

APPENDIX A – from Law for Food

ABOUT LAW FOR FOOD: Law for Food, LLP, supports farmers, food businesses, and the sustainable economy by providing effective, affordable legal counsel on issues important to small businesses. With offices in Connecticut and Vermont, Law for Food is an innovative regional legal practice with a vision for New England's local economies.

THE SPECTER OF APPRENTICESHIPS ON THE FARM

Farmers offer time-honored apprenticeships, or on-farm “work-stay” opportunities, which are:

- a way to pass along important farming skills,
- provide farm labor that many farmers consider a primary reason for offering apprenticeships,
- dependent on the nature of the relationship between the farmer and apprentice, which is one of:
 - mutual respect and understanding,
 - a work-trade arrangement, where in a laborer may receive any combination of “alternative” compensation, for example a stipend, room and board, produce, the education and training received.

Apprenticeship programs bring with them a range of challenges, most of which may be addressed by clearly memorializing the arrangement in writing, establishing:

- Length or term of the apprenticeship,
- Room and board, cooking arrangements, and work schedule,
- Sustainable agricultural practices to be taught and expected to be carried out, along with the general goal or farmer's responsibilities, perhaps to provide a diversified perspective of farming, from infrastructure, marketing, and distribution, alongside production,
- Clear expectations of the internship, for example that long stretches of hard physical labor may and are likely to take place, and, finally,
- Compensation: be up front about wages and what the intern will be charged, if charged at all, for room, board, and education. The rates must reflect local rates, although education rates are flexible.

The same laws may apply to apprentices/ interns/ whatever you happen to call them as other employees. The most frequently used standard defines an employee as someone who follows the usual path of an employee and, for economic purposes, is dependent on the business served. For example, the federal DOL established a working definition of an intern, versus an employee; it's a 6-part test:

1. The training is similar to what would take place at a vocational school,
2. The training is for the benefit of the student/ apprentice/ intern/ etc.,
3. Trainees do not displace regular employees,
4. Business derives no immediate advantage from job description, terms dictating the internship,
5. Trainees are not necessarily entitled to a job at the end of the term, and
6. Business and trainees clearly understand the terms and conditions of the underlying agreement, for example that the trainees are not entitled to wages for the time spent in training.

The law generally views on-farm mentors as employers and their “apprentices” as employees, because the business usually derives an immediate benefit from the efforts of the intern. To avoid certain employment requirements, such as paying minimum wage, filling out an I-9, etc. businesses sometimes designate their labor as “independent contractors.” These too are for the most part negatively defined, this time by a 7-part “totality of the circumstances” test:

1. Not an integral part of the business – for farms, consider agricultural vs. non-agricultural labor,
2. Not a permanent, or long-term, relationship,

3. Not dependent on the business's facilities and equipment,
4. Not closely directed by the business,
5. Not shielded from liability and loss,
6. Not dependent on business for initiative, judgment, or foresight, and
7. Not part of the same business organization and operation as business.

Primarily, the federal and state laws and regulations that affect farm employers, and sometimes unexpectedly, small-farm mentors, include:

- Immigration Reform and Control Act ("IRCA"), which applies in some form or another to all employers and imposes penalties upon employers who knowingly hire or knowingly continue to employ individuals not authorized to work in the U.S;
- Fair Labor Standards Act ("FLSA"), federal and/ or state, which protects workers from exploitation and guarantees minimum wage, overtime pay, and sets recordkeeping requirements and child labor protections;
- Migrant and Seasonal Agricultural Worker Protection Act ("MSAWPA"), which governs disclosure requirements and employee housing, may apply if:
 - o Apprentice does not return to their permanent residence at night, and
 - o Apprentice works 500 or more Man-days, a day in which an employee performs at least one hour's worth of "agricultural labor," in any calendar quarter of the previous year. This applies also to FLSA;
 - o FLSA and MSAWPA share the 500 Man-day threshold; also, they share the definition of agricultural labor, which can generally be read to inform additional statutory workplace requirements and exemptions. Agricultural labor is defined by primary and secondary agricultural activities. In short,
 1. Primary: farming in all of its branches, from cultivation and tillage, to dairying and raising livestock or bees.
 2. Secondary: incident to or in conjunction with farming operation, performed by a farmer on a farm.
- Occupational Safety and Health Act ("OSHA"), which establishes a general duty to furnish employment safe from recognizable hazards. Exempt from inspection but not from the general duty usually includes, although it varies by state, agricultural operations with ten or fewer employees in the previous 12 months. Its basic requirements include:
 - o Housing requirements,
 - o Sanitation requirements, for example potable drinking water, clean hand-washing facilities and toilet,
 - o Protective measures for particular on the farm safety concerns.
- Workers' Compensation, which is administered at the state level, generally the State Department of Labor, covers workplace injuries and represents the exclusive remedy of covered employees. An exemption to agricultural employer exists for those whose annual aggregate payroll is less than \$10,000.
- Payroll Taxes, federal and state, which includes, on the federal end, at least, income tax withholding, Social Security, Medicare.
 - o The threshold for application of payroll taxes on agricultural employers is \$150 or more in cash wages to a single employee, or who pay \$2,500 or more in annual cash wages.
 - o Also included are federal-state unemployment tax, and, possibly, self-employment tax.
- State unemployment insurance applies generally, although it varies by state, to agricultural employers who employ 10 or more individuals in each of 20 calendar weeks of preceding or current year, or who paid cash wages of \$20,000 or more to agricultural employees.
- Federal Family Medical Leave Act ("FMLA"), which applies to employers with 50 or more employees for 20 or more weeks.

- Eligible employees include those employed by the same employer one year for an average of 30 hours per week.
- 12 weeks unpaid leave in 12 month period, including job protection and continuation of benefits, in case of
 - Childbirth or newborn care;
 - Adoption;
 - Serious health condition of employee or immediate family member;
 - Military service of immediate family member.

Regulatory compliance is expensive for small farms, regardless of whether the subject matter is employment, food safety, licensing, etc. Laws and regulations seem to be made specifically with economies of scale in mind. We need to figure out how to keep the costs of regulatory compliance down, without sacrificing cash in the form of penalties for non-compliance, or employee and consumer safety. With employment on the mind, what can we do in this area to minimize costs without breaking the law?

- More obviously, if impossible to legally designate the apprentice as something different from employee, keep below the exemptions.
 - Below 500 Man-hours, exempt from minimum wage, overtime and certain recordkeeping requirements.
 - Keep in mind, however, the importance of requirements, especially those that are good business practices in the first place, such as recordkeeping and, under certain circumstances, maintaining worker compensation coverage.
- Less obviously, businesses/ their owners need to be creative, honest, and forthright with the apprentices.
 - In reference to the beginning of this presentation, clear expectations are the foundation of a successful apprenticeship arrangement, as is the case with any contract: Put it in writing.
 - Lease Arrangements, as a potential solution to certain arrangements: only limited to the extent, so long the contract is within statutory parameters, as the ability to express, in writing, expectations.

APPENDIX B – from Full Belly Farm

Full Belly Farm Internship Wage Agreement

Full Belly Farm and I have come to a mutually agreed upon working arrangement which will include the following:

I will work 10 hours/day, 5 days a week. I will be paid minimum wage for these hours - (\$8.00/ hour).

I will be provided with Room and Board. Room and Board will be deducted from my monthly paycheck according to the schedule of the Industrial Welfare Commission. The rates will be Room= \$163.06/ month and Board=\$370.37/month. I understand that my federal taxes will be calculated on my gross wages minus room and board. Local taxes and State Unemployment taxes are NOT exempt and therefore will be calculated on Gross wages including room and board.

I understand that there are certain "house keeping" chores that are inherent in living at the farm that will not be part of my 10 hours/~~day~~ For example, making lunch, certain animal chores, yard work etc. I will keep a monthly time card and return a signed copy at the end of the month to the office before I am paid.

I understand that the hours I work will vary by season, as daily workload requires. I am aware that I am entitled to two 15- minute paid breaks. My one-hour lunch break will not be paid.

I understand that five months after my first day, I will be eligible for Full Belly Farm health insurance. I understand that this internship is an educational opportunity allowing me to gain a deeper understanding of agriculture and farming.

My salary includes 2 days of paid sick leave per month. These days will accrue (when not used) from month to month up to a cap of 6 days. Additional information about paid sick leave is available in the Full Belly orientation packet.

I am accepting this position and wage with free will.

Print Name: _____

Signature: _____ Date: _____

Farm Partner: _____ Date: _____

APPENDIX C – from the California State Grange

2010 Resolution of the California State Grange

<http://www.californiagrango.org/news/resolutions2010passed.html>

Title: Encouraging A New Generation Of Family Farmers

Proposed By: Little Lake #670

Whereas: The average age of American farmers is 55 and rising; and

Whereas: It is important to begin now to train the next generation of farmers, and many young people interested in farming do not have family members who can provide the experience necessary; and

Whereas: Many young people interested in farming have found volunteering or interning on small, family farms an ideal way to try out their interest while learning important skills; and

Whereas: Farmers who take on volunteers and interns not only benefit from the work of these individuals but contribute in untold ways to their education; and

Whereas: The State of California has recently begun a campaign of enforcement of state labor laws aimed at forcing farmers hosting volunteers and interns to comply in all particulars with those laws, imposing insupportable burdens on farmers who wish to host volunteers and interns and imposing thousands of dollars in fines on farms that are struggling for survival; therefore, be it

Resolved: That the California State Grange call upon the California Division of Labor Standards Enforcement to cease investigation and prosecution of farmers hosting volunteers and interns unless pursuant to a complaint; and be it further

Resolved: That the California State Grange petition the State Assembly to begin hearings to review California Labor Law in the light of recent legislation in Oregon and Washington aimed at accommodating the practice of volunteering and interning on small farms; and be it further

Resolved: That the California State Grange support a specific exclusion from existing law for farms grossing under \$100,000 annually who wish to host volunteers and/or interns.

APPENDIX D – from ATTRA and California FarmLink



Possible Models for Legal Farm Internship Programs

California FarmLink and NCAT-ATTRA are working on developing a list of options for farmers to come into compliance with labor laws and continue their internship programs. Here is a short summary of the options we have been researching, and some leads on how they can work. Please be aware that these are still ideas and none are guaranteed to happen as of yet (with the exception of #1).

1) Hire Apprentices as Employees

In this scenario, farmers have opted to hire their "interns" as employees, and pay them the state mandated \$8.00/hr minimum wage, federal taxes, state payroll taxes, workers compensation and unemployment taxes. However, farmers are allowed to deduct the value of meals and lodging from employees' wages BEFORE taxes. This is beneficial for both parties, as it reduces the total amount that employees are taxed on, and also the amount that the farmer ends up paying the employee. Farmers also come into compliance with OSHA health regulations, which included posting safety notices in accessible places.

2) Create an agricultural apprenticeship program through the CA Dept of Industrial Relations Division of Apprenticeship Standards.

Apprenticeship programs exist legally for the trade industries, such as carpenters, painters, plumbers, welders, etc. The California Department of Labor and Industrial Relations Division of Apprenticeship Standards (DAS) is working with a Marin farmer and the College of Marin to create an apprenticeship program for small and organic farms, which would be the first of its kind in the state and the country. Apprenticeships are technically exempt from minimum wage in California, but that needs to be justified to DAS, and are required to collaborate with an accredited educational institution (most often community colleges) for educational classroom work.

3) Lease some of your land to an aspiring farmer

In this scenario, a farmer leases a small plot of land to their apprentice to farm on their own. The apprentice is responsible for managing this plot as their own business, including paying for operating expenses, and filling out their own schedule F income tax form. The apprentice can sell their products to the farmer or they can sell it on their own. The farmer and apprentice will work out an educational or training program between themselves.

4) Farm School Approach

In this scenario, apprentices are students who pay tuition for a formal training program. However, all farm work is done following state and federal labor laws. Apprentices are paid minimum wage for the work they do, and pay tuition for the education they receive.

5) Employment Training Panel

The CA Employment Training Panel (ETP) is a state agency that provides financial assistance to California businesses to support customized worker training, and is funded by the Employment Training Tax paid by California employers. Growers and institutions are reimbursed for wages paid for training hours. An established curriculum must be followed and hours spent on different subject matters documented. A "trainer" must be present during documented hours, which can include a manager, supervisor or crew leader. There is a minimum 90-day training period. CA FarmLink is researching more on this model.

<p style="text-align: center;">Summary of CA Employment Training Panel – How We Might Use This Program to Support Farm Apprenticeships</p> <p style="text-align: center;">(see http://www.etp.ca.gov/ for more information)</p>	 The logo for California Farmlink is circular. It features a sun in the upper right, a landscape with a field and a tree in the center, and a hand holding a tool in the lower right. The word "CALIFORNIA" is written along the top inner edge, and "FARMLINK" is written along the bottom inner edge.
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The CA Employment Training Panel is a state agency that provides financial assistance to California businesses to support customized worker training. ETP's purpose is

- to provide workers with secure jobs that pay good wages and have opportunities for advancement
- assist employers in competing
- help employers offset the costs of job skills training and support investment in training among employers.

ETP prioritizes small businesses and employers in high unemployment areas of the State and is funded by the Employment Training Tax paid by California employers. ETP is an eight member panel, seven of whom are appointed by the governor.

FarmLink discussed this program with an ETP analyst in Foster City, who thought that small farms could likely benefit from this program. We hope that this program could help provide apprentices from CA farms with extra capital to start their own businesses.

Applicants can be Small Businesses (including an individual farmer) and eligible institutions which include, Groups of employers, trade associations, universities, Community Colleges, Adult Schools, and certified training agencies. Most of the money goes to these kind of groups. Applications for the new fiscal year will be accepted starting in July. It takes about 2 months for a Training Agreement to be set up with the ETP, before training can begin. Growers and institutions are reimbursed for wages paid for training hours. Involving an institution may be advantageous, as the institution may be able to take care of paperwork and front the training funds to the grower.

An established curriculum must be followed and hours spent on different subject matters documented. A "trainer" must be present during documented hours, which can include a manager, supervisor or crew leader. There is a minimum 90-day training period. ETP reimburses at wage levels that are higher than the state minimum wage. Funds must be reimbursed for employees who don't finish the training.

There is a Seasonal Worker program piloted in 2007 for agricultural employees. It requires that trainees remain employed with the farm for 500 hours after the training ends.

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Farm School Idea – Addressing the Legal Challenges of On Farm Intern Relations

Issues – why addressing the need for legal on-farm internships is critical

- there is a critical need for farm training opportunities
- farmers need access to renewable sources of committed workers
- internships have become the most direct and significant way to "train" new farmers especially in relation to direct farm marketing and organic production
- there is a need to increase and standardize the "education" content of internships to make them more valuable for the interns and limit the "exploitive" potential
- farmers need to comply with state and federal labor laws concerning: record keeping, registering workers, wage and hours, withholding, workers compensation, and housing rules
- there is an opportunity to create a new income stream for farmers in recognition of the training provided
- public opportunities for intern training, such as the UC Santa Cruz farm, are important models but limited in availability
- avoiding legal risks and costs from the threat of labor investigations and enforcement create a need for a responsible way to structure internships
- increasing the number of internship relations available and their diversity can help both the interns and the farm community address labor and training issues.

Answer – a "farm school" system in which:

- the intern is "employed" and paid according to state law, for the majority of the week, e.g. 32 hours,
- the intern is also a "student" on the farm and is paying some form of tuition or payment in exchange for the education, training and experience, e.g. 8 hours of class each week and market experience,
- the farmer develops a "curriculum" and plan for the education and internship taking the student through the range of activities and experiences on the farm,
- the farmer uses a portion of the income from providing the training and education to comply with labor laws and pay required wages,
- the parties enter into an employment and education contract setting out the plan for the labor and for the education and training,
- the education and training may in part be provided by an affiliated non-profit organization or nearby educational institution.

Legal Issues to Address

- State labor laws - what is required as to minimum wages, employee registration, record keeping and withholding,
- State regulation or guidelines relating to "educational" activities - any registration or licensing requirements for the farms to do this, e.g. cooking classes analogy;
- Development of the employment and education contract - detailing relationship, expectations, responsibilities, allocation of time between work and study,
- Land use regulation – application of local zoning laws and treatment of the farms as businesses if they become schools

- Business creation and registration – does the addition of the educational activity create any new business registration requirements, or does it need to be created as separate business in the farms structure
- Insurance issues – insurance may come into play both in relation to the employees/students and for the business,
- Housing issues – if the relationship includes some form of housing for the interns, issues of compliance with housing codes and the timing and nature of the payment for housing come into play,
- Relation between the farm and any related educational institution or non-profit involved with the internship, as to liability for accidents, provision of the education, insuring compliance with legal requirements, [Need to examine how ATTRA and others who operate "intern" location and matching programs address the issues of what is their liability of responsibility if something goes wrong.