

Managing Risks of Interns and Volunteers in New Hampshire: The short version

What should farmers know about interns?

Generally speaking, interns are employees under the law and employment laws must be followed. This means that if farmers are required to provide minimum wage, workers' compensation and the like for employees, the same must be provided for interns.

There are situations where interns are not considered employees. This area of law is in a state of flux. Risk adverse farmers should follow the federal Department of Labor's 6 criteria for when an intern is not an employee. Farmers more comfortable accepting the risk of losing a wage claim, enforcement action, or lawsuit might consider following the Black Swan test, named for the lawsuit that established it.

DOL's Six Criteria

Unless an internship meets ALL of the six criteria, the intern is an employee:

1. Training must be provided that is similar to a classroom educational experience
2. The farm must get no immediate advantage from the intern's presence
3. The farm must have person(s) whose primary role is to run the internship program
4. The internship may not be trial period for a future paid position
5. Experience is for the benefit of the intern, not the employer
6. The intern understands that the position is unpaid or paid at less than the minimum wage

Black Swan Test

Unless an internship meets ALL of the three criteria, the intern is an employee:

1. The intern and not the farmer must be the primary beneficiary of the internship program
2. Education must be the focus of the internship
3. Training should be tied to the intern's formal education program, such as through course credit, or if the type of training is similar to what an educational institution provides, such as clinical or hands-on training

Farmers who host interns that are employees should follow all employment laws, including minimum wage and workers' compensation. For more information, see the *Checklist for Hiring a Farm Employee in New Hampshire*.

Farmers who host non-employee interns don't necessarily need to follow employment laws. But they should understand other legal obligations and best practices including:

1. Keep records of hours worked, tasks performed, and training curriculum for the internship program
2. File reports and paperwork with affiliated schools or institutions that are providing course credit
3. Have the intern sign an agreement acknowledging they're a non-employee intern
4. Get insurance coverage for worker injuries

What should farmers know about volunteers?

Non-profit organizations: Volunteers are not considered employees and employment laws do not apply, generally speaking.

For-profit businesses: Volunteers are employees and all employment laws should be followed, generally speaking. Any person who is allowed to do the work of a for-profit business, regardless of whether the person is paid or not, is generally defined as an employee under the law. Employment laws such as minimum wage and workers' compensation likely apply.

For both non-profit and for-profit farms, **the more a volunteer position looks like employment, the more likely it is employment.** A position looks like employment when the individual:

- Keeps a regular schedule,
- Is directed in his or her tasks, and
- Is compensated for his or her labor in some way, among other factors.

For example, let's say that a mother and her child go to a farm to pick raspberries at their leisure and pick a few extra pints for the farmer to sell. The mother and child were not scheduled to work, didn't follow the farmer's direction in picking, and were not compensated so it is unlikely they are employees.

Both non-profit and for-profit farms need to manage the risks of a volunteer program. Core risk management strategies include the following.

1. **Insurance.** Volunteer positions can be hazardous. Farms should make sure they have coverage for injuries to volunteers, which may require either a workers' compensation policy or a liability policy depending on the volunteer program. Farmers should contact their insurance agent for more information.
2. **Minimum Wage.** If a farm provides any compensation to volunteers, the farm should consider providing at least the equivalent of minimum wage for all hours worked. Volunteer programs run the risk of falling under employment laws such as minimum wage. Complying with these laws helps manage that risk.

Make sure to read the complete *Managing Risks of Interns and Volunteers in New Hampshire* guide to more fully understand the complexity of intern and volunteer laws.