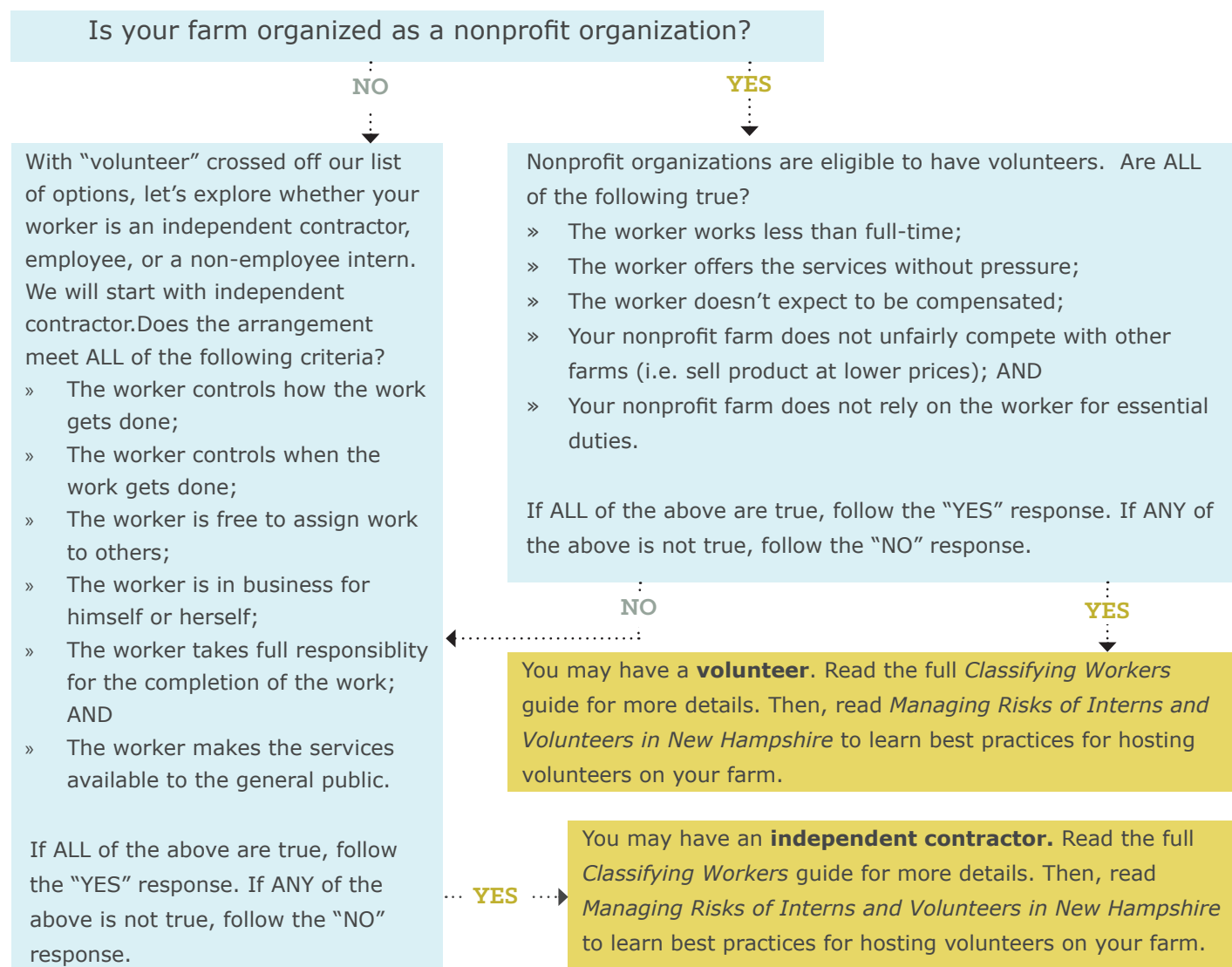


Classifying Workers in New Hampshire: The Short Version

What's really the difference between an employee and an intern or volunteer under the law? And, what is an independent contractor? How do I know what type of worker I have, legally speaking?

The legal classification of farm workers has many implications—whether the farmer must pay minimum wage, carry workers' compensation, withhold and pay taxes, and so on. Oftentimes, what farmers call interns, volunteers, independent contractors, and so on are in fact “employees” in the eyes of the law. Misclassification is common in many industries, including farming. Farmers can craft their worker arrangements to both suit their needs and fulfill their legal obligations when they know the rules.

The flowchart will lead the farmer to an initial determination of which of the four categories their worker(s) fall into. The full *Classifying Workers in New Hampshire* guide provides detailed explanations and criteria for each of the classifications.



At this point, we know the worker is not a volunteer and not an independent contractor. We have one more step: let's explore the complex issue of whether the worker is an intern.

Does the arrangement meet ALL of the following criteria for an **intern**?

- » The farm provides training that is similar to a classroom educational experience;
- » The farm gets no immediate advantage from the worker;
- » The farm has separate staff whose primary role is to run the internship program;
- » The position is not a trial period for a future paid position
- » The overall experience is for the benefit of the worker, not the farmer; AND
- » The worker understands that the position is unpaid or less than minimum wage.

YES

You may have an intern who does not fall under employment laws. We like to call this type of worker a **non-employee intern**.

Non-employee intern jobs generally do not have to follow employment laws such as minimum wage, and workers' compensation.

Read the *Classifying Workers* guide in full before following this pathway. There are many nuances to the non-employee intern rules.

Non-employee interns involve risks and legal obligations. To learn how to manage the risks of having non-employee interns, read *Managing Risks of Interns and Volunteers in New Hampshire*.

NO

Interns aren't right for my work

You likely have an **employee**. You can give the worker any title you wish (including "intern") but legally speaking, all employment laws including minimum wage, workers' compensation, and more must be followed.

Treating a worker like an employee and following employment laws is always a solid risk management strategy.

To understand basic employment laws at the time of hiring and whether they apply to your farm read the *Checklist for Hiring a Farm Employee in New Hampshire*.

NO,

But I'd still like to have interns

How risk-adverse you are? Do you want to play it absolutely safe and not risk having to pay back wages, payroll taxes, and penalties?

YES

NOT NECESSARILY

Some courts have recently taken a more lenient approach for interns. You may decide to take a risk and rely on this approach. Is the intern the "primary beneficiary" of the internship and is education the focus of the program?

NO

YES