeeping. Remember that the 500 man day rule applies to the previous year. To determine federal minimum wage obligations this year, we need to determine the farm's man days last year. If records were not kept last year or are not detailed enough, we will have a hard time demonstrating compliance with the law. In that case, the safe choice is for the farm to act as if the minimum wage applies as indicated by Box 4.

Box 2: We arrive at box 2 because we know we are at the appropriate size- we are under the 500 man day threshold. Thus, we know we are eligible to pay less than the federal minimum wage. Now, we have one more question to ask to determine if we can actually pay less than the minimum wage.

The 500 man day exemption applies only to agricultural labor. If an employee spends any time working on something that is not deemed agricultural, the minimum-wage exemption does not apply. It does not apply with respect to all work that employee does during that workweek. This means that if a farm employee spends even one hour of time on a non-agricultural task, the employee must be paid at least the minimum wage for all hours worked in that week.

Whether work is agricultural labor under the law is not always intuitive. That's because it's based on legal definitions. It is also because the definition of "agricultural" has not been litigated very much in either the courts of New Hampshire or federal courts. Litigation helps clarify legal definitions. For now, we're left with a broad definition that does not account for the realities of modern and direct to consumer farms.

Diversified farms are prevalent in New Hampshire and throughout the country. These farms typically engage in activities—such as selling at farmers' markets, making value added products, organizing on-farm events and so on—that fall outside the traditional scope of farming activities. Unfortunately, the legal definition of agricultural labor has not yet evolved to meet this new type of diversified farm. Without any statutes or case law for guidance, it can be challenging to draw the line between agricultural and non-agricultural labor.

Agricultural labor is the growing and harvesting of crops, raising of livestock or poultry, and preparing unmanufactured farm products for market and delivery to market. Agricultural labor includes work done on a farm in connection to farming operations. Conversely, most if not all work done off farm is not agricultural labor. Sales at a farmers' market are off the farm and are potentially not agricultural

labor. It also may include marketing activities such as pitching products to restaurants and grocery stores.

In addition, some work done on a diversified farm is tangential to agricultural production, for example, making value added products, planning and hosting agritourism or on farm events such as dinners, weddings, and potlucks.

These activities most likely do not fall within the agricultural labor definition. Aggregating and packing products from another farm, for example into a CSA box, is a grey area. Most likely, it would not be considered agricultural labor as it's more akin to marketing and value-added production.

The safest route is to assume that off farm and any activities that are tangential to farming are not agricultural labor. A farm can quickly resolve any legal risk by paying at least the minimum wage and paying overtime for any hours worked over 40 in a week. If the farm pays at least the minimum wage plus overtime, there is no need to determine if tasks are agricultural or not.

Box 4: If the work assigned to an individual is non-agricultural, then minimum wage is owed, even if the farm is under the 500 man day threshold.

Box 5: Again, when an employee does non-agricultural labor, the employee is owed minimum wage for the entire workweek, not just for the non-agricultural hours worked. As a reminder, farms need to keep complete records to demonstrate compliance with minimum wage law. Timesheets recording the date, hours worked, and tasks performed are essential, even if no minimum wage is owed. The records are necessary to show that minimum wage is not owed.

Farms may be able to satisfy their minimum wage obligations (in whole or in part) by providing housing, food, and other in-kind wages. Make sure to consult the "Farm Interns and Volunteers in New Hampshire Guide" for more information. Specific rules dictate how in kind wages are valued and additional laws apply when providing housing, especially.

Box 3: If we arrive here, then the hours worked by the agricultural laborer do not fall under minimum wage laws. Where a farm is under the 500 man day threshold last year and assigns only ag labor, the farm is allowed to pay less than the minimum wage. Now, that doesn't mean no rules apply to the wage payment relationship. Of course, the farm is obligated to pay the employee whatever the farmer said the employee would be paid for the work. If a farmer promises to pay \$3 per hour and then pays the employee just \$2 per hour, the farm could certainly be sued by the employee for breaking that promise. The farmer couldn't be sued under minimum wage laws, but laws covering our mutual agreements and

contracts still apply.

**R** If you do not plan to provide overtime, verify your eligibility.

Farms are exempt from paying overtime to farm employees under New Hampshire and federal law, regardless of the size of the farm. However, just as with minimum wage, the exemption only applies to agricultural labor. If the employee performs non-agricultural labor, the farm must pay overtime for all hours worked over 40 in that week. If the employee performs exclusively agricultural labor in a week, no overtime is owed for hours over 40.

## Conclusion

This checklist illustrates selected, immediate paperwork responsibilities of the farmer at the time of hiring. It also reveals that the farmer's responsibilities don't stop there—the law requires ongoing recordkeeping, withholding, remitting, and payment responsibilities. If a farm creates a clear, consistent system for hiring, tracking payroll and calculating taxes, employment paperwork burdens can be minimized. For farmers who don't enjoy creating these procedures and can afford modest fees, accountants and payroll service providers will be happy to handle this aspect of hiring. To find a local service provider, ask other farmers if they have a recommendation.

This resource guides farmers in the initial steps necessary to hire an employee; it does not discuss many other tax aspects of hiring. For example, employers must keep certain records and must provide specific documentation to employees at the end of the year. Payroll service providers and Small Business Administration offices can help, and the IRS provides information in many publications.

Farmers may want to read [IRS Publication 51: Agricultural Employer's Tax Guide](#), [Publication 15-B: Employer's Tax Guide to Fringe Benefits](#) and [Publication 225: Farmer's Tax Guide](#). Farmers working with employees under 18 years of age should also consult child labor laws, such as the [guide from the U.S. Department of Labor](#) and from [the New Hampshire Department of Labor](#).

For more checklists, flowcharts, webinars, and guides on farm law issues, including injury liability, volunteer workers, providing food and lodging, and much more, please see Farm Commons' website: [www.farmcommons.org](http://www.farmcommons.org).

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