

Farmers' Guide to Farm Employees

Federal and Minnesota Labor and Employment Law for Small-Scale Family Farms

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Farmers' Legal Action Group, Inc.

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Farmers' Legal Action Group (FLAG) is proud to be publishing the *Farmers' Guide to Farm Employees: Federal and Minnesota Labor and Employment Law for Small-Scale Family Farms*, a comprehensive resource for small-scale family farm operations.

As always with FLAG publications, this guide represents a true collaborative effort. The guide was written by FLAG attorneys Amanda N. Heyman and Jennifer Jambor-Delgado and edited by FLAG Program Director Lynn A. Hayes and Senior Staff Attorney Karen R. Krub. Staff Attorney Hli Xyooj provided invaluable insights, advised on cultural issues, and helped shaped the guide's content. Rita Gorman Capes copyedited and formatted the guide, and Debby Erickson designed the cover and provided publishing support. FLAG law clerks Jennifer Kalyuzhny, Jared Rudolph, and Brian Jacobson provided helpful research assistance, and Kelliann Blazek cite-checked the guide. Ly Vang of the Association for the Advancement of Hmong Women in Minnesota provided wise counsel based on her many years of working with Hmong American and other immigrant farmers.

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We are awed and inspired by the farm families—many of whom bring their rich agrarian traditions here from all reaches of the globe—who provide the arduous labor needed to run their small-scale farm operations. We hope this guide will help these families successfully navigate complicated labor and employment laws, allowing their operations to grow and nourish our communities with the fruits of their labor.

Susan E. Stokes
Executive Director and Attorney at Law

Farmers' Guide to Farm Employees: Federal and Minnesota Labor and Employment Law for Small-Scale Family Farmers can be downloaded for no charge from FLAG's website at www.flaginc.org. Hard copies can be purchased online through FLAG's website or by contacting FLAG by telephone at 651-223-5400; by fax at 651-223-5335; by mail at 360 North Robert Street, Suite 500, Saint Paul, MN 55101; or by email at lawyers@flaginc.org.

Quick Q & A

Figuring out which labor and employment laws apply to your workers can be difficult. Both the federal and Minnesota state laws have special exceptions that may mean you do not have to comply with a particular law. Below is a general overview of how these laws and exceptions all fit together and are likely to apply to family-run specialty crop (fruit and vegetable) operations that gross less than \$500,000 per year. This overview attempts to answer some of the main questions farmers may have about their responsibilities as employers.

Note, however, that this overview gives a very condensed synopsis of complicated laws. For a more complete description, you will need to read the remainder of this guide.

WHAT AM I REQUIRED TO PAY MY FAMILY MEMBERS AND FRIENDS WHO WORK ON MY FARM?

The issue of the amount of money employees must be paid is covered by a federal law called the Fair Labor Standards Act (FLSA) and by a similar state law called the Minnesota Fair Labor Standards Act (MFLSA). These two laws set the minimum hourly pay rate that employees must be paid.

There are three possible pay rates that might apply to your farming operation: the federal rate of \$7.25 per hour, the state rate of \$5.25 per hour, and a youth training rate of \$4.90 per hour. **The state hourly rate of \$5.25 and the \$4.90 hourly training rate are the rates most likely to apply to the farm operations this guide is geared toward.**

The federal minimum wage requirements do not apply to a farmer's immediate family. Under the FLSA, "immediate family" includes **only**:

- legal spouse,
- children (biological, adopted, step, foster), and
- parents (biological, step, adopted, foster).

To be very clear, immediate family does NOT include brothers, sisters, aunts, uncles, grandparents, grandchildren, nieces, nephews, cousins, in-laws, or any other extended family members. These family members are NOT exempt from the FLSA.

The state minimum wage rates DO apply to immediate family. This means that farmers must generally pay immediate family members who work on their farm the state minimum wage of \$5.25 per hour.

Summary — Paying Family Members on the Farm:

Federal minimum wage laws do NOT apply to a farmer's immediate family. Under this law, "immediate family" includes the farmer's parents, children, and legal spouse. This means that you are NOT REQUIRED to pay your parents, children, and legal spouse the federal minimum wage of \$7.25 per hour.

Any other family members (for example, cousins, nephews and nieces, brothers or sisters) or friends working for you on your farm must generally be paid the federal minimum wage of \$7.25 per hour unless you qualify for an exemption called the "**500 Man-Day Exemption.**"

- Farmers who employ the equivalent of seven or fewer employees (outside of immediate family) working five days a week should generally qualify for this exemption if their employees ONLY do agricultural work. This exemption is described in Chapter 4 of this guide, and a worksheet is provided in Appendix B.
- Agricultural work generally includes hands-on work related to planting, maintaining, and harvesting crops, and raising animals. It also generally includes packing produce and loading the vehicle used to deliver the produce, deliveries to a market or an off-farm community-supported agriculture (CSA) distribution drop point, and on-farm sales of the farmer's products such as at a roadside stand located on your farm. Office work and maintenance of farm equipment may also be considered agricultural work, provided these duties are not a worker's primary duties.
- Farmers should generally assume that off-farm sales by workers—for example, at the farmers' market—do not fit within the definition of agricultural work. Processing, packaging, or delivery of another farmer's crops generally does not fall within

the definition of agriculture either. You may wish to have immediate family members do these jobs so that you can preserve the 500 man-day exemption for your other workers (both extended family and non-family workers).

Farmers should plan to pay all workers, including immediate family, at least the state minimum wage of \$5.25 per hour.

Workers under the age of 20 may be paid the youth training rate of \$4.90 per hour for the first 90 days they work on your farm.

See Chapters 3, 4, and 5 of the guide for more detailed information.

DO HEALTH AND SAFETY LAWS APPLY TO MY FARMING OPERATION?

Workplace safety laws are set by a federal law called the Occupational Health and Safety Act (OSHA) and by a similar state law called the Minnesota Occupational Health and Safety Act (Minnesota OSHA).

Most farm businesses with a small number of employees will be exempt from the federal health and safety laws. Specifically, **if you had ten or fewer employees at all times during the prior year, you generally do not have to comply with the federal health and safety laws.** You should not count the members of your immediate family (parents, children, legal spouse) as employees when you are determining the number of employees you had.

- If you have workers living on your farm, the above exemption might not apply, and you may be expected to follow the federal workplace safety rules. These rules are described in Chapter 7 of this guide.

Farmers who are required to follow the federal workplace safety rules should note that these rules do NOT apply to the farmer's immediate family.

All farmers must follow state safety laws (Minnesota OSHA laws), even for immediate family. Generally speaking, the Minnesota OSHA program requires farmers to:

- keep the workplace free from recognized hazards;
- develop and follow a written safety plan;
- follow state OSHA standards and labeling requirements;

- be subject to inspection;
- make available information dealing with injury reports, general safety records, and other required records; and
- provide employees with an initial training and annual refresher training regarding harmful physical agents, infectious agents, and hazardous substances.

More detail on state safety laws can be found in Chapter 7 of this guide.

DO I HAVE TO PURCHASE A WORKERS' COMPENSATION POLICY?

Farmers do NOT need to obtain workers' compensation coverage for their legal spouse, parents, and children. You DO need to obtain coverage for other family members working on your farm and any other employees, unless your farm qualifies as a "family farm."

The workers' compensation laws have a specific definition of "family farm." To fit within this definition, you must be able to show either:

- (1) That, adding up all worker wages, your farm paid total cash wages of less than \$8,000 to all non-family labor during the previous calendar year; or
- (2) That, adding up all worker wages, your farm paid total cash wages of less than the average state annual wage (currently, approximately \$26,000) to all non-family labor during the previous calendar year, **and** currently has \$300,000 liability and \$5,000 medical insurance coverage.

See Chapter 8 of the guide for more detailed information.

AM I SUPPOSED TO FOLLOW EMPLOYMENT TAX LAWS FOR MEMBERS OF MY FAMILY WHO ARE PAID TO WORK ON MY FARM?

Farmers have several federal and state tax withholding, reporting, and depositing responsibilities related to farm workers, including for family members. Generally speaking, employers are required to withhold portions of workers' salaries and deposit the funds with the federal government for the federal Medicare and Social Security programs, as well as to meet workers' federal income tax obligations. Employers must

also withhold portions of workers' salaries and deposit the funds with the state government to meet workers' state income tax obligations.

A farmer's children under the age of 18 are exempt from:

- Medicare tax employee withholding and employer contribution,
- Social Security tax employee withholding and employer contribution,
- Federal income tax withholding, and
- Minnesota state income tax withholding.

This exemption applies only to the children under the age of 18 themselves, meaning that farmers are NOT exempt from and must comply with the employment tax responsibilities for their other farm workers, including immediate family members age 18 and over.

More detail on employment-related tax responsibilities can be found in Chapters 9 and 12, and Appendix D of this guide.

AM I REQUIRED TO KEEP EMPLOYMENT RECORDS?

All farmers must keep some employment records, even for immediate family. The types of records you have to keep depend in part on the number of employees you have.

Farmers should generally keep the following information about each employee, including immediate family members:

- **Hiring Records** (for example, Federal Form I-9, Minnesota New Hire Report, Proof of Age for Minors), and income tax withholding forms (such as Federal Form W-4).
- **Hours and Pay Records** (for example, employee name, address, Social Security number, occupation, rate of pay, deductions, wages, timesheets, total hours worked, and meals accepted).

Farmers may also be required to keep or submit to the state or federal government: payroll tax records, unemployment insurance records, and workers' compensation records.

It's best to keep employee records for at least five years. They can be handwritten and saved in a file or can be typed into a computer and saved there.

If representatives of the state or federal government ask to see your employment records, you are required to provide the requested records to them.

See Chapter 12 of the guide for more detailed information.

WHAT HAPPENS IF I DO NOT COMPLY WITH THE FEDERAL OR STATE LAWS?

If you do not comply with labor and employment laws that apply to your farm, you may be fined by the state and federal government agencies that enforce these laws. Fines for violating labor and employment laws can quickly reach thousands of dollars.

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- 4 How to Use This Guide
- 5 Example Family Farm Employment Scenario:
The Vang Family Farm Operation

CHAPTER 1

Introduction and How to Use This Guide

This guide is intended for family-run specialty crop (fruit and vegetable) operations that gross less than \$500,000 per year and rely extensively on family labor. Many minority and immigrant farming families with deep agricultural traditions fall into this category.

Due to close family relationships, farms that rely extensively on family labor typically do not stop to consider whether there could be legal obligations that affect the family working arrangement. Most critically, many farmers are not aware that federal and state laws often require family members to be treated just like any other non-family farm worker. This means that farmers who have family help on the farm are likely to be considered employers who have legal responsibilities.

A. All Farm Employers Have Legal Responsibilities

The position of “employer” carries significant legal responsibilities. Those responsibilities include compliance with federal and state labor and employment laws. Farm employers must be prepared to comply with these laws or risk significant penalties.

Failure to comply with labor and employment laws may open a farmer up to being cited and fined by the state and federal government agencies that enforce these laws. Fines for violating labor and employment laws can quickly reach thousands of dollars.

IMPORTANT NOTE:

Farmers whose operations are not small-scale, family-run farm operations that gross less than \$500,000 per year and rely extensively on family labor should not rely on the information in this guide because the guide may omit important information related to your operation.

Even if your farm operation meets the description given above, this guide is not meant to be a substitute for legal advice from an attorney licensed to practice in your state.

B. How to Use This Guide

This guide is intended to introduce you to federal and state labor and employment laws and give you an idea of how they might apply to your farming operation. Generally speaking, the federal laws are enforced by federal agencies and the state laws are enforced by Minnesota state agencies. The role these agencies play and how they fit into the structure of our government in the United States are described in Appendix E of this guide.

The federal and state laws discussed in this guide cover topics such as:

- minimum wage and overtime laws;
- labor standards specific to agricultural workers;
- child labor laws;
- workplace safety laws;
- mandatory workers' compensation insurance;
- employment (payroll) tax and withholding laws;
- anti-discrimination laws;
- workplace posting requirements; and
- recordkeeping requirements.

Although these laws are often very complex, the guide can give you an idea about which laws are likely to apply to your farming operation and each of the individuals who work on your farm. However, this guide does not discuss every law that affects agricultural employers. **Farmers should not rely on this guide to determine whether a farm operation's employment relationships are in full compliance with all applicable laws.** Farmers with questions about compliance with labor and employment laws should refer to the resources listed in the appendices to this guide and may also wish to contact the agencies responsible for enforcing these laws.

The federal laws discussed in this guide apply to labor and employment in every state. **State laws discussed in this guide are the laws of Minnesota.** Farmers outside Minnesota will need to consult an attorney licensed in their state, local regulatory agencies, or other resources to determine the state-specific requirements applicable to farmers' relationships with individuals who perform work on their farms.

Finally, in some places, the guide will refer you to other resources that can help you arrive at more concrete answers to the on-the-ground questions that may occur regarding how to treat your workers in compliance with federal and state law. Again, this guide is not a substitute for obtaining advice on your particular farm situation from an attorney licensed to practice in your state.

C. Example Family Farm Employment Scenario

The fictitious family farm operation described below (the Vang Family Farm operation) was created to illustrate the labor and employment complexities associated with a small-scale, family-run specialty crop (fruit and vegetable) farm operation that grosses less than \$500,000 per year and relies extensively on family labor.

Where appropriate, this guide will use the Vang Family Farm operation to help illustrate key legal concepts. Additionally, Appendix A contains a sample Exemption Worksheet filled in as appropriate for the Vang operation. See page 1-8 for an informational graphic showing the members of the operation and the family relationships involved.

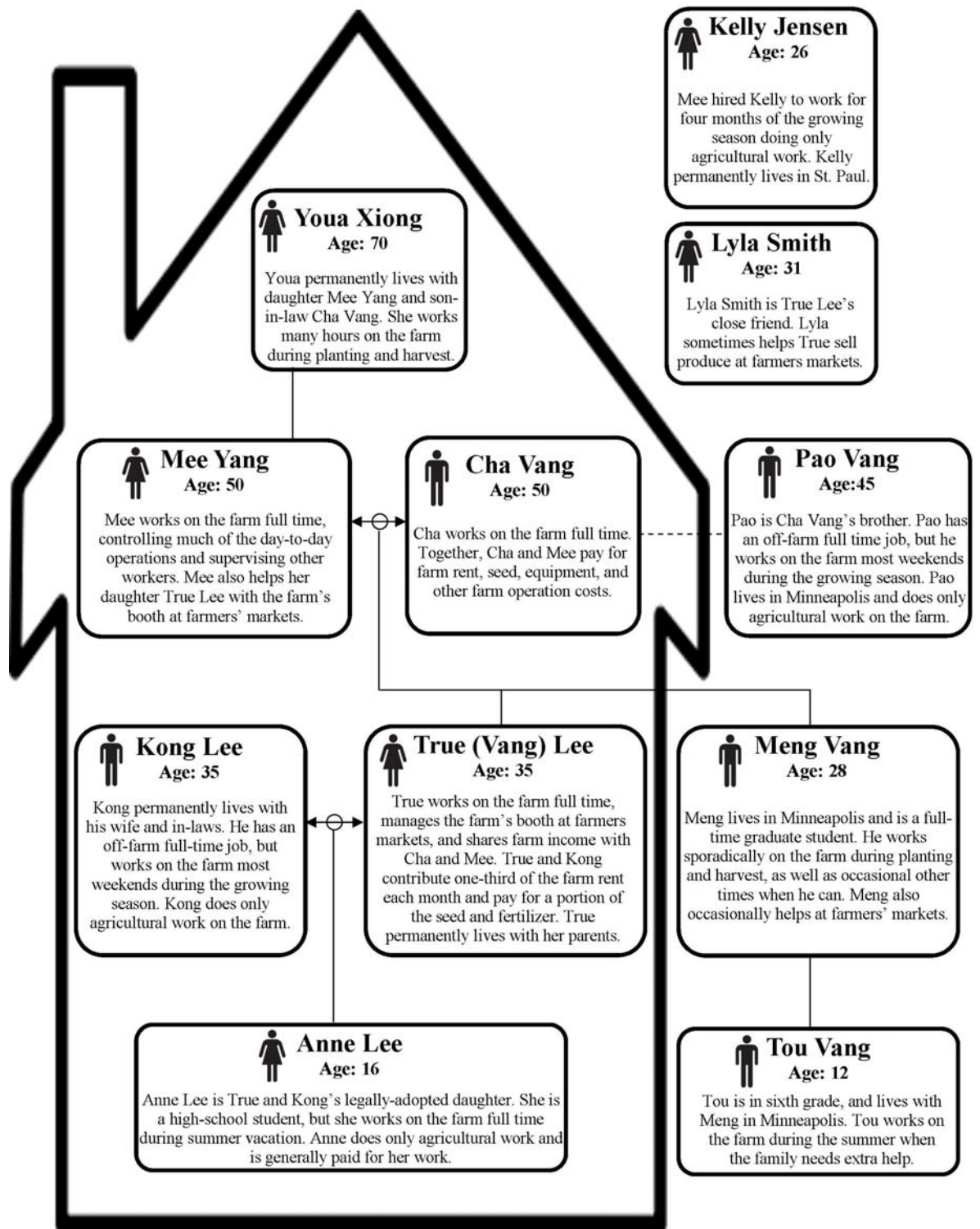
1. Example Farm Family: The Vang Family Farm Operation

The Vang Family Farm operation grows vegetables in Dakota County, Minnesota. The Vang family does not own farm land; they rent 30 acres near Farmington, Minnesota. The farm lease is in Mee Yang's name. Mee shares farm income with her husband Cha Vang and her daughter True (Vang) Lee. Most of the farm's Farm Service Agency paperwork is in Mee Yang's name, but some paperwork is in her daughter True Lee's name. On average, the farm generates about \$35,000 in gross income per year.

Mee Yang and her husband Cha Vang own a home in Eagan, Minnesota. They share the home with True Lee, True's husband Kong Lee, and True's daughter Anne Lee. Mee Yang's mother, Youa Xiong, also lives with the family. The other members of the farm operation shown in the graphic on the next page live elsewhere.

The family tree graphic on the next page illustrates the family and employment relationships within the Vang Family Farm operation. See Appendix A for the Vang Family Example Exemption Worksheet, which shows how each worker in the operation should be treated under various federal and state labor and employment laws discussed in this guide.

The members of the Vang Family Farm operation are:



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Do I Have to Treat My Family & Friends Like Employees?

- 6 Who Is an “Employer” on Your Farm?
- 8 Family Exemptions From Labor and Employment Laws
- 12 Individual Worker Exemptions Available to Family,
Friends, and Other Workers (Volunteers, Independent
Contractors, and Trainees)

CHAPTER 2

Do I Have to Treat My Family and Friends Like Employees If They Are Working on My Farm?

Farmers often incorrectly assume that family members and/or family friends who perform work on their farm do not need to be treated like employees. In fact, in many situations, family and friends who perform farm work must be paid and treated like regular farm employees. Still, many farmers mistakenly believe they can legally compensate family and friends with gratitude or a meal. This belief is often incorrect, and can put farmers in danger of being punished with significant government-imposed fines.¹

This means that a typical farm worker—even a family member—must generally be paid like any other farm employee.

It also means that farmers must follow workplace laws that govern the employer-employee relationship, such as health and safety, workers' compensation, recordkeeping, and tax laws.

This chapter explains how family, friends, and certain other individuals can sometimes qualify for very specific exemptions from federal and state employment laws. Many of the laws discussed in this guide provide an exemption or allow for less severe requirements if farmers and/or their workers meet specific criteria. The term “exemption” can mean either that the **employer** (the farmer) is not required to comply with that law for any of the employer's workers, or that a particular **employee** (farm worker) is not covered by that law. The exemptions in this chapter apply to individual employees. Exemptions for farm employers are discussed in Chapter 4.

Individual worker exemptions typically depend on either:

- (1) the worker's family relationship to the farm employer; or
- (2) the amount of time a worker spends working on the farm.

Remember that a particular worker—like a farmer's mother—may be exempt under some laws but not exempt from other laws. That means you have to check how each person who does work on your farm must be treated under **all** of the relevant state and federal laws. This is not necessarily a simple task. However, this guide provides a worksheet to help make this process somewhat easier. See the Exemption Worksheet in Appendix A.

How to Think About Family and Friends Who Work on Your Farm

Family Members: A complex web of federal and state laws governs whether family members must be treated like regular employees. Sometimes, certain immediate family members (like parents, children, and legal spouse) might not count as employees under some laws, but still must be treated like employees under other laws. Most of the time, other family members (like brothers, sisters, uncles, aunts, cousins, nieces, nephews, grandchildren, grandparents, and in-laws) must be treated like regular employees.

Friends: There are no exemptions specifically for "friends."

Other categories: Both family and friends (and others) could potentially qualify as volunteers, independent contractors, or trainees. Individuals who fall into these categories are not considered employees. Friends and family must meet specific requirements to qualify for these categories; farmers cannot just claim that a friend is a volunteer or that a family member is an independent contractor. See pages 2-12 – 2-15 for more information about who can qualify as a volunteer, independent contractor, or trainee.

The Vang Family Example Exemption Worksheet in Appendix A shows how a family farm operation could use the Exemption Worksheet to help determine how each farm worker must be treated under the various federal and state employment laws discussed in this guide.

CAUTION:

Note that labor and employment laws are extremely complex. This guide attempts to explain some of the ways the most relevant laws apply to farms that rely extensively on family labor. However, it is often difficult (even for experienced lawyers) to arrive at a clear answer about how farm workers should be treated under federal and state laws.

If you cannot determine how to treat a particular worker under a certain law, you can: (1) contact Farmers' Legal Action Group, Inc. (FLAG); (2) contact the appropriate federal or state agency; or (3) contact a labor and employment attorney who has experience working with employers, and is familiar with how labor and employment laws apply to farm employers. You can also refer to FLAG's *Farmers' Guide to Farm Internships: Federal and Minnesota Labor and Employment Law*, which contains more detailed information about certain labor and employment laws.

Also, farmers should be aware that if a farmer-claimed exemption for a particular worker is challenged by the state or federal agency enforcing the law, the farmer as employer will bear the burden of proving that the exemption applies. Farmers will generally need written records to prove that an exemption applies. See Chapter 12 for more information about required recordkeeping for farm employers.

A. Who Is an “Employer” on Your Farm?

To determine who qualifies as immediate family and is therefore exempt from federal and state labor laws that exclude a farmer’s family members from coverage, you first need to know which person or persons are the “employer.”

1. A Farm Can Have More Than One Employer

Both federal and state laws define “employer” broadly.² And courts have repeatedly stated that the term employer should be interpreted expansively.³

Most important for the farmers this guide is intended for, the broad legal interpretation of “employer” means that more than one person in a farm operation can qualify as an “employer.”⁴

If you run the farm together with members of your family, those people might be considered your fellow employers and not employees. This means that legal requirements for employees would not apply to you and your co-employers. Under certain laws, your immediate family and their immediate family would not be considered employees either.

2. Reality of Day-to-Day Operations Determines Who Is an Employer

The agencies that enforce labor and employment laws and the courts look at the day-to-day reality of the farming operation to determine if people are running a business together. To determine that people are in fact running a business together these agencies will generally require: (1) proof of a shared financial stake in the business—for example, a farmer and members of his family contribute money for seeds, equipment, or for renting the land where they farm, and all share the profits; (2) authority to make decisions about the business, including supervising, hiring and firing workers; and (3) shared responsibility for the daily operation of the farm business.⁵

In a family farm situation, the individuals who have legal ownership of the farm operation are often the farm employers. **Note that legal ownership of a farm operation does not necessarily mean the farmer owns the land being farmed.** Farmers can own a farm operation without owning land, for example, by paying for and farming

rented land together. Evidence of legal ownership of a farm operation could also include the name on farm business documents, such as a farmers' market application or tax documents (like a Schedule F).

Examples of farm employers could be: a married couple; a mother, daughter, and son; two unrelated partners; a single owner, or some other combination of employers.

Who Is an “Employer” in the Vang Family Farm Operation?

In the Vang family farm operation (see Chapter 1, pages 1-6 – 1-8), Mee Yang is clearly an employer. The farm lease is in Mee's name, and Mee works full time on the farm managing the day-to-day operations, oversees workers, and hires employees (like Kelly Jensen). She also has a significant financial stake in the farm.

Cha Vang is likely also an employer under the law, because (jointly with Mee) he has a large financial stake in the farm operation—contributing money for rent, seed and other inputs, and farm equipment. He also works full time on the farm.

Additionally, True Lee likely qualifies as an employer. She works full time on the farm, manages a significant part of the farm operation (the farmers' market booth), and has a financial stake in the farm (contributing one-third of the rent, and money for seed and fertilizer).

Kong Lee is likely not an employer, because although he has some financial stake in the operation, he does not manage any farm operations and only works on the farm on weekends.

Farmers should note that allowing another individual who works on the farm to have employer-like responsibilities like those listed above could allow that individual to qualify as an employer, potentially allowing that individual's immediate family members (their parents, legal spouse, and children) to take advantage of family exemptions from labor and employment laws.

Although the laws regarding immediate family exemptions do not specifically address **multiple** farm employers taking immediate family member exemptions, it appears that the law allows multiple farm employers to each exempt their own immediate family members (as shown in the box below). We spoke with representatives of the federal U.S. Department of Labor (DOL) in Minnesota who confirmed that because the applicable regulation does not limit the exemption to a “sole” farm employer, multiple farm employers should be able to take immediate family exemptions.⁶

Employer Status Affects Immediate Family Exemptions in the Vang Family Farm Operation

Employer Mee Yang Immediate Family Workers:

Youa Xiong (parent), Meng Vang (child)

Employer Cha Vang Immediate Family Workers:

Meng Vang (child)

Employer True Lee Immediate Family Workers:

Kong Lee (legal spouse), Anne Lee (child)

If Mee Yang was the only farm employer, immediate family exemptions would be limited to her mother Youa Xiong and her son Meng Vang.

Cha Vang's employer status does not add any additional exemptions because he can only claim his son with Mee Yang, Meng Vang.

However, **because True Lee also qualifies as an employer** (instead of an employee), two additional workers—her legal spouse Kong Lee and her adopted daughter Anne Lee—would likely qualify for the family exemptions discussed in the next section, potentially saving money for the Vang operation.

B. Family Exemptions From Labor and Employment Laws

The following are descriptions of the family-related individual exemptions under relevant federal and state labor and employment laws. All of the

family exemptions for individual workers depend on the worker's family relationship to a farm employer.

1. FLSA and MFLSA (Federal and State Minimum Wage and Overtime)

Under the federal Fair Labor Standards Act (FLSA), which sets federal minimum wage and overtime standards, a farm employer's "immediate family" members are exempt.

Under the FLSA, "immediate family" includes **only the following**:

- legal spouse,
- children (biological, adopted, step, foster), and
- parents (biological, step, adopted, foster).

To be very clear, immediate family does NOT include brothers, sisters, aunts, uncles, grandparents, grandchildren, nieces, nephews, cousins, in-laws, or any other extended family members. These family members are NOT exempt from the FLSA.

Immediate Family Exemptions Do Not Cover Everyone in the Vang Family Farm Operation

Pao Vang, brother to farm operation employer Cha Vang and uncle to farm operation employer True Lee, does NOT qualify for a family exemption from the FLSA.

Additionally, Tou Vang, grandson to Mee Yang and Cha Vang, and nephew to True Lee, does NOT qualify for a family exemption from the FLSA.

Unless Pao Vang and Tou Vang qualify for a different federal exemption, they must be paid the federal minimum wage and federal overtime for the hours they work on the farm.

There are no family exemptions under the Minnesota Fair Labor Standards Act (MFLSA), which sets the state minimum wage and overtime standards. **That means farmers must pay at least the**

state minimum wage and overtime to all family member employees.

2. OSHA and Minnesota OSHA (Federal and State Workplace Safety)

Under federal OSHA laws, which set the federal workplace safety and health standards, the farm employer's "immediate family" members are exempt. However, the OSHA laws do not define "immediate family."

Nevertheless, the FLSA definition of immediate family is a helpful guideline, and farmers are most likely safe considering their legal spouse, parents, and children exempt from OSHA.⁷

There are no family exemptions under Minnesota OSHA, which sets the state workplace safety and health standards. That means farmers must follow state workplace safety and health laws with respect to all family member employees.

3. Federal Social Security and Medicare

The rules for withholding and paying Social Security and Medicare taxes exempt farmers' children who are under 18 years old.

See Chapter 9 for more information about farmers' responsibilities related to Social Security and Medicare.

4. Federal and State Income Tax Withholding

The rules for withholding federal income taxes from an employee's paycheck exempt farmers' children who are under 18 years old. The rules for withholding state income taxes from an employee's paycheck likewise exempt farmers' children who are under 18 years old.

See Chapter 9 for more information about farmers' responsibilities related to federal and state income tax withholding.

5. Federal and State Unemployment Taxes

There is no exemption for family members under the federal unemployment tax law (FUTA). Farmers must pay federal unemployment tax for all family member employees unless the federal unemployment requirements are inapplicable to the entire farm operation, as discussed in Chapter 9.⁸

The rules requiring farmers to pay Minnesota unemployment tax exempt farmers from paying the tax on behalf of children under age 16. This exemption applies to all children younger than 16 years of age, not just farm employers' children under age 16.

The Minnesota state unemployment tax law also exempts family farm stockholders/officers of a family farm corporation. Family farm corporation members must be within the third degree of kindred (by blood). Family relationships within the third degree of kindred include: parents and children (first degree of kindred); grandparents, grandchildren, brothers, and sisters (second degree of kindred); uncles, aunts, nephews, nieces, great-grandchildren, and great-grandparents (third degree of kindred). Family relationships by marriage or family relationships with other non-blood-related individuals (like a close family friend that family members consider an “aunt”) are not included in the legal definition of kindred. Also, neither cousins nor spouses who are not legally married are included in the legal definition of kindred.

Minnesota state unemployment requirements may also be inapplicable to entire farm operations. See Chapter 9 for more information about farmers' obligations to pay federal and state unemployment taxes.

6. Minnesota Workers' Compensation Insurance

The rules requiring farmers to obtain workers' compensation insurance to cover injuries incurred on the job exempt farmers from obtaining workers' compensation insurance for their legal spouse, parents, and children.

See Chapter 8 for more information about farmers' responsibilities related to workers' compensation insurance.

Summary of Federal and State Family Employment Exemptions

Law	Exemption
FLSA (federal minimum wage, overtime) OSHA (safety) Minnesota Workers' Compensation	Exemption for immediate family, meaning legal spouse, parents, and children.

Summary of Federal and State Family Employment Exemptions

MFLSA (state minimum wage, overtime) Minnesota OSHA (safety)	NO FAMILY EXEMPTION.
Social Security Medicare Federal Income Tax Minnesota Income Tax	Exemption for farmers' children under age 18.
Federal Unemployment Tax	No exemption. BUT family members are not counted when determining if a farmer paid the amount of wages that triggers the requirement to pay federal unemployment tax.
Minnesota Unemployment Tax	Exemption for all children under age 16, and officers/stockholders of a family farm corporation within a third degree of kindred.

C. Individual Worker Exemptions Available to Family, Friends, and Other Workers (Volunteers, Independent Contractors, and Trainees)

Farmers do not need to apply labor and employment laws to any individuals who qualify as volunteers, independent contractors, or trainees. To qualify for each of these designations, an individual must meet certain criteria discussed below.

Note that while a farmer and a worker may agree between themselves that the worker is a volunteer, independent contractor, or trainee, that agreement is not controlling.⁹ In all cases, the agencies that enforce these laws and the courts will look to the reality of the work arrangement rather than the label given to it to determine the appropriate legal classification. Regardless of the title given, if a person appears to be an employee, that person will be considered an employee under the law.¹⁰

1. Individuals Who Perform Farm Work May Meet the Federal Definition of a “Volunteer”

Courts examine a number of factors to determine whether a worker is a volunteer or an employee. These factors are:

- (a) receipt of any benefits (including food and lodging) from those for whom the services are performed;
- (b) whether the activity is a less than full-time occupation;
- (c) whether the services are of the kind typically associated with volunteer work, such as work assisting the sick, elderly, indigent, infirm, handicapped, or disadvantaged youth; and
- (d) the length of time the individual is dependent on the employer.¹¹

Individuals who are paid or receive food or lodging from a farm employer, work on the farm close to full time, perform work not typically associated with volunteer work, and are dependent on a farmer for a long period of time will most likely not be considered volunteers.

If family farm workers work full time for several weeks or months, this also makes it unlikely that they would be considered as volunteers. In addition, farm work is not typically associated with volunteer work. In one case, individuals volunteering at hog farms and other businesses who were compensated with food, clothing, shelter, and other benefits were considered employees.¹²

Generally speaking, shorter work stints are less likely to indicate economic dependence on the farmer. Therefore, a person who works at the farm periodically for short periods of time (for example, one day per week) is more likely to be categorized as a volunteer under the law because the arrangement does not resemble a full-time occupation, nor is the worker dependent on the farmer for an extended period of time.

Where people performing farm work receive payment from the farmer, they should be considered employees. This is true even if the workers work at the farm only now and then and provide their own room and board.

To make it more likely that a family member or friend qualifies as a volunteer, you could make sure they only help with farm work occasionally (for example, one or two days per week, or one week out of the year), do not receive housing or meals, do not receive payments, and do not work full time.

Who Is a Volunteer in the Vang Family Farm Operation?

Meng Vang likely qualifies as a volunteer, because he works on the farm and at the farmers' market only occasionally and only when he has time. He is also not paid.

Lyla Smith is likely also a volunteer. She only helps at the farmers' market occasionally, and is not paid.

Neither Youa Xiong, Pao Vang, Kong Lee, Anne Lee, Tou Vang, nor Kelly Jensen qualify as volunteers—even though they do not work on the farm full time. The farm operation needs their work to survive, and they work more regularly—either most weekends or full time during the summer—so they cannot qualify as volunteers.

2. Individuals Who Perform Farm Work Could Potentially Be Classified as “Independent Contractors”

Labor and employment laws do not apply to persons classified as independent contractors. Generally speaking, workers who have control over the manner and means by which their work is accomplished are typically considered to be independent contractors.¹³ In considering whether someone is an independent contractor, the courts analyze a number of factors, including, but not limited to the following:

- (a) skill required;
- (b) source of the equipment and tools necessary for the work;
- (c) location of the work;
- (d) duration of the relationship between the parties;

- (e) whether the hiring party has the right to assign additional projects to the hired party;
- (f) the extent of the hired party's discretion over when and how long to work; and
- (g) method of payment.¹⁴

If you are paying a family member or friend to perform a specific farm task for you, they use their own tools, they have a particular skill for that work, and they have control over when and how long to work, that individual may qualify as an independent contractor.

However, if an individual performing work on your farm will use the farm's tools and will be subject to direction by the farmer as to the tasks to be performed and hours to be worked, that individual is probably not an independent contractor.

3. Individuals Who Perform Work on Your Farm Are Unlikely to Meet the Federal Definition of a "Trainee"

Trainees are distinguished from employees under federal law by a six-factor test.¹⁵ One of the requirements is that a trainee's work cannot benefit the employer.¹⁶ Most farmers do benefit from and depend on the work of family and friends. Indeed, in most instances, having friends and family help with farm work allows a farmer to hire fewer regular employees. Because these people displace regular employees and their work is to the benefit of the farmer, farmers should generally assume that any workers working on the farm are unlikely to be classified as trainees.¹⁷

3

The General Rules for Paying Farm Workers

- 3 The Federal and State Laws That Apply (FLSA and MFLSA)
- 4 Federal and State Minimum Wage Requirements
- 5 Federal and State Overtime Pay
- 6 Paying Wages for Meal and Rest Breaks
- 6 Deducting the Cost of Farmer-Provided Meals
- 7 Timing and Manner of Payment of Wages

CHAPTER 3

The General Rules For Paying Farm Employees

This chapter explains the federal and state minimum wage and overtime rules, as well as other regulations regarding payment of farm workers. These are the rules that apply in the absence of any exemption. Put another way, if you comply with these rules, you will generally be in compliance with federal and state labor and employment laws regarding payment of workers. It can be helpful to think about these rules as the baseline requirement, and then apply any exemptions that your farm or your workers might qualify for.

A. The Federal and State Laws That Apply (FLSA and MFLSA)

The federal Fair Labor Standards Act (FLSA)¹⁸ and the Minnesota Fair Labor Standards Act (MFLSA)¹⁹ are the laws that cover the basics of how farmers are required to pay workers. Most of your farm workers are very likely covered by the state labor law (MFLSA) regulating wages and hours. They may also be covered by the federal wage and hour law (FLSA) as well.²⁰ Remember that immediate family members are not covered by the FLSA, but they are covered by the MFLSA, so you should generally expect that you will have to pay them at least the state minimum wage and comply with the other requirements of the MFLSA even for your immediate family members.

Farmers Must Apply Most Protective Standard

Where federal and state employment laws both apply, the employer must comply with the law that provides the worker with the greater protection or benefit. Thus, if both the federal and state minimum wage and overtime standards apply to your operation, the federal standards would apply in most situations because they are more beneficial to the farm worker.

Both the FLSA and MFLSA contain exemptions that excuse farmers from complying with some parts of the laws, depending on the characteristics of the particular farm. The exemptions for individual employees were discussed in the previous chapter, Chapter 2. The exemptions for federal and state minimum wage and overtime that largely depend on the characteristics of the whole farm operation are discussed in the next chapter, Chapter 4.

B. Federal and State Minimum Wage Requirements

For the sake of clarity, the discussion below includes the federal and state minimum wage rates that were in place at the time this guide was printed. It is important to note, however, that the federal and state legislatures set the minimum wage rates, and the rates change from time to time.

1. General Federal Minimum Wage Requirements (FLSA)

The general federal minimum wage rules under the FLSA are as follows:

- **Adults:** Currently, the federal minimum wage is \$7.25 per hour.²¹
- **Youth 20 and Under:** A federal minimum youth wage of \$4.25 per hour applies to workers who are under the age of 20 for the first 90 consecutive days of their employment.²² An employer may not intentionally displace other employees in order to hire employees under the age of 20.²³

2. General State Minimum Wage Requirements (MFLSA)

Minnesota law requires a “small employer” with annual gross sales below \$625,000 to pay a minimum wage rate of \$5.25 per hour.²⁴

Like federal law, Minnesota law also provides for a lower minimum wage for youth workers.

- **Youth 20 and Under:** Employers may pay a youth minimum wage of \$4.90 per hour to employees under the age of 20 for the first 90 consecutive days of their employment.²⁵
 - **Note:** This is higher than the federal youth minimum wage of \$4.25. An employer must always pay the higher state youth wage unless exempt from state minimum wage requirements. Employers covered by both federal and state minimum wage laws must pay the higher state youth wage.

APPLICABLE MINIMUM WAGE RATES
<ul style="list-style-type: none">• \$7.25 per hour unless an exemption from the federal minimum wage rate applies.• If a federal exemption applies, the applicable minimum wage rate is \$5.25 per hour.• Youth wage (\$4.90 per hour) may be paid to workers age 20 and under for their first 90 days of employment.• Farmers exempt from the federal requirements must pay either the \$5.25 state minimum wage or the \$4.90 youth wage.

C. Federal and State Overtime Pay

1. Federal Overtime Pay (FLSA)

Unless an exemption applies, federal law requires employers to pay overtime to employees who work more than 40 hours within a workweek.²⁶

Under both federal and Minnesota law, the overtime rate is one and one-half times the employee's regular hourly rate of pay.²⁷

2. State Overtime Pay (MFLSA)

Unless an exemption applies, Minnesota law requires employers to pay overtime to employees for each hour worked over 48 hours within a workweek.²⁸

Under both federal and Minnesota law, the overtime rate is one and one-half times the employee's regular hourly rate of pay.²⁹

As explained in the next chapter, many farmers will be exempt from federal overtime requirements. However, most farmers will likely be required to comply with the Minnesota overtime requirements, even for family members.

D. Paying Wages for Meal and Rest Breaks

Genuine meal breaks of 30 minutes or more must be provided to all employees working eight or more consecutive hours.³⁰ Meal breaks are not considered "hours worked."³¹ Thus, you do not have to pay your workers for meal break time. In addition, this time does not need to be counted toward the number of hours worked by an employee for purposes of determining whether overtime is due in a given workweek. Meal breaks of less than 30 minutes or any meal break interrupted by work duties should generally be paid and counted toward work hours.

Rest breaks should be provided at least every four hours.³² Rest breaks are considered "hours worked"; **you must pay your workers for time spent on rest breaks of less than 20 minutes.**³³ Rest break time must also be counted toward the number of hours worked by an employee for purposes of determining whether overtime is due in a given workweek.

E. Deducting the Cost of Farmer-Provided Meals

It is legal in some circumstances to deduct some or all of the cost of meals from worker wages if the farmer is providing the meal to the worker.³⁴ However, the process of meal deduction is rather complicated, and requires farmers to keep very detailed records. Workers also have to agree to accept farmer-provided meals in order for farmers to legally deduct the cost of the meals.

1. Federal Rules for Deducting the Cost of Farmer-Provided Meals

The federal meal deduction rules are not described here because they are not likely to apply to the farmers for whom this guide is intended, as most should qualify for the 500 man-day exemption described below.³⁵ For a description of the federal meal deduction rules, see FLAG's *Farmers' Guide to Farm Internships: Federal and Minnesota Labor and Employment Law*.

2. Minnesota Rules for Deducting the Cost of Farmer-Provided Meals

Minnesota law provides that farmers may subtract only **specified allowances** from employee wages for meals.³⁶

Minnesota Meal Allowance: Maximum of \$3.15 per meal.

A maximum meal allowance for small employers of \$3.15 per meal may be deducted from the state minimum wage, but only if the employee **voluntarily accepts the meal**.³⁷ In addition, meals must be consistent with the employee's work shift, meaning that a meal allowance cannot be deducted if the meals were provided outside of an employee's regular work hours. Finally, the employer must keep a record of each meal accepted by the employee before any meal allowance can be deducted.³⁸

Minnesota deductions for meals must be shown on worker pay stubs.³⁹ State law requires farmers to preserve all payroll records for three years, including records related to deductions for meals.

For more information on federal and Minnesota meal deductions, please see FLAG's *Farmers' Guide to Farm Internships: Federal and Minnesota Labor and Employment Law*.

F. Timing and Manner of Payment of Wages

The issue of when and how farmers pay farm workers is largely governed by state law. The Minnesota Payment of Wages Act governs these issues and imposes penalties for the failure to promptly pay wages.

The following are some of the important requirements regarding timing and payment of wages:

- Farmers must establish a regular payday schedule and pay their workers on the scheduled paydays. Paydays must fall at least once every 31 days.

- If a farmer terminates a worker, the farmer must pay the worker all earned wages within 24 hours after the worker demands payment.
- Workers who resign must receive their wages by the next scheduled payday.
- Farmers are required to provide workers with a written earnings statement containing specified information at the end of each pay period.

For more specific information on timing and manner of payment, see FLAG's *Farmers' Guide to Farm Internships: Federal and Minnesota Labor and Employment Law*.

4

Exemptions from Minimum Wage and Overtime Rules

- 3 Federal (FLSA) Exemptions from Federal Minimum Wage and Overtime Rules
- 5 500 Man-Day Exemption
- 8 “Agricultural Labor” Defined
- 10 Federal Overtime Exemption for Agricultural Workers
- 10 Minnesota (MFLSA) Exemptions from Minnesota Minimum Wage and Overtime Rules
- 11 The Two-Worker, \$386/Week Minnesota Exemption
- 12 Summary of Exemptions

CHAPTER 4

Exemptions From the Minimum Wage and Overtime Rules Based on Size of Farming Operation and Work Done by Employees

This chapter explains how your operation can be exempt from the minimum wage and overtime rules for paying farm workers described in the previous chapter, Chapter 3. Both the federal and state minimum wage and overtime laws contain exemptions that may excuse some farming operations from having to comply with minimum wage and overtime requirements.⁴⁰ These exemptions are described below, and are in addition to the individual worker exemptions from federal and state laws (the family, volunteer, and independent contractor exemptions).

Also, keep in mind that the exemptions discussed in this chapter are only applicable to the minimum wage and overtime rules; they do not apply to the federal or state rules for workplace safety, payroll taxes, workers' compensation, anti-discrimination, posting, or recordkeeping. Put another way, even if your farm or farm worker is exempt under the rules discussed in this chapter, they may not be exempt from other rules. You must look separately at whether your workers are exempt from rules other than minimum wage or overtime.

A. Federal (FLSA) Exemptions from Federal Minimum Wage and Overtime Rules

As noted earlier, a farmer's immediate family members (parents, step-parents, foster parents; children, step-children, and foster children; and legal spouse) are not covered by the federal minimum wage and overtime requirements. If members of your extended family (for example, brothers and sisters, nieces and nephews, or cousins) or other non-family individuals work on your farm, you must generally pay them at least the federal minimum wage of \$7.25 per hour and follow federal overtime rules unless you qualify for one of the exemptions described below.

The three federal FLSA exemptions most likely to apply to the farmers using this guide include:

- (1) **500 Man-Day Exemption:** an exemption from both minimum wage and overtime requirements for smaller-scale farming operations with a limited number of employees (for example, approximately seven employees working five days a week).⁴¹

IMPORTANT NOTE: Work performed by the farmer and the farmer's immediate family does not count for purposes of calculating the number of man-days worked.

- (2) **Hand Harvest Laborer Minimum Wage and Overtime Exemption:** an exemption from federal minimum wage and overtime requirements for temporary farm workers who harvest by hand soil grown crops—such as fruits and vegetables—if they are paid on a piece-rate basis.
- (3) **Agricultural Overtime Exemption:** a broad exemption excluding agricultural workers from receiving federal overtime pay, regardless of farm size.

The 500 Man-Day Exemption exempts farmers with a small number of employees from paying federal minimum wage and overtime. The Hand Harvest Laborer Exemption applies only to certain types of employees, but can be used even at farms with many workers. The Agricultural Overtime Exemption applies **only** to federal overtime, but can be used even at farms with many workers.

It is important to remember that qualifying for exemption from the federal minimum wage or overtime requirements does not excuse compliance with state requirements unless you are also exempt under the state rules.

For example, a family farmer who employs only a few workers (such as approximately seven employees working five days a week, excluding immediate family) who do only agricultural work might be allowed to pay a worker less than the federal minimum wage (\$7.25/hr), but will still probably have to pay the lower state minimum wage (\$5.25/hr). Additionally, even if you qualify for the federal overtime exemption, you will still probably have to pay state overtime for all hours worked in a workweek over 48 hours.

To determine whether your farm meets the requirements for the 500 Man-Day Exemption and/or the Agricultural Overtime Exemption, you may wish to use the worksheets available in Appendices B and C. Note that calculating man-days and determining whether a worker is doing agricultural work can be complicated, even for experienced labor and employment law attorneys.

If you have questions about these exemptions, you may contact FLAG, or the federal Department of Labor's Wage and Hour Division at 1-866-487-9243.

- 1. 500 Man-Day Exemption: Federal Minimum Wage and Overtime Exemption for Farms Using 500 or Fewer Man-Days of Agricultural Labor**

Farm employers that used 500 or fewer **man-days** of **agricultural labor** during each **calendar quarter** of the preceding year and earn less than \$10,000,000 annually are exempt from both federal minimum wage and overtime requirements.⁴²

As a general guideline, the 500 man-day exemption usually permits approximately seven employees working five days a week as full-time employees.⁴³ Note that work performed by the farmer and the farmer's immediate family does not count for purposes of calculating the number of man-days worked.⁴⁴

“Man-Day” Defined: A “man-day” is any day on which any **employee** performs one hour or more of **agricultural** work.⁴⁵ Put another way, one man-day equals at least one hour of agricultural work in one day by one employee.

Non-agricultural work is not included in the man-day count as the exemption only applies to employees who do agricultural work. The FLSA definition of agricultural work is discussed in detail below.

When counting man-days of agricultural work, **all** of the farmer's employees must be counted separately, except for immediate family members.⁴⁶

Calendar Quarter (Time Frame For Counting Man-Days):⁴⁷ If an agricultural operation exceeds 500 man-days during any of the **preceding year's** calendar quarters, the farmer must pay each employee the federal minimum wage in the **current** year.⁴⁸

This means you have to know what happened during last year's calendar quarters to determine whether you are exempt during the entirety of this year. Note that if your farm has more than 500 man-days in **any** of last year's calendar quarters, you cannot use the exemption for the entirety of the current year.

a. The 500 Man-Day Test Excludes Work Done by Immediate Family

Work performed by the farmer or the farmer's immediate family does not count for purposes of calculating the number of man-days worked.⁴⁹

“Immediate family” is defined to include a farmer's parents, legal spouse, children, step-children, foster children, step-parents, and foster parents.⁵⁰

Note that this definition of immediate family is the same as the FLSA definition for immediate family discussed in Chapter 2 for individual exemptions, and it does **not** include brothers, sisters, grandparents, grandchildren, in-laws, or other extended family members.

b. The 500 Man-Day Test Excludes Work Done by Some Neighboring Farmers

When neighboring farmers help one another with harvesting a crop, and there is no money paid for these services, neither farmer would be considered an employee of the other.⁵¹ However, if the farmers bring their employees along to help out, those employees would be counted toward the number of man-days used by the farming operation where the work was done. If the employees did an hour or more of work for their farm employer and the neighboring farmer on the same day, both farms should count the employees' work toward their man-days total.⁵²

c. The 500 Man-Day Test Excludes Work Done by Some Temporary Employees Who Work as Hand Harvest Laborers

Work done by temporary employees who work as hand harvest laborers and are paid on a piece-rate basis is not counted toward the 500 man-day total.⁵³ The hand harvest laborer exemption applies to local workers who work on a farm on a temporary basis during the harvest season to harvest crops. The exemption is not intended to apply to a full-time farm worker who earns a livelihood at farming.⁵⁴

Local hand harvest laborers who: (1) commute daily from their permanent residence, (2) are paid on a piece-rate basis in traditionally piece-rated occupations, and (3) were engaged in agriculture less than 13 weeks during the preceding calendar year, do not have to be paid the federal minimum wage or overtime.⁵⁵ In addition, the hours worked by this category of farm workers are not counted toward a farmer's man-days total.⁵⁶

Note that the hand harvesting exemption applies only to the actual harvest of soil-grown crops. Pre- and post-harvest work is outside of the exemption.⁵⁷ As mentioned, to qualify for the exemption hand harvesters must be paid on a piece-rate basis, not an hourly basis. However, if the piece-rate basis level leaves the worker earning less than \$5.25 per hour, the farmer could be violating state minimum wage laws.⁵⁸

d. The 500 Man-Day Exemption Only Applies If Workers Are Doing Only “Agricultural Labor”

The 500 man-day exemption only applies to employees who do agricultural work.⁵⁹ This determination is made week-by-week. Thus, if any work performed by a worker falls outside of the FLSA definition of agriculture, the 500 man-day exemption does not apply for that employee for the workweek in which the non-agricultural work was done.⁶⁰

Consequently, **if your workers (this includes members of your extended family) do any non-agricultural work, you must pay them at least the federal minimum wage of \$7.25 per hour for all hours worked during that workweek.** You are free to take advantage of the exemption for those workers during any following workweeks provided they only do agricultural work in those weeks.

IMPORTANT NOTE:

If a farm employee performs any non-agricultural work (for example, housecleaning) during a workweek, **neither the 500 Man-Day nor the Agricultural Overtime exemption apply for that week;** the employee must be paid the federal minimum wage and any overtime for **all** of the time worked during that week. This is true even if most of the work performed during that workweek was agricultural in nature.

e. “Agricultural Labor” Defined

Whether or not work is considered “agriculture” depends on the task performed.

- Under the FLSA, agriculture includes “primary agriculture” and “secondary agriculture.” Primary agriculture is defined as “farming in all its branches,” which encompasses “the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities . . . [and] the raising of livestock, bees, fur-bearing animals, or poultry.”⁶¹ Generally speaking, hands-on work related to planting, maintaining, and harvesting crops, and raising animals fits within the definition of primary agriculture.
- The agricultural work definition also extends to “secondary agriculture,” which includes any practices, whether or not themselves farming practices, which are “performed by a farmer or on a farm as incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.”⁶²
 - To qualify as secondary agriculture, a practice must generally be performed either by a farmer or on a farm. It must also be performed in connection with the farmer’s own farming operations.⁶³ Note that the term “farmer” includes the farmer’s employees.⁶⁴ This means that employees can perform certain off-farm activities that fit within the definition of secondary agriculture.
 - On-farm sales of the farmer’s products by a worker—for example, at a roadside stand—is considered secondary agriculture, provided the roadside stand is part of the farming operation and not a separate business.⁶⁵ Office work and maintenance of farm equipment may also be considered agricultural work, provided these duties are not the family farm worker’s primary duties, but are performed to support the agricultural work of the farming operation.⁶⁶
 - Work that is performed off of the farm is generally not considered agricultural work when performed by someone other than the farmer.⁶⁷ Given that the term “farmer” is

interpreted to include employees of the farmer, employees should be able to perform certain off-farm activities and still be engaged in “agricultural” work.

- These activities include: (1) preparing the farmer’s products for market; and (2) the initial delivery from the farm to a storage facility, or to market, or to carriers for transportation to market.⁶⁸ The term “market” typically means “the wholesaler, processor, or distributing agency to which the farmer delivers his products.” “Preparation for market” refers to activities preceding the delivery to market (for example, packing produce and loading the delivery truck).⁶⁹ Therefore, family farm worker deliveries to a market or an off-farm CSA distribution drop point may be considered “agricultural” work.
- Farmers should generally assume farmers’ market sales by their farm workers do not fit within the definition of agricultural work. The regulations governing the FLSA list several types of sales arrangements that may be considered as agricultural work (including roadside stands, mail order, and “house to house” sales).⁷⁰ Farmers’ market sales are not included in this list. Although we spoke with representatives from the federal Department of Labor’s Wage and Hour Division and the Minnesota Department of Labor and Industry to obtain clarification about whether farmers’ market sales are defined as agricultural work, the representatives could not provide an answer to that question. Because the regulations are unclear on this issue and there is no interpretive guidance from the enforcing agencies, farmers should assume such activities are not included within the definition of agriculture. **Thus, to keep farm workers within any exemptions that require workers to do only agricultural work, farmers may wish to ensure that farm workers are not assigned to off-farm sales work like selling at a farmers’ market.**
- Processing, packaging, or delivery of another farmer’s crops generally does not fall within the definition of agriculture.⁷¹ Note that the regulations do allow neighboring farmers and their employees to periodically help one another harvest their crops while remaining within the definition of agriculture.⁷²

To determine whether your family farm workers are doing only “agricultural” work in a particular workweek, you can use the “Are Your Workers Performing Agricultural Work?” Worksheet in Appendix C.

Quick Take Away Point

To make your farm more likely to qualify for the 500 man-day exemption, you could try to avoid assigning tasks likely to fall outside the definition of agricultural work to workers who are not immediate family members. For example, you could consider assigning an immediate family member to conduct sales at the farmers’ market instead of an extended family member or a non-family member.

2. Federal Overtime Exemption for Agricultural Workers

The FLSA’s overtime provisions do not apply to “any employee employed in agriculture.”⁷³ This means that if your workers are doing work that falls within the FLSA definition of agriculture (discussed above), you do not have to pay them overtime. If, however, a worker has performed **any** non-agricultural work in a workweek, you must follow federal overtime rules for that workweek.

This overtime exemption applies even if you had more than 500 man-days of work in one or more quarters of the previous year and do not qualify for a minimum wage exemption.

B. Minnesota (MFLSA) Exemptions from Minnesota Minimum Wage and Overtime Rules

Even if you qualify for the federal exemptions described above, you must still pay your employees at least the Minnesota minimum wage and follow Minnesota overtime pay rules unless a state exemption applies. The Minnesota minimum wage is \$5.25 per hour for a small employer or \$4.90 per hour if the youth minimum wage applies. Minnesota overtime rules require farmers to pay one and one-half times the applicable minimum wage rate for each hour the employee works over 48 hours in a workweek.

1. The Two-Worker, \$386/Week Minnesota Exemption

According to the Minnesota Department of Labor and Industry (DLI), a farmer may select two farm workers to be exempt from state minimum wage and overtime rules if they are paid a salary of at least \$386 per week.⁷⁴ A salary must be a fixed amount of money determined in advance of the workweek in which the salary is to be paid. A salary cannot be an hourly rate that ends up totaling more than \$386 in a week.⁷⁵

Thus, if your farm designates one or two workers who do only work that qualifies as agriculture, and you pay them a fixed salary of at least \$386 per week, you are exempt from Minnesota minimum wage and overtime requirements with respect to those workers. Note that workers must work at least 65 hours per week for this exemption to provide any cost savings for farmers. Therefore, this could be a cost-effective exemption for farmers who have one or two workers who regularly work more than 65 hours per week.

All employees except for the one or two employees paid a salary of at least \$386 per week must be paid according to the regular state minimum wage and overtime rules. This rule applies to both immediate and extended family members of the farmer.

Minnesota Exemption Only Applies to “Agricultural Labor”:

Like the federal exemptions, the Minnesota “Two Workers, \$386/Week” minimum wage and overtime exemption discussed here only applies if your family farm workers are doing “agricultural” work. Minnesota law defines “agriculture” similarly to the FLSA as “farming in all its branches.”⁷⁶

The Minnesota definition of agriculture is a bit narrower than the FLSA definition in that it specifically excludes greenhouse work from the definition of agriculture.⁷⁷ Thus, while your family farm workers can do greenhouse work and still fit within the federal 500 man-day exemption, you cannot take advantage of the Minnesota exemption if you have your family farm workers do greenhouse work. Note that greenhouses and hoop houses (also known as high tunnels) are not the same kind of structure.⁷⁸ Therefore, you may be able to consider work done in a hoop house as agricultural work.

Summary of Exemptions and Likelihood of Applicability to Your Farm

MINIMUM WAGE AND OVERTIME RULES	WHO DO THE RULES GENERALLY APPLY TO?	LIKELIHOOD OF EXEMPTION
Federal Minimum Wage: \$7.25 per hour	<p>APPLIES TO farming operations that used more than 500 man-days of agricultural labor in any calendar quarter of the preceding year.</p> <p>DOES NOT APPLY TO farms using 500 or fewer man-days of agricultural labor during all calendar quarters of the preceding year, BUT workers must generally be paid the \$7.25 minimum wage rate for any workweeks in which they do any non-agricultural work.</p> <p>DOES NOT APPLY TO workers under the age of 20 who may be paid the lower youth wage of \$4.90 per hour for their first 90 consecutive days of employment.</p>	<p>HIGH</p> <p>If workers only do agricultural work and the farm has a small number of employees throughout the year, farm employer is likely to meet 500 man-day exemption criteria, especially with immediate family work excluded from the man-day count.</p> <p>Under certain circumstances family farm workers under the age of 20 may also be paid less than the federal minimum wage.</p>
Minnesota Minimum Wage: \$5.25 per hour	<p>APPLIES TO farmers who do not have to pay the federal minimum wage because they qualify for the 500 man-day exemption.</p> <p>DOES NOT APPLY TO workers under the age of 20 who may be paid the lower youth wage of \$4.90 per hour for their first 90 consecutive days of employment.</p> <p>DOES NOT APPLY TO one or two designated employees paid a fixed weekly salary of at least \$386.</p>	<p>MEDIUM</p> <p>Some farmers may find the \$386 weekly salary exemption to be a cost-effective alternative to paying the \$5.25 minimum wage rate, if up to two workers regularly work more than 65 hours per week.</p> <p>A maximum of two employees can be exempt under current Minnesota policy.</p>

Summary of Exemptions and Likelihood of Applicability to Your Farm

MINIMUM WAGE AND OVERTIME RULES	WHO DO THE RULES GENERALLY APPLY TO?	LIKELIHOOD OF EXEMPTION
Federal Overtime: One and one-half times the regular rate of pay after 40 hours within the workweek	<p>APPLIES TO any worker doing any non-agricultural work during the workweek unless another exemption applies.</p> <p>DOES NOT APPLY TO any worker performing exclusively agricultural work.</p> <p>DOES NOT APPLY TO farms using 500 or fewer man-days of agricultural labor during all calendar quarters of the preceding year. Note that workers doing non-agricultural work are not covered by the exception for the workweeks in which they do non-agricultural work.</p>	<p>HIGH</p> <p>Provided workers are only doing agricultural work, the federal overtime exemption should apply.</p>
Minnesota Overtime: One and one-half times the regular rate of pay for each hour worked over 48 hours within the workweek	<p>APPLIES TO all farmers who do not have to pay federal overtime because they qualify for the 500 man-day exemption.</p> <p>DOES NOT APPLY TO one or two designated employees paid a fixed weekly salary of at least \$386.⁷⁹</p>	<p>MEDIUM</p> <p>Some farmers may find the \$386 weekly salary exemption to be a cost-effective alternative to paying the \$5.25 minimum wage rate, if up to two workers regularly work more than 65 hours per week.</p> <p>A maximum of two employees can be exempt under current Minnesota policy.</p>

Please see Appendix A for the Vang Family Example Exemption Worksheet showing how each farm worker in the Vang operation should be paid under the FLSA and MFLSA rules.

5

Child Labor Laws Apply to Farmers

- 3 Children Working on a Farm Owned or Operated by Their Parents
- 4 General Child Labor Rules for Agricultural Work on Farms Not Owned or Operated by Their Parents
- 7 Child Labor Rules Are Different for Children Working at Farmers' Market Vendor Stalls
- 8 Child Employees Age 17 and Under Are Required to Provide Proof of Age
- 9 Recordkeeping Required
- 9 Inspections and Penalties
- 9 Contact Federal or State Agencies With Child Labor Law Questions
- 10 List of Agricultural Occupations Deemed Particularly Hazardous by the Secretary of Labor

CHAPTER 5

Child Labor Laws Apply To Farmers

Both federal and state laws regulate the work that children under 18 years of age can perform.⁸⁰ The general purpose of child labor regulation is to allow children to perform some work while simultaneously ensuring educational and safety considerations are met.

Child labor laws regulate both non-agricultural child labor (most off-farm labor) and agricultural child labor (mostly on-farm labor). In many cases, however, the laws regulating agricultural child labor are more relaxed, allowing children to do more farm work. For example, in Minnesota, children age 12 and older may do farm work under certain conditions—but children must be at least age 14 in order to do most non-farm work (including selling at a farmers' market, discussed in section C, below).

This chapter will lay out the rules that apply to children under 18 years of age who are doing agricultural work in Minnesota. These rules are a combination of federal and Minnesota laws on children performing farm work.⁸¹ The chapter will also cover the rules applicable to children working at farmers' markets, which both federal and state law consider to be “non-agricultural” work.

A. Children Working on a Farm Owned or Operated by Their Parents

Perhaps the most important child labor rule for farm families is that **all children of any age (including step, adopted, or foster children) may do any job on a farm owned or operated by their parent(s) (or guardian)**. Put another way, if you own or operate a farm, any child of yours can do any job on your farm (including jobs identified as hazardous by the Secretary of Labor (see section H, below)).⁸²

In contrast, the child labor restrictions described below generally apply to children working on farms owned or operated by adults **who are not**

those children's parents. Note that farm owners or operators must follow the rules described below for all related children who are not their own children (like nieces, nephews, younger cousins, or younger siblings).

Note that while children of any age may do any agricultural job on a farm owned or operated by a parent or guardian, the same rule does **not** apply to children working at farmers' markets. Children under 14 years old may generally not legally work at a farmers' market, even if they are selling for their parent or guardian's farm. See section C, below, for more information about child labor rules for farmer's market work.

B. General Child Labor Rules for Agricultural Work on Farms Not Owned or Operated by Their Parents

1. General Child Labor Rules for 16- and 17-Year-Olds Working in Agriculture

(a) Work Hour Restrictions

16-year-old and 17-year-old high school students working on farms not owned or operated by their parents may not begin farm work before 5 a.m. on school days,⁸³ and may not work past 11 p.m. on an evening before a school day.⁸⁴ However, 16- and 17-year-olds who supply a note signed by a parent or guardian may be permitted to work until 11:30 p.m. on an evening before a school day, and/or to begin work at 4:30 a.m. on a school day.⁸⁵

(b) Type of Job

16- and 17-year-old children may perform any type of farm job during appropriate work hours.⁸⁶

How Do These Rules Affect the Vang Family?

Anne Lee, the 16-year-old high school student, would be exempt from these rules because she works on a farm operated by her parent, True Lee.

However, if Anne were to help True sell at a farmers' market, she could not work later than 11:30 p.m. on an evening before a school day or before 4:30 a.m. on a school day – even with written permission from True or Kong. See section C, paragraph 3, below.

2. General Child Labor Rules for 14- and 15-Year-Olds Working in Agriculture

(a) Work Hour Restrictions

14-year-olds and 15-year-olds performing farm work on farms not owned or operated by their parents may not work during school hours⁸⁷ on school days.⁸⁸ Additionally, 14- and 15-year-olds cannot work before 7 a.m. or after 9 p.m. on any day of the week, including on school days.⁸⁹

Only with parent or guardian permission, 14- and 15-year-olds may perform agricultural work more than 40 hours a week and/or more than 8 hours per day.⁹⁰ Without parent or guardian permission, 14- and 15-year-olds are limited to working no more than 40 hours a week and 8 hours per day.⁹¹

(b) Type of Job

On farms not owned or operated by their parents, 14- and 15-year-olds may perform any farm job except those jobs listed as particularly hazardous by the U.S. Secretary of Labor.⁹² See the end of this chapter for the list of agricultural jobs declared particularly hazardous.

3. General Child Labor Rules for 12- and 13-Year-Olds Working in Agriculture

(a) Restricted to Working on Farms That Employ Their Parents, or With Written Parental Consent

12- and 13-year-old children may only work on farms not owned or operated by their parents if either of the following is true: (1) the farm the child will work on also employs the child's parent(s), or (2) the child's parents have given **written** consent.⁹³

(b) Work Hour Restrictions (Same as 14- and 15-Year-Old Restrictions)

Furthermore, 12- and 13-year-olds performing farm work on farms not owned or operated by their parents may not work during school hours⁹⁴ on school days.⁹⁵ Additionally, 12- and 13-year-olds cannot work before 7 a.m. or after 9 p.m. on any day of the week, including on school days.⁹⁶

Only with parent or guardian permission, 12- and 13-year-olds may perform agricultural work on farms not owned or operated by their parents more than 40 hours a week and/or more than 8 hours per day.⁹⁷

Without parent or guardian permission, 12- and 13-year-olds are limited to working no more than 40 hours a week and 8 hours per day.⁹⁸

(c) Type of Job (Same as 14- and 15-Year-Old Restrictions)

On farms not owned or operated by their parents, 12- and 13-year-olds may perform any farm job except those jobs listed as particularly hazardous by the U.S. Secretary of Labor.⁹⁹ See the end of this chapter for the list of agricultural jobs declared particularly hazardous.

How Do These Rules Affect the Vang Family?

Tou Vang, the 12-year-old sixth grader, would NOT be exempt from these rules. His father, Meng Vang, does not operate the farm.

Thus, Tou can only work on the farm if his parent also works on the farm, or if his parent gives written permission. Meng does not work on the farm; he is just a volunteer (see Chapter 2, pages 2-12 – 2-14.) Thus, the only way Tou can legally work on the farm is if one of his parents gives written permission.

Furthermore, if Tou wants to work more than 40 hours a week or 8 hours a day, his parent must specifically write down that Tou can work those hours. The farm employers, Mee, Cha, and True, should keep the written document on file.

Also, even with written permission from a parent, Tou may not work during school hours on school days, or work before 7 a.m. or after 9 p.m. on any day of the week. Tou is also prohibited from doing any farm job listed as particularly hazardous by the Secretary of Labor (see section H, below).

4. Children 11 Years Old and Younger May Not Work in Agriculture Unless on a Farm Owned or Operated by Their Parent or Guardian

Children 11 years of age or younger may not perform farm work unless the farm work is performed on a farm owned or operated by the child's parent or guardian.¹⁰⁰ Therefore, any child relatives age 11 or younger—other than a farmer's own children—may not work on the farm.

However, children age 11 and younger may be employed to do home chores¹⁰¹ (on or off the farm), even if the minor is doing home chores for a non-parent.¹⁰² Home chores are tasks normal to the running of a household and include mowing lawns, raking leaves, removing snow, light housekeeping, washing clothes or dishes, vacuuming, cleaning yards, and preparing food.¹⁰³

C. Child Labor Rules Are Different for Children Working at Farmers' Market Vendor Stalls

As noted in Chapter 4, pages 4-8 – 4-10, farmers should generally assume that selling farm products at an off-farm farmers' market does not qualify as "agricultural" work under federal or state law.¹⁰⁴ Assuming farmers' market work is not agricultural, the "non-agricultural" child labor laws apply to children working at a farmers' market vendor stall.

Non-agricultural child labor laws are, in general, stricter than agricultural child labor laws. This means that the same children who could legally do on-farm agricultural work may not be able to sell at a farmers' market, or may only be able to work at the market during certain hours.

Many farm families allow children to work at the family's farmers' market stall. Farmers should comply with the following rules if they choose to allow children to work at the market.

1. No Child Under Age 14 May Work at a Farmers' Market Stall

The most important difference between agricultural and non-agricultural child labor rules is that children under age 14 may not do most non-agricultural work. Assuming working at a farmers' market is non-agricultural work, children under age 14 may not work at a farmers' market stall. This is true even if the child under age 14 is working exclusively for his or her parent or parents.¹⁰⁵

Thus, children younger than age 14 may generally not legally work at a farmers' market stall in Minnesota.

2. Children 14 and 15 Years Old May Work at a Farmers' Market With Certain Hours Restrictions

Children 14 and 15 years old may work at a farmers' market vendor stall. However, there are restrictions on the amount and timing of hours they can work.

General Hours Restrictions: All children 14 and 15 years old are prohibited from working at a farmers' market stall:

- more than 40 hours a week, or
- more than 8 hours in any day (any 24-hour period), or
- during school hours.¹⁰⁶

These rules apply even if the child is working at the farmers' market exclusively for a parent or guardian.

Hours Restrictions for Children Not Working for Parents:

Children 14 and 15 years old who are **not** working exclusively for a parent have additional restrictions on farmers' market work, including:

- May not work before 7 a.m. or after 9 p.m. on any day, and
- May not work more than 3 hours on a school day, and
- May not work more than 18 hours in a week.¹⁰⁷

3. Children 16 and 17 Years Old May Work at a Farmers' Market with Minor Hours Restrictions

Children 16 and 17 years old may work at a farmers' market. However, children 16 and 17 years old who are high school students may not work at a farmers' market:

- later than 11 p.m. on an evening before a school day, or
- before 5 a.m. on a school day.

With **written** parental permission, however, those hours may be extended to 11:30 p.m. on an evening before a school day and 4:30 a.m. on a school day.¹⁰⁸

These rules apply to all children 16 or 17 years old who are high school students—even if the child is working at the farmers' market exclusively for a parent or guardian.

D. Child Employees 17 and Under Are Required to Provide Proof of Age

Farmers employing children age 17 and younger who are not the farmers' own children must require the child employee to provide proof of age.¹⁰⁹ Farmers must obtain proof of age for children doing both agricultural

work (such as on-farm work) and non-agricultural work (such as selling at a farmers' market). Proof of age can be a copy of a birth certificate, driver's license, a Form I-9, or a state age certificate.

Farmers employing their own children for agricultural or non-agricultural work do not need to obtain proof of age.¹¹⁰

E. Recordkeeping Required

Every employer of a child 17 years of age or younger must maintain and preserve records containing the following information;¹¹¹

- Child's name in full.
- Child's date of birth.
- If required (see above), the written consent of a parent or guardian allowing the child to work on the farm.
- Place where child lives while employed.

However, farmers employing their own children for agricultural or non-agricultural work do not need keep any records concerning the employment of their own children.¹¹²

F. Inspections and Penalties

Both federal and state government agencies may inspect farms and farmers' markets for issues related to the employment of children age 17 and younger.

Farmers may be fined up to \$11,000 for each federal child labor violation.¹¹³ Farmers may be fined up to \$1,000 for each state child labor violation.¹¹⁴

G. Contact Federal or State Agencies With Child Labor Law Questions

For questions about federal child labor regulations, visit <http://www.wagehour.dol.gov> or call the U.S. Department of Labor Wage and Hour Division at 1-866-487-9243.

For questions about state child labor law regulations, visit www.dli.mn.gov or call the Minnesota Department of Labor and Industry at 1-800-342-5354.

H. List of Agricultural Occupations Deemed Particularly Hazardous by the Secretary of Labor¹¹⁵

As discussed above, some children are not allowed to do farm tasks that are considered to be particularly hazardous by the U.S. Secretary of Labor. The following is a list of the tasks that the Secretary of Labor has identified as “particularly hazardous”:

1. Operating a tractor of over 20 power-take-off (PTO) horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.
2. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with operation) any of the following machines:
 - a. corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, mobile pea viner;
 - b. feed grinder, crop dryer, forage blower, auger conveyer, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or
 - c. power post hole diggers, power post driver, or non-walking type rotary.
3. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with operation) any of the following machines:
 - a. trencher or earthmoving equipment;
 - b. forklift;
 - c. potato combine; or
 - d. power-driven circular, band, or chain saw.
4. Working on a farm in a yard, pen, or stall occupied by a:
 - a. bull, boar, or stud horse maintained for breeding purposes;
 - b. a sow with suckling pigs, or a cow with a newborn calf (with umbilical cord present).

5. Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than six inches.
6. Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.
7. Driving a bus, truck, or automobile when transporting passengers or riding on a tractor as a passenger or helper.
8. Working inside:
 - a. a fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;
 - b. an upright silo within two weeks after silage has been added or when a top unloading device is in operating position;
 - c. a manure pit; or
 - d. a horizontal silo while operating a tractor for packing purposes.
9. Handling or applying toxic agricultural chemicals (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying such chemicals). Such toxic chemicals are identified by the word “poison,” or “warning,” or are identified by a “skull and crossbones” on the label.
10. Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or
11. Transporting, transferring, or applying anhydrous ammonia.

6

If Your Workers Live On Your Farm...

- 3 Farmers Who Provide Temporary Worker Housing
May Become Subject to Federal and State Worker
Housing Regulations

CHAPTER 6

If Your Workers Live on Your Farm...

Many farmers who rely extensively on family labor may have individuals who could qualify as employees living with them (for example, a legal spouse, an unmarried partner, parents, children, brothers, sisters, grandchildren, grandparents, in-laws, aunts, uncles, cousins, nieces, nephews, etc.). Federal and state labor and employment laws do not regulate housing for workers who live with employers on a **permanent** basis. Thus, if your house is a permanent home for individuals who work on your farm, you generally do not have to worry about worker housing regulations with respect to those permanent residents.

However, if you provide housing to a worker on a **temporary** basis, you could become subject to certain federal and state laws regulating worker housing—even if those temporary resident workers are also family members.

A. Farmers Who Provide Temporary Worker Housing May Become Subject to Federal and State Worker Housing Regulations

Farmers who permit or require workers to live away from their regular home in order to be near the farm may become subject to certain laws regarding worker housing, including the Migrant and Seasonal Worker Protection Act (MSPA),¹¹⁶ federal and state OSHA rules,¹¹⁷ and local zoning regulations.

A full explanation of how MSPA, OSHA housing rules, and local zoning regulations could apply to farmer-provided worker housing is beyond the scope of this guide. For more information on worker housing regulations, see FLAG's *Farmers' Guide to Farm Internships: Federal and Minnesota Labor and Employment Law*.

Should the Vang Family Worry About These Laws?

No. Although Youa, Mee, Cha, True, Kong, and Anne all live together, they are all **permanent** residents of a regular household. There are no workers **temporarily** living in the house. Even though Youa, Kong and Anne are farm workers living with farm employers (Mee, Cha, and True), the critical point is that everyone is a **permanent** resident.

Kelly Jensen is a temporary hired worker, but she does not live in housing provided by the farm operation.

Thus, the Vang family does not have to worry about the laws triggered by a **temporary** housing situation.

7

Farmers Must Create a Safe Work Environment

- 4 Federal Work Safety: The Federal Occupational Safety and Health Act (OSHA)
- 5 State Work Safety: The Minnesota Occupational Safety and Health Act (Minnesota OSHA)

CHAPTER 7

Farmers Are Required to Create a Safe Work Environment

Farm work safety is regulated at both the federal and state levels, but many small farms are exempt from federal work safety regulations. In contrast, all employers are covered by the Minnesota work safety regulations. As a result, your farm will almost certainly be required to comply with some state-level work safety regulations, and might be required to comply with federal work safety laws. This means that you are required to create a safe work environment for the people working on your farm, and you can be fined or even criminally charged by the federal or state government if you fail to do so (see below).

An overview of the federal and state workplace safety and health requirements is set forth below. More detailed information about these requirements is contained in FLAG's *Farmers' Guide to Farm Internships: Federal and Minnesota Labor and Employment Law*.

Farmers may also wish to follow up with the appropriate federal and state agencies to obtain details about the safety rules you are required to follow.

Note on Pesticides and Farm Safety

This guide does not cover state and federal safety rules related to the application of pesticides. Information regarding the federal law that governs the use of pesticides (the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)) can be obtained through the U.S. Environmental Protection Agency's (EPA) website. See <http://www.epa.gov/agriculture/lfra.html>.

The part of FIFRA that applies to farm workers is the Worker Protection Standard (WPS). The Minnesota Department of Agriculture (MDA) implements and monitors WPS compliance within the state of Minnesota. More information about the WPS and pesticides can be found through MDA's website. See: <http://www.mda.state.mn.us/news/publications/chemfert/workprotstand.pdf>.

A. Federal Work Safety: The Federal Occupational Safety and Health Act (OSHA)

The Occupational Safety and Health Administration (OSHA) is the federal agency generally authorized to enforce federal work safety rules through workplace inspections and investigations.¹¹⁸ OSHA penalties vary depending on the seriousness of a violation, but can include both civil penalties (fines) and criminal penalties (fines or jail time).

Under OSHA rules, a farmer's general duty is to furnish each employee with a workplace free from recognized hazards that cause or are likely to cause death or serious harm.¹¹⁹ Farmers covered by the OSHA rules are also responsible for complying with farm-specific occupational safety and health rules (discussed below).

A farmer's immediate family members (legal spouse, parents, and children) are not covered by the federal OSHA rules. They are covered by the Minnesota OSHA rules.

1. Farm-Related OSHA Exemptions

Many small farms will be exempt from OSHA in the following situations:

- **By size of farm workforce:** Farms employing ten or fewer workers and having had no “temporary labor camps” (that is, temporary worker housing) in the last 12 months are generally exempt from OSHA enforcement.¹²⁰
- **By employee:** Members of the immediate family of a farm employer are not considered employees and are excluded from OSHA coverage.¹²¹ So far, OSHA has not defined “immediate family,” but the FLSA definition is a helpful guideline. Under the FLSA, the legal spouse, parents, and children of farmers are exempt. This includes biological, step, adopted, and foster children and parents.¹²²

2. If Not Exempt, Farmers Must Comply with Farm-Specific Safety Rules

In addition to providing farm employees with a workplace free from recognized hazards causing or likely to cause death or serious harm, non-exempt farmers must comply with the OSHA rules specific to the farm operation.¹²³

OSHA standards call for very specific safety and training requirements. For example, the field sanitation standard requires employers to provide toilets, potable drinking water, and hand-washing facilities to hand laborers in the field; provide employees with “reasonable use” of the above facilities; and inform each employee of the importance of good hygiene practices.¹²⁴

More information about the specific federal safety rules you may have to follow can be obtained from fact sheets available on OSHA’s website, located at <http://www.osha.gov>.

In addition, farmers with questions about OSHA may wish to review OSHA’s web page regarding agricultural operations, located at <http://www.osha.gov/SLTC/agriculturaloperations/index.html>. Farmers may also call the federal (toll-free) OSHA hotline at 1-800-321-6742.

B. State Work Safety: The Minnesota Occupational Safety and Health Act (Minnesota OSHA)

As mentioned above, all Minnesota farms are covered by at least some of Minnesota’s OSHA rules, even if the farm is exempt from federal OSHA

because the farmer has fewer than ten employees and no temporary housing or employs only immediate family members (legal spouse, parents, and children).

1. Minnesota's OSHA Program

Federal OSHA authorizes the states to develop and operate their own job safety and health programs.¹²⁵ Minnesota has a state OSHA program (Minnesota OSHA) that generally applies to all businesses in the state (including farms).¹²⁶

The Minnesota Department of Labor and Industry's Occupational Health and Safety Administration is the agency authorized to enforce Minnesota's state-level OSHA program. Minnesota OSHA, similar to Federal OSHA, issues citations for safety violations.

Employers who violate the Minnesota OSHA rules may be required to pay fines ranging from \$5,000 to \$70,000.¹²⁷ Criminal penalties may also apply in cases where an individual knowingly makes false statements, gives an employer advance notice of a scheduled inspection, or willfully or repeatedly violates the rules.¹²⁸

For more information about how Minnesota OSHA workplace inspections and enforcement are conducted, see the Minnesota OSHA's educational publication, "Minnesota OSHA Workplace Inspections," available at <http://www.dli.mn.gov/OSHA/PDF/inspectionbooklet.pdf>.

Free Safety Consultation Service

Minnesota farmers who want help with work safety compliance can contact the state OSHA Workplace Safety Consultation Division for a free safety consultation. The agency seeks to help employers identify what steps they must take to come into compliance with state and federal OSHA requirements.

No penalties are issued during consultations, nor is information about consultation activities typically provided to OSHA's enforcement division. Farmers should note, however, that in those cases where a serious violation of program rules and regulations is found during a visit, the farmer must agree in writing to remedy that violation during a set period of time. If the violation is not remedied, the matter is typically referred for enforcement.

Farmers can reach the Workplace Safety Consultation Division at 651-284-5060. Farmers may also call 651-284-5050 with general questions.

Farmers can also view the Workplace Safety Consultation Division's online brochure at: http://www.doli.state.mn.us/WSC/PDF/servicesbrochure_legalsize.pdf.

2. Overview of Minnesota OSHA Requirements

Generally speaking, the Minnesota OSHA program requires employers to:

- keep the workplace free from recognized hazards;
- develop and follow a written safety plan (AWAIR plan—see below);
- follow state OSHA standards and labeling requirements;
- be subject to inspection;
- make available information dealing with injury reports, general safety records, and other required records; and
- provide employees with an initial training and annual refresher training regarding harmful physical agents, infectious agents, and hazardous substances (see below).¹²⁹ All Minnesota farmers

must comply with these basic Minnesota OSHA regulations (even for immediate family members).

(a) AWAIR Plan: Minnesota Farmers Must Create a Written Safety Plan

The required written safety plan, called an AWAIR plan, is a critical part of the Minnesota OSHA program. All Minnesota farmer-employers are required to create an AWAIR plan.¹³⁰ The plan must be written, and it must establish an accident and injury reduction program that promotes safe and healthful working conditions and is based on clearly stated goals and objectives for meeting those goals.¹³¹

For more information about how to create an AWAIR plan, see the Minnesota OSHA educational publication, “An Employer’s Guide to Developing A Workplace Accident and Injury Reduction (AWAIR) Program,” available at <http://www.dli.mn.gov/OSHA/PDF/awair.pdf>. Farmers can also contact Minnesota OSHA at 651-284-5060 for help creating an AWAIR plan.

Minnesota OSHA also recommends that farmers interested in learning about good safety practices look for local agricultural safety training classes often held at extension offices or vocational training schools.

(b) Farm Operation Training Required for Non-Exempt Farms

Farmers with more than ten employees must provide employees with farming operation training regarding “hazardous substances” and “harmful physical agents.”¹³²

Farmers can call Minnesota OSHA at 651-284-5050 with questions about providing farm operation training.

Quick Take Away Points

- Some farms will be exempt from the federal OSHA regulations (farms with fewer than ten employees that do not temporarily house employees).
- A farmer's immediate family members (legal spouse, parents, and children) are not covered by the federal OSHA rules. They are covered by the Minnesota OSHA rules.
- All Minnesota farmers must comply with the basic Minnesota OSHA regulations (even for immediate family members): keep the workplace free from recognized hazards; develop a written safety plan; follow Minnesota OSHA standards and labeling requirements; be subject to inspection; and make available information dealing with injury reports, general safety records, and other required records.
- Some Minnesota farmers will be exempt from the Minnesota farm operation training requirement (farmers with fewer than ten employees and with no temporary housing).

8

Workers' Compensation Insurance

- 3 Immediate Family Members Are Exempted From Workers' Compensation Insurance Requirements
- 4 Farms That Meet the Definition of a "Family Farm" Are Exempted from Workers' Compensation Insurance Requirements

CHAPTER 8

Workers' Compensation Insurance

Minnesota law requires employers to obtain and pay for workers' compensation insurance for employees. Workers' compensation insurance provides important financial benefits to workers who are injured on the job. Generally speaking, workers' compensation covers medical payments when a worker gets hurt or becomes ill as a result of work activities. Workers' compensation is a no-fault system, meaning that a worker does not have to prove that an employer was "at fault" for his or her injury or illness.

Workers' compensation insurance laws are state-based. The cost to employers for this required insurance is generally based on the total amount of wages an employer pays employees (payroll amount), the type of job (farming), and the employer's experience rating (how many years the employer has been an employer and past claims, if any). Consequently, premiums are likely to be higher for new employers with no track record than for those who have a good record of employee safety.

Minnesota's workers' compensation law requires employers to maintain workers' compensation policies for all of their non-exempt employees.¹³³ The law defines employee to mean "any person who performs services for another for hire."¹³⁴

A. Immediate Family Members Are Exempted From Workers' Compensation Insurance Requirements

The legal spouse, parents, and children of a farmer are excluded from the workers' compensation insurance requirements.¹³⁵ However, farmers may still choose to obtain workers' compensation insurance for immediate family members in case those individuals are injured on the job. Workers' compensation insurance covers medical payments for injured workers,

so this insurance could possibly save you money if your immediate family member is injured during farm work.

B. Farms That Meet the Definition of a “Family Farm” Are Exempted from Workers’ Compensation Insurance Requirements

Additionally, the Minnesota workers’ compensation statute explicitly excludes from its requirements farming operations that meet the definition of a family farm. The workers’ compensation statute defines a family farm as a farm that, adding up all worker wages, paid total cash wages to non-immediate family farmworkers during the previous calendar year in an amount that is either:

- i. less than \$8,000;

or

- ii. less than the average state annual wage (roughly \$26,000).
The farm must also currently carry at least \$300,000 liability and \$5,000 medical insurance coverage if it is relying on the average state annual wage piece of the family farm definition.¹³⁶

Wages paid to the farmer’s legal spouse, parents, or children are not counted when determining if the family farm exemption applies.¹³⁷

Consequently, farmers whose operations meet either of the above definitions of “family farm” under the workers’ compensation statute are not required to obtain coverage for their employees. However, if you do not meet the family farm definitions above, and you have workers who are not immediate family members (legal spouse, parents, or children), you must generally obtain workers’ compensation insurance for all of the workers on your farm who are not the immediate family member of a farmer.

Quick Take Away Points

- Farmers are not legally required to obtain workers' compensation coverage for members of their immediate family (which only includes a legal spouse, parents, and children), but should consider whether it is a good idea to do so anyway.
- Certain small-scale farming operations are exempt from the workers' compensation requirements and will not need to obtain coverage for their workers. These include: (1) farms that paid less than \$8,000 in total cash wages to all non-immediate family workers during the previous calendar year; and (2) farms that paid less than the average state annual wage (currently, approximately \$26,000) in total cash wages to all non-immediate family workers during the previous calendar year, provided they carry at least \$300,000 liability and \$5,000 medical insurance coverage.

To find out more about workers' compensation insurance, including more information about insurance companies from which you can purchase workers' compensation insurance, go to the Minnesota Department of Labor and Industry (DLI) website:

<http://www.dli.mn.gov/workcomp.asp>. The DLI Workers' Compensation Hotline number is 1-800-342-5354, press 2.

How Do the Family Exemptions for Workers' Compensation Apply to the Vang Family?

First, the farm does not need to obtain workers' compensation insurance for the employers, Mee Yang, Cha Vang, and True Lee. Next, we can determine which family members qualify as immediate family of the employers:

Employer Mee Yang Immediate Family Workers:

Youa Xiong (parent), Meng Vang (child)

Employer Cha Vang Immediate Family Workers:

Meng Vang (child)

Employer True Lee Immediate Family Workers:

Kong Lee (legal spouse), Anne Lee (child)

Thus, there is no legal requirement to obtain workers' compensation insurance for Youa Xiong, Kong Lee, or Anne Lee.

However, unless the farm falls into the second exemption listed above, the farm **should** obtain workers' compensation insurance for Pao Vang, Tou Vang, and Kelly Jensen.

There is no legal requirement to obtain workers' compensation insurance for volunteers, like Meng Vang and Lyla Smith.

9

Payroll Taxes & Withholding

- 3 Explanation of How Payroll Withholding and Payroll Taxes Are Used
- 6 Getting Required Employer Identification Numbers
- 6 Collecting and Paying Federal Payroll Taxes (Medicare, Social Security, and Federal Income Tax)
- 8 Federal Unemployment Tax Requirements
- 9 Collecting and Paying Minnesota Payroll Taxes (State Income Tax and Unemployment Tax)

CHAPTER 9

Payroll Taxes and Withholding: Social Security, Medicare, Income Taxes, and Unemployment Taxes

Farmers have several federal and state tax withholding, reporting, and depositing responsibilities related to farm workers. The full tax implications of being an employer are beyond the scope of this guide. The guide will simply cover the basic payroll tax responsibilities and exemptions likely to apply to most small-scale farmers relying extensively on family member labor. Farmers may also wish to contact an accountant to help ensure they understand their tax responsibilities.

Payroll responsibilities fall into two main categories:

- (1) Withholding portions of worker wages (income) and depositing the withheld funds with the correct government tax agency; and
- (2) Paying taxes related to each of your workers.

In the labor and employment context, “tax withholding” generally refers to income tax deducted from an employee’s wages and paid directly to the government by the employer.

A. Explanation of How Payroll Withholding and Payroll Taxes Are Used

Payroll withholding and payroll taxes fund four main benefits that are intended for employees:

1. Medicare

Medicare is a federal social insurance program that pays for access to health insurance for Americans age 65 and older.¹³⁸ The program also pays for access to health insurance for younger people with disabilities.

A large portion of Medicare is funded by a payroll tax on both employers and workers (currently the employer and the employee each pay a tax of 1.45 percent tax on the employee's wages). The portion of the tax that the worker is responsible to pay is collected mainly by the employer withholding the appropriate amount of employee wages and depositing that amount with the appropriate federal agency on behalf of the employee.

2. Social Security

Social Security is a federal program designed to protect Americans and their families from loss of earnings due to retirement, disability, or death. Social Security is a major source of income for half of the U.S. population over age 65.¹³⁹ Like Medicare, Social Security is funded by a payroll tax on both employers and workers (currently 6.2 percent for employers and 4.2 percent for workers). The portion of the tax the worker is responsible to pay is collected mainly by the employer withholding the appropriate amount of employee wages and depositing it with the appropriate federal agency on behalf of the employee.

3. Federal and State Income Taxes

Income taxes are taxes on the income (wages) of individual workers. Both the federal government and the Minnesota state government collect income taxes. The tax percentage varies based on the amount of income an individual earns. Employers do not pay federal or state income taxes on employee wages; the employer's only responsibility is to withhold the tax from the employee's pay and deposit it with the appropriate federal agency (Internal Revenue Service (IRS)) or state agency (Minnesota Department of Revenue).

4. Federal and State Unemployment Taxes

Federal and state unemployment taxes paid by employers are put into a fund that provides unemployment payments to eligible workers who have lost their jobs.¹⁴⁰ Only the employer pays unemployment tax; it is not withheld from the employees' wages.

In summary, employers are required to withhold portions of worker wages and deposit the funds with the federal government for the federal Medicare and Social Security programs, as well as to meet workers' federal income tax obligations. Employers must also withhold portions of

worker wages and deposit the funds with the state government to meet workers' state income tax obligations.

Employers must use their own funds to pay the required employer contributions for the federal Medicare and Social Security programs, as well as to pay federal and state unemployment taxes. The chart below lists general federal and state payroll responsibilities for employers.

General Federal Payroll Withholding and Tax Responsibilities Overview	General Minnesota Payroll Withholding and Tax Responsibilities Overview
<ul style="list-style-type: none"> • Obtain Federal Employer ID Number • Medicare Tax Employee Withholding and Employer Contribution • Social Security Tax Employee Withholding and Employer Contribution • Federal Income Tax Withholding • Federal Unemployment Tax Payment 	<ul style="list-style-type: none"> • Obtain State Employer ID Number • State Income Tax Withholding • State Unemployment Tax Payment

Note that a farmer is exempt from the following for the farmer's children under the age of 18:

- Medicare tax employee withholding and employer contribution,
- Social Security tax employee withholding and employer contribution,
- Federal income tax withholding, and
- Minnesota state income tax withholding.

This exemption applies only to the children under age 18 themselves, meaning that farmers with children under the age of 18 are not exempt

from the responsibilities listed above for their other farm workers, including immediate family members age 18 and over.

Additionally, farm employers do not have to pay Minnesota unemployment tax for officers and/or stockholders of a family farm corporation (see below for more detail). Also, farmers who pay only a very small amount in wages may qualify for payroll tax exemptions (discussed below).

Although the discussion below contains more information about farm employers' tax and withholding responsibilities, farmers should consult with a tax professional to ensure they understand and comply with federal and state payroll tax requirements for employers. Additionally, please see Appendix D for a list of helpful tax publications and online resources.

B. Getting Required Employer Identification Numbers

Farm employers must obtain both federal and state identification numbers. These numbers are unique to each farm and help the government identify your operation in its tax databases. You will need these identification numbers to complete federal and state tax forms.

1. Federal Employer ID Number

In order to file required reports and make required deposits, farmers with employees must obtain a federal Employer Identification Number (EIN).¹⁴¹ This number is requested through Form SS-4, *Application for Employer Identification Number*.

Farmers must obtain this number even if you have only one worker, and even if that worker is an immediate family member.¹⁴²

2. Minnesota Employer ID Number

Minnesota requires new employers to obtain an ID number by filing Form ABR, *Application for Business Registration*. This form is similar to the federal Form SS-4, but both forms must be filled out and filed.¹⁴³

C. Collecting and Paying Federal Payroll Taxes

The Internal Revenue Service (IRS) administers and enforces federal tax regulations. All IRS forms and publications are available online at www.irs.gov.

Federal law generally requires all employers to:¹⁴⁴

- Obtain a completed and signed IRS Form W-4 from each new employee. This form is used to determine how much the employer should withhold from the employee's paychecks for federal income tax.¹⁴⁵
- Withhold from each employee paycheck the employee's portion of Social Security and Medicare taxes due. Add the employer portion of Social Security and Medicare taxes due for each pay period to the amount withheld from employee paychecks and timely deposit with the U.S. Federal Reserve Bank.
- Withhold federal income taxes from each employee paycheck based on the employee's filing status and exemptions and timely deposit with the U.S. Federal Reserve Bank.
- Timely pay federal unemployment tax (employer only, employees do not contribute to unemployment tax) to the U.S. Federal Reserve Bank.¹⁴⁶
- Timely file annual payroll tax returns. For farm employers, these will typically be IRS Form 943, "Employer's Annual Federal Tax Return for Agricultural Employees"; IRS Form 940, "Employer's Annual Federal Unemployment (FUTA) Tax Return"; and IRS Form W-3, "Transmittal of Wage and Tax Statements."
- Timely provide an IRS Form W-2 to each employee after the end of each calendar year.

1. Social Security, Medicare, and Federal Income Tax Rules

Social Security and Medicare payroll taxes are applicable to almost all farm employers. Generally, farm employers must pay an employer share of Social Security and Medicare taxes on the wages of every employee (other than the farmer's children under the age of 18).¹⁴⁷ Farmers must also withhold from each employee's earnings the employee's share of those taxes or pay the amount that should have been withheld.

Wages that are subject to Social Security and Medicare taxes are also subject to federal income tax withholding.¹⁴⁸ Put another way, the same standards (set forth below) apply to all three types of federal payroll tax.

The Two Tests for Whether an Employer Must Pay and/or Withhold Social Security, Medicare, and Federal Income Taxes:

- **\$150 or More per Worker Test:** Farm employers are required to pay Social Security and Medicare taxes and withhold federal income taxes for any worker paid \$150 or more during a year. The \$150 test applies separately to each worker employed by a farmer, and **does not** include the value of food (and lodging, if any) provided by the employer.¹⁴⁹
- **\$2,500 or More for Everyone Test:** Farm employers are required to pay Social Security and Medicare taxes and withhold federal income taxes for all workers if the total paid to all farm workers is \$2,500 or more during a year.¹⁵⁰ The \$2,500 test **does** include the value of food (and lodging, if any) provided by the employer.¹⁵¹

In summary, farmers do not need to pay or withhold Social Security, Medicare, or federal income tax for farmers' children under age 18. However, farmers must pay and/or withhold Social Security, Medicare, and federal income tax for every other worker (including immediate family members) unless you meet one of the two tests described above. Because farmers rarely meet either the \$150/worker or the \$2,500/everyone test described above, farmers should generally assume you will pay and/or withhold Social Security, Medicare, and federal income taxes for all of your workers except farmers' children under 18 years of age.

D. Federal Unemployment Tax Requirements

There are no individual exemptions from federal unemployment tax requirements. However, an entire farm operation will be exempt from federal unemployment tax requirements unless it falls into one of the two categories discussed below.

Farmers must pay federal unemployment tax if:

- (1) The farm employer pays a total of \$20,000 or more to all employees during any calendar quarter of the current or preceding calendar year; or
- (2) The farmer employed ten or more workers during at least some part of a day during any 20 different weeks of the current or preceding calendar year.¹⁵²

Note that **a farmer's spouse and any farmer's children under age 21 are not considered** in determining whether the \$20,000 cash wages or ten-employee tests are met.

Farmers who must pay federal unemployment tax must **also** pay Minnesota unemployment tax.

E. Collecting and Paying Minnesota Payroll Taxes

The Minnesota Department of Revenue administers and enforces state payroll tax regulations. All of its forms are available online at http://taxes.state.mn.us/pages/current_forms.aspx.

1. Minnesota Income Tax Withholding

Farmers who are required to withhold federal income tax under the test discussed above are, in most cases, also required to withhold Minnesota income tax. The reverse is also true: Farmers who are not required to withhold federal income tax are generally not required to withhold Minnesota income tax.¹⁵³

There are a few state law provisions that do require farmers who are not required to withhold income tax to withhold state income tax. However, it is very unlikely that these state law provisions will apply to most farmers. Therefore, most farmers can assume that if they do not have to withhold federal income tax they also do not have to withhold state income tax.¹⁵⁴

2. Minnesota Unemployment Tax

There are two individual exemptions from Minnesota unemployment tax requirements, as discussed in Chapter 2. The first individual exemption is for any child under age 16. The second exemption is for any officer or shareholder of a family farm corporation within the third degree of kindred. See pages 2-10 and 2-11 for more information.

Additionally, an entire farm operation will be exempt from Minnesota unemployment tax requirements unless it falls into one of the three categories discussed below.

Farmers who fall into any of the three categories listed below must register for the Minnesota Unemployment Insurance program, pay state unemployment tax, and file quarterly reports. Work performed by workers 16 years old and younger and by

officers or shareholders of a family farm corporation is not counted when determining if a farming operation fits within these categories.¹⁵⁵

For purposes of the state unemployment statutes, a “family farm corporation” means a farm founded for the purposes of farming and owning agricultural land, with at least one related member living on or actively operating the farm, and where the majority of the stockholders are related to each other within the third degree of kindred.¹⁵⁶ Kindred includes the following family relationships: parents and children (relatives in the first degree of kindred); grandparents, grandchildren, brothers, and sisters (relatives in the second degree of kindred); uncles, aunts, nephews, nieces, great-grandchildren, and great-grandparents (relatives in the third degree of kindred).

- **Farmers who must pay federal unemployment tax must also pay Minnesota unemployment tax.** Thus, a farm employer must pay both federal and state unemployment taxes if the farmer meets the federal criteria discussed above (that is, the farmer pays wages of \$20,000 or more to employees during any calendar quarter of the current or preceding calendar year, or the farmer employed **ten or more** farm workers during at least some part of a day during any 20 different weeks of a single calendar year – not including a farmer’s spouse or children under age 21 as employees in either category);
- Farm employers who pay a total of \$20,000 or more in **cash and non-cash** (non-cash means, for example, providing meals and lodging) wages to farm workers in any calendar quarter must pay Minnesota unemployment tax; and
- Farm employers who pay **four** farm workers for at least 20 weeks within a calendar year must pay Minnesota unemployment tax.¹⁵⁷

Note that the last two categories apply to farmers who are not required to pay federal unemployment tax. Thus, even if farm employers are not required to pay federal unemployment tax, they may still be required to pay state unemployment tax if they fall within either of the last two categories.

If you fall within any of the three categories listed above, you must:

- **Register:** Employers must register with the Minnesota Unemployment Insurance Program(UIMN), listing wages paid to all employees.¹⁵⁸ Employers can register online at www.uimn.org or by phone at 651-296-6141.
- **Pay the unemployment tax:** The amount of the tax owed by the employer will generally be equal to the state's average cost rate and specified assessments and fees.¹⁵⁹
- **File quarterly reports:** Employers must file quarterly reports with UIMN and pay unemployment insurance within one month after the end of each calendar quarter (i.e., on or before April 30, July 31, October 31, and January 31).¹⁶⁰ The reports are used to determine entitlement to unemployment insurance benefits should an employee or former employee apply for them.¹⁶¹

10

Anti-Discrimination Laws Apply To Farmers

- 4 Federal Anti-Discrimination Laws
- 5 Minnesota Anti-Discrimination Laws

CHAPTER 10

Anti-Discrimination Laws Apply to Farmers

Farmers should be aware that they must generally comply with federal and state laws prohibiting discrimination on the basis of certain worker characteristics.

A full description of employment-related anti-discrimination laws is beyond the scope of this guide. The following is an extremely simplified overview of the anti-discrimination laws that may apply to farmers and farm workers. Note that every law discussed in this section makes it illegal to retaliate against employees who complain about discrimination.

Farms with fewer than 20 employees may be exempt from some of the anti-discrimination laws discussed below.

Gender Discrimination Is Always Prohibited

Farmers are never exempt from the federal Equal Pay Act or the Minnesota Equal Pay for Equal Work Law (discussed below). This means that all family farmers must always pay men and women the same wages for the same work. Put another way, farmers cannot pay women less than men for doing the same kind of job.

Male and female workers must always be treated equally.

Farmers are also never exempt from the general anti-discrimination requirements of the Minnesota Human Rights Act (discussed below).

A. Federal Anti-Discrimination Laws

1. Civil Rights Act

Title VII of the federal Civil Rights Act of 1964 makes it illegal for employers to discriminate against someone on the basis of race, color, religion, national origin, or sex.¹⁶²

This law also makes it illegal for employers to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.¹⁶³

Exemption: Employers are exempt if they had fewer than 15 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.¹⁶⁴

2. Equal Pay Act

The federal Equal Pay Act of 1963 (EPA) makes it illegal to pay different wages to men and women because of their sex if they perform equal work in the same workplace.¹⁶⁵

No Exemption: All employers must comply with the federal Equal Pay Act.

3. Age Discrimination in Employment Act

The federal Age Discrimination in Employment Act of 1967 (ADEA) protects applicants or employees who are age 40 or older from discrimination because of age.¹⁶⁶

Exemption: Employers are exempt from the ADEA if they had fewer than 20 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.¹⁶⁷

Note: Under the federal Fair Labor Standards Act, it is also illegal for farmers to seek to hire employees who are 20 years old or younger just so that the farmers can pay the lower youth wage (for the first 90 days of employment).¹⁶⁸

4. Americans with Disabilities Act

Title I of the federal Americans with Disabilities Act of 1990 (ADA) makes it illegal for an employer to discriminate against a person with a disability who is otherwise qualified for the job.¹⁶⁹ A person with a disability is

someone who is substantially limited in performing a major life activity, even when using a mitigating measure.¹⁷⁰

The ADA further requires employers to provide “reasonable accommodation” for the employee’s disability, unless providing the reasonable accommodation would cause “undue hardship” to the employer’s business.¹⁷¹

Exemption: Employers are exempt from Title I of the ADA if they had fewer than 15 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.¹⁷²

5. Genetic Information Nondiscrimination Act

The federal Genetic Information Nondiscrimination Act of 2008 (GINA) makes it illegal for employers to discriminate against employees or applicants because of genetic information.¹⁷³ Genetic information includes information about an individual’s genetic tests and the genetic tests of an individual’s family members, as well as information about any disease, disorder, or condition of an individual’s family members.

Exemption: Employers are exempt from GINA if they had fewer than 15 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.¹⁷⁴

B. Minnesota Anti-Discrimination Laws

1. Minnesota Human Rights Act

The Minnesota Human Rights Act (MHRA) prohibits employers from refusing to hire, discharging, or establishing unfair terms, conditions, or privileges of employment for an employee due to an employee’s protected class status.¹⁷⁵ Protected classes include:

- race,
- color,
- creed,
- religion,
- national origin,
- sex,
- marital status,
- status with regard to public assistance,
- membership or activity in a local commission,

- disability,
- sexual orientation, and
- age.

The MHRA further prohibits employers from requiring, seeking, or obtaining information that pertains to any protected characteristic listed above, or:

- advertising a job opening with preferences, quotas, limitations, or specifications regarding a protected characteristic;
- failing to make reasonable accommodation for an employee's disability, unless providing the reasonable accommodation would cause "undue hardship" to the employer's business; or
- failing to treat a woman affected by pregnancy or childbirth, or disabilities related to pregnancy or childbirth, the same as other persons with similar abilities or inabilities to work who are not so affected—including making reasonable accommodations.

Exemption: Employers are exempt from the MHRA requirement to make reasonable accommodation for an employee or applicant with a disability if they had fewer than 15 employees working 20 or more weeks in both the past and current calendar years.¹⁷⁶

Note that this exemption only applies to the requirement to make accommodation for disability. **All employers must comply with the general anti-discrimination requirements of the MHRA.**

2. Minnesota Equal Pay for Equal Work Law

The Minnesota Equal Pay for Equal Work Law (MEPA) prohibits employers from paying men and women different wages based on their sex for equal work on jobs requiring equal skill, effort, and responsibility and performed under similar working conditions.¹⁷⁷

11

Employer Posting Requirements

- 3 Federal Requirements
- 3 Minnesota Requirements

CHAPTER 11

Employer Posting Requirements

Both federal and Minnesota laws require employers to display certain employment-related posters describing employees' legal rights. These must be posted in a conspicuous place at the worksite. The federal and state governments will send you these posters for free, but you generally have to contact the appropriate government agency to request them.

A. Federal Requirements

Workplace posters specific to agricultural employers that are required under federal law are:

- *Employee Rights Under the Fair Labor Standards Act: Agricultural Employees*
- *Notice—Migrant and Seasonal Worker Protection Act*

Additional federal posters not specific to agricultural employers may also be required. A complete list of federal workplace posters and an explanation of who must post them is available online at <http://www.dol.gov/oasam/programs/osdbu/sbrefa/poster/matrix.htm>. Free posters can be obtained through the same website.

Farmers who want additional information regarding posting requirements may also call the U.S. Department of Labor toll-free at 1-866-487-2365.

B. Minnesota Requirements

Minnesota law requires employers to also display the following workplace posters:

- *Safety and Health Protection on the Job*
- *Minnesota Workers' Compensation—Employee Rights and Responsibilities*
- *Minnesota Employees, You Are Entitled To . . .* (describing employee rights under minimum wage and overtime laws)
- *Know Your Rights Under Minnesota and Federal Law Prohibiting Age Discrimination*
- *Unemployed?*

Free posters may be obtained through the Minnesota Department of Labor and Industry's website at <http://www.doli.state.mn.us/lis/Posters.asp> or by calling 1-800-342-5354. Farmers located in the Twin Cities metro area may call 651-284-5042 to obtain posters.

12

Employer Recordkeeping & Reporting Requirements

- 3 Hiring Records
- 6 Hours and Pay Records
- 6 Workplace Safety Records
- 7 Payroll Tax Records
- 7 Unemployment Tax Records
- 8 Workers' Compensation Insurance Records

CHAPTER 12

Employer Recordkeeping and Reporting Requirements

In addition to the various laws discussed in this guide concerning how employers must treat their employees, there are several federal and state requirements regarding the records that an employer must maintain and, in some cases, report to the proper federal or state agency. Some of the information in these records must be obtained from employees at the time of hiring. Other records should be created by the employer over the course of the employment relationship.

As a general rule, employers should keep all of the records described in this section for at least five years. Records must be kept in or near the premises where the employee works and be available for inspection.¹⁷⁸ Farmers should create a file for each employee and keep the required information in the file.

Note that the information in this chapter is not a complete list of all the records a farm employer must keep. Additional records may be required.

A. Hiring Records

1. Federal Form I-9 – Identity and Employment Eligibility

When hiring someone to perform labor or services in return for wages or any other form of compensation, including food and lodging, the employer must have the new employee complete a federal Form I-9, Employment Eligibility Verification.¹⁷⁹ This form, and copies of documents provided by the employee, establish that the employee is eligible for employment in the United States.

The employee section of the I-9 must be completed, signed, and dated by no later than the employee's first day of work. The employer should

provide the employee with a blank copy of Form I-9 and Form I-9's complete instructions before the first work day.¹⁸⁰

The employer should then review the form and originals of documents provided by the employee, return the original documents to the employee, and complete the employer's section of the form within three business days of the employee's first work day.

Note that employers may not require employees to provide a specific type of identification, such as a Social Security card. As long as the employee provides original, unexpired documentation of a type or types listed as acceptable on the Form I-9, that is sufficient. It is the employee's choice as to which type(s) of documents to provide. Depending on the type of documents the employee has, he or she may provide a single document that shows both identity and employment authorization ("List A")—such as a U.S. passport or permanent resident card—or two separate documents, one showing identity ("List B")—such as a driver's license or other government-issued photo I.D.— and one showing employment authorization ("List C")—such as a Social Security card or a certified copy of a U.S. birth certificate.

Employers must accept any document(s) presented by the employee that reasonably appear on their face to be genuine and to relate to the person presenting them.

Employers must maintain the completed and signed I-9 form for three years from the date of hire or one year after the employee is no longer working, whichever is later.

Employers must handle all employees' I-9 documentation in the same manner, regardless of national origin or citizenship status. For example, while employers are required to review the employee's documentation, they are permitted, but not required, to keep photocopies of those documents; if an employer does choose to make copies of the employee's documents, the employer must do so for all employees.

2. Minnesota New Hire Report

Minnesota employers are required to submit a "new hire" report for any new employee to whom the employer anticipates paying earnings and any re-hired employee who returns after a break of 90 days or more.¹⁸¹

The new hire report must be submitted to the Minnesota New Hire Reporting Center within 20 days after the employee is hired or returns to work. The report may be submitted on paper or electronically.¹⁸²

Required information includes the names and contact information for both the employer and the new employee and the date the employee first performed services for pay.

3. Proof of Age for Children Under Age 18

Minnesota law requires that employers obtain proof of age for all children under 18 years of age who are not the farmers' own children. Farmers must maintain the proof of age record for the duration of the child's employment.¹⁸³ The federal Form I-9 and supporting documentation, discussed above, are sufficient as proof of age under this requirement. Also acceptable as proof of age are: a birth certificate, driver's license, or age certificate issued by the head of the child's school.

See Chapter 5 for more information about child labor laws.

4. Income Tax Withholding Forms

(a) Federal Requirements

Employers are required to have each new employee complete federal Form W-4 to declare the employee's marital status and income tax withholding allowances.¹⁸⁴ See Chapter 9 and Appendix D for more information about tax withholding. The form is available from the IRS website—www.irs.gov—or can be ordered by phone at 800-TAX-FORM (800-829-3676).

The information provided by the employee in Form W-4 is used when the employer calculates withholding from the employee's wages. If an employee fails to provide a properly completed Form W-4, the employer is required to withhold federal income taxes from his or her wages as if he or she were single and claiming no withholding allowances.

All records related to employment taxes, including Form W-4, should be maintained by the employer for at least four years.

See the IRS website for more information: <http://www.irs.gov>.

(b) Minnesota Requirements

In most cases, the information in an employee's federal Form W-4 will also be sufficient for calculating Minnesota state tax withholding, and no separate state form will be required. However, if the employee wishes to use a more complex withholding arrangement, a separate Minnesota form (Form W-4MN) must be used.¹⁸⁵

See Chapter 9, Appendix D, and the Minnesota Department of Revenue website for more information: <http://www.revenue.state.mn.us>.

B. Hours and Pay Records

In addition to the information that an employer must obtain and record when a new employee is hired, there are other records that must be created and maintained throughout the course of a person's employment. Employers must record the employee's name, address, Social Security number, and occupation.¹⁸⁶ With this basic background information, employers must maintain complete records for each pay period showing the employee's rate of pay, deductions (such as taxes, lodging, and meals), and wages received.¹⁸⁷

Timesheets must be maintained showing the beginning and ending hours worked each day, including a.m. and p.m. designations, plus total hours worked each day and each workweek.¹⁸⁸ Employers must also keep a running record of any employer-provided meals accepted by the employee.¹⁸⁹

C. Workplace Safety Records

Employers with more than ten employees at any time in the previous year must keep detailed injury and illness logs.¹⁹⁰ Recordkeeping forms are available from the OSHA website at <http://www.osha.gov/recordkeeping/RKforms.html>.

Although employers with ten or fewer employees are not required to keep injury and illness logs, they are still required to report to OSHA any workplace incident that results in a fatality or the hospitalization of three or more employees.

See Chapter 7 for more information about workplace safety rules.

D. Payroll Tax Records

A full description of the payroll tax records required for farm employers is beyond the scope of this guide. Required federal and state tax records vary from operation to operation. However, employers should at least keep records of the amounts withheld from employee paychecks for state and federal tax purposes. Employers should also keep copies of any tax forms submitted by the employer to the state or federal government with tax withholding payments.

For more information on payroll tax records, the following IRS and Minnesota resources may be helpful:

- Publication 51 (Circular A), Agricultural Employer's Tax Guide:
<http://www.irs.gov/publications/p51/index.html>
- IRS Agriculture Tax Center web page collecting links to agricultural tax resources:
<http://www.irs.gov/businesses/small/article/0,,id=118249,00.html>
- IRS Forms and Publications to Assist Farmers web page collecting links to resources useful to farmers:
<http://www.irs.gov/businesses/small/industries/article/0,,id=201608,00.html>
- Minnesota Department of Revenue Income Tax Withholding Instruction Booklet and Tax Tables:
http://www.revenue.state.mn.us/Forms_and_Instructions/2012/wh_inst_12.pdf

See Chapter 9 and Appendix D for more information about federal and state payroll taxes.

E. Unemployment Tax Records

Employers who are required to pay the federal unemployment tax (FUTA) must pay the tax quarterly. The required form is Federal Form 940. Do not collect or deduct the FUTA tax from employee wages.

The FUTA tax applies to the first \$7,000 employers pay to each employee during a calendar year after subtracting any payments exempt from FUTA tax. See the IRS website www.irs.gov/form940 for more information and to download Form 940.

Employers who are required to enroll in the Minnesota Unemployment Insurance Program and pay state unemployment taxes should refer to the program website at <http://www.uimn.org/uimn/employers/index.jsp> for more information about required filings. The program handbook is available at <http://www.uimn.org/uimn/employers/publications/emp-hbook/index.jsp>.

See Chapter 9 for more information about federal and state unemployment taxes.

F. Workers' Compensation Insurance Records

Employers who are required to obtain a workers' compensation insurance policy for employees should keep copies of insurance paperwork, records of policy premium payments, and any other paperwork received regarding workers' compensation. Information about Minnesota workers' compensation is available at the Minnesota Department of Labor and Industry (DLI) website at <http://www.dli.mn.gov/workcomp.asp>. The DLI Workers' Compensation hotline is 1-800-342-5354, press 2.

See Chapter 8 for more information about workers' compensation.

Appendices and Endnotes

- A Exemption Worksheet and Vang Family
 Example
 - B Worksheet: 500 Man-Day Exemption
 - C Worksheet: Are Your Workers Performing
 Agricultural Work?
 - D Tax Resources
 - E U.S. Federal and State Government Structure
- Endnotes

Appendix A: Exemption Worksheet

Use the guide to help you determine which laws apply to each individual worker, including family members. Then, use this worksheet to help keep track of whether each worker qualifies for an exemption under each law. Write “Yes” if the worker qualifies for an exemption. Write “No” if the worker does not qualify for an exemption. You may need to use the 500 Man-Day Worksheet (Appendix B) and the Are Your Workers Doing Agricultural Work? Worksheet (Appendix C) in order to completely fill out this worksheet.

After you have written “Yes,” “No,” or “Not Applicable” (N/A) in every box, you can use the applicable guide section to determine your labor and employment obligations for each worker. Note that for many workers not all of the laws listed will apply.

Farm Employer(s): _____
(See pp. 2-6 – 2-7 to determine who is an employer on your farm.)

	<u>Worker 1</u>	<u>Worker 2</u>	<u>Worker 3</u>	<u>Worker 4</u>	<u>Worker 5</u>	<u>Worker 6</u>	<u>Worker 7</u>
<u>Name</u>							
<u>Relationship to Farm Employer</u> (Closest family relationship)							
<u>Age</u>							
Immediate Family Member (Yes/No)? (p. 2-9)							
Legal Spouse, Parent or Child of Farm Employer?							
Volunteer or Independent Contractor (Yes/No)? (pp. 2-12 – 2-14) <i>Note: If Yes to Either, Exempt From Rest of Chart.</i>							
Volunteer (Occasional, No Compensation – p. 2-13)							
Independent Contractor (Own tools, etc. – p. 2-14)							
Exempt From Minimum Wage and/or Overtime (Yes/No)? (Chs. 2, 3) <i>Note: If Yes to Immediate Family Exemption, Skip the Gray 500 Man-Day and Agricultural Overtime Exemptions.</i>							
Federal Minimum Wage and Overtime <u>Immediate Family</u> Exemption (Legal Spouse, Parent, Child of a Farm Employer – p. 2-9)							
Federal Minimum Wage and Overtime <u>500 Man-Day</u> Exemption (Whole Farm) (Approx. 7 Workers Doing Only Ag Work 5 Days/Wk; use 500 Man-Day Worksheet – Appx. B)							
Federal Agricultural Overtime Exemption (Use Are Your Workers Doing Ag Work Worksheet – Appx. C)							
<u>State</u> Minimum Wage and Overtime Exemption (2 Workers/\$386 Per Week – p. 4-11)							

	<u>Worker 1</u>	<u>Worker 2</u>	<u>Worker 3</u>	<u>Worker 4</u>	<u>Worker 5</u>	<u>Worker 6</u>	<u>Worker 7</u>
Name:							
Immediate Family Member?							
Age:							
Exempt from Federal or State Work Safety (Yes/No)? (Chs. 2, 7)							
OSHA (Individual) <i>(Immediate Family – p. 2-10)</i>							
OSHA (Whole Farm) <i>(10 or fewer workers and no temporary housing – p. 7-5)</i>							
MN OSHA (Individual) <i>(NO EXEMPTION for family members – p. 2-10)</i>	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A
MN OSHA (Whole Farm) <i>(Partial training exemption for 10 or fewer workers – p. 7-8)</i>							
Exempt from Payroll Withholding and Taxes (Yes/No)? (Ch. 9, pp. 9-5 – 9-10)							
Social Security (Withhold/Pay) <i>(Farmer's Child Under Age 18, \$150/worker; \$2500/everyone)</i>							
Medicare (Withhold/Pay) <i>(Farmer's Child Under Age 18, \$150/worker; \$2500/everyone)</i>							
Federal Income Tax <i>(Farmer's Child Under Age 18, \$150/worker; \$2500/everyone)</i>							
State Income Tax <i>(Farmer's Child Under Age 18, \$150/worker; \$2500/everyone)</i>							
Exempt from Unemployment Tax and Insurance (Yes/No)? (Chs. 2, 9)							
Federal Unemployment Tax (Individual) <i>(NO EXEMPTION – p. 2-10)</i>	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A
Federal Unemployment Tax (Whole Farm) <i>(Exemptions: Less than \$20,000; Less than 10 workers – p. 9-8)</i>							
MN Unemployment Insurance (Individual) <i>(Exemptions: Children under 16 or family farm corp. stockholder/officer within 3rd degree of kindred – p. 2-10 – 2-11)</i>							
MN Unemployment Insurance (Whole Farm) <i>(Exemptions: Less than \$20,000; Less than 4 farm workers in 20 wks – p. 9-9. Do not count as workers children under 16 or family farm corp. stockholder/officer w/in 3rd deg. of kindred.)</i>							
Exempt from Obtaining Workers' Compensation Insurance (Yes/No)? (Ch. 8, pp. 8-3 – 8-4)							
Workers' Comp Insurance (Individual) <i>(Legal Spouse, Parent, Child of Farm Employer)</i>							
Workers' Comp Insurance (Whole Farm) <i>(Exemptions: Less than \$8,000; Less than \$26,000 plus insurance – p. 8-4)</i>							
Child Labor Restriction on Type of Work or Hours (Yes/No)? (Ch. 5)							
Child Labor Restriction? <i>(Chapter 5)</i>							

Exemption Worksheet continued (for additional workers)...

	<u>Worker 8</u>	<u>Worker 9</u>	<u>Worker 10</u>	<u>Worker 11</u>	<u>Worker 12</u>	<u>Worker 13</u>	<u>Worker 14</u>
<u>Name:</u>							
<u>Relationship to Farm Employer</u> <i>(Closest family relationship)</i>							
<u>Age</u>							
Immediate Family Member (Yes/No)? (p. 2-9)							
Legal Spouse, Parent or Child of Farm Employer?							
Volunteer or Independent Contractor (Yes/No)? (pp. 2-12 – 2-14) <i>Note: If Yes to Either, Exempt From Rest of Chart.</i>							
Volunteer <i>(Occasional, No Compensation – p. 2-13)</i>							
Independent Contractor <i>(Own tools, etc. – p. 2-14)</i>							
Exempt From Minimum Wage and/or Overtime (Yes/No)? (Chs. 2, 3) <i>Note: If Yes to Immediate Family Exemption, Skip the Gray 500 Man-Day and Agricultural Overtime Exemptions.</i>							
Federal Minimum Wage and Overtime <u>Immediate Family Exemption</u> <i>(Legal Spouse, Parent, Child of a Farm Employer – p. 2-9)</i>							
Federal Minimum Wage and Overtime <u>500 Man-Day Exemption (Whole Farm)</u> <i>(Approx. 7 Workers Doing Only Ag Work 5 Days/Wk; use 500 Man-Day Worksheet – Appx. B)</i>							
Federal Agricultural Overtime Exemption <i>(Use Are Your Workers Doing Ag Work Worksheet – Appx. C)</i>							
<u>State Minimum Wage and Overtime Exemption</u> <i>(2 Workers/\$386 Per Week – p. 4-11)</i>							

	<u>Worker 8</u>	<u>Worker 9</u>	<u>Worker 10</u>	<u>Worker 11</u>	<u>Worker 12</u>	<u>Worker 13</u>	<u>Worker 14</u>
Name:							
Immediate Family Member?							
Age:							
Exempt from Federal or State Work Safety (Yes/No)? (Chs. 2, 7)							
OSHA (Individual) <i>(Immediate Family – p. 2-10)</i>							
OSHA (Whole Farm) <i>(10 or fewer workers and no temporary housing – p. 7-5)</i>							
MN OSHA (Individual) <i>(NO EXEMPTION for family members – p. 2-10)</i>	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A
MN OSHA (Whole Farm) <i>(Partial training exemption for 10 or fewer workers – p. 7-8)</i>							
Exempt from Payroll Withholding and Taxes (Yes/No)? (Ch. 9, pp. 9-5 – 9-10)							
Social Security (Withhold/Pay) <i>(Farmer's Child Under Age 18, \$150/worker; \$2500/everyone)</i>							
Medicare (Withhold/Pay) <i>(Farmer's Child Under Age 18, \$150/worker; \$2500/everyone)</i>							
Federal Income Tax <i>(Farmer's Child Under Age 18, \$150/worker; \$2500/everyone)</i>							
State Income Tax <i>(Farmer's Child Under Age 18, \$150/worker; \$2500/everyone)</i>							
Exempt from Unemployment Tax and Insurance (Yes/No)? (Chs. 2, 9)							
Federal Unemployment Tax (Individual) <i>(NO EXEMPTION – p. 2-10)</i>	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A
Federal Unemployment Tax (Whole Farm) <i>(Exemptions: Less than \$20,000; Less than 10 workers – p. 9-8)</i>							
MN Unemployment Insurance (Individual) <i>(Exemptions: Children under 16 or family farm corp. stockholder/officer within 3rd degree of kindred – p. 2-10 – 2-11)</i>							
MN Unemployment Insurance (Whole Farm) <i>(Exemptions: Less than \$20,000; Less than 4 farm workers in 20 wks – p. 9-9. Do not count as workers children under 16 or family farm corp. stockholder/officer w/in 3rd deg. of kindred.)</i>							
Exempt from Obtaining Workers Compensation Insurance (Yes/No)? (Ch. 8)							
Workers' Comp Insurance (Individual) <i>(Legal Spouse, Parent, Child of Farm Employer)</i>							
Workers' Comp Insurance (Whole Farm) <i>(Exemptions: Less than \$8,000; Less than \$26,000 plus insurance – p. 8-4)</i>							
Child Labor Restriction on Type of Work or Hours (Yes/No)? (Ch. 5)							
Child Labor Restriction? <i>(Chapter 5)</i>							

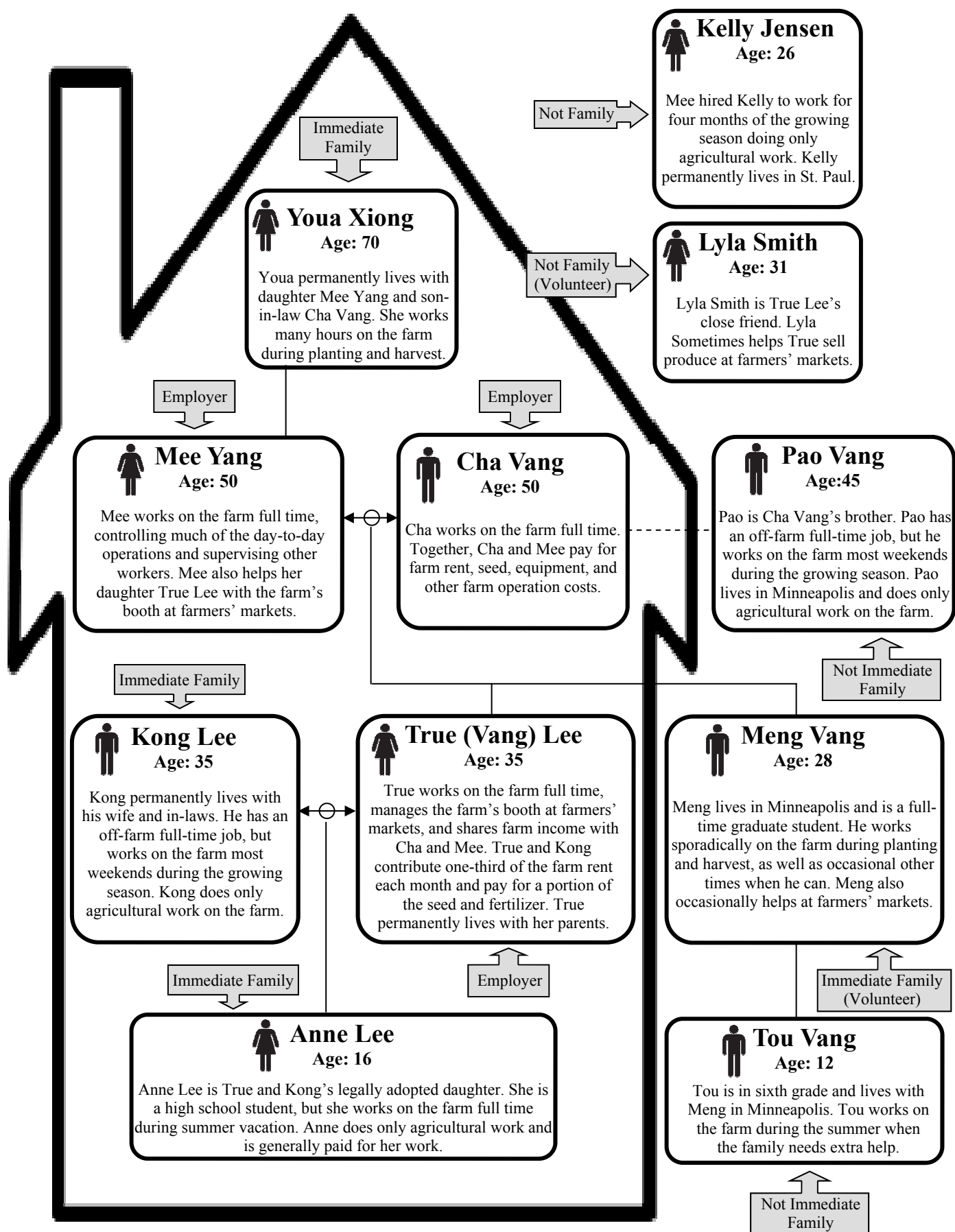
After you have completed the chart for each worker, you can determine what your labor and employment obligations are for each worker by referring to the appropriate sections of the guide. You can record what that means for your farm in the columns below.

<i>Farm Employer Obligations to Workers:</i>	<u>Worker 1</u>	<u>Worker 2</u>	<u>Worker 3</u>	<u>Worker 4</u>	<u>Worker 5</u>	<u>Worker 6</u>	<u>Worker 7</u>
Required Federal or State Minimum Wage, If Any: <i>(Chapter 3)</i>							
Overtime <i>(Federal or State)</i>							
Federal OSHA							
MN OSHA							
Social Security							
Medicare							
Federal Income Tax							
State Income Tax							
Federal Unemployment Tax							
MN Unemployment Insurance							
Workers' Compensation							
Child Labor Restriction							

<i>Farm Employer Obligations to Workers:</i>	<u>Worker 8</u>	<u>Worker 9</u>	<u>Worker 10</u>	<u>Worker 11</u>	<u>Worker 12</u>	<u>Worker 13</u>	<u>Worker 14</u>
Required Federal or State Minimum Wage, If Any: <i>(Chapter 3)</i>							
Overtime <i>(Federal or State)</i>							
Federal OSHA							
MN OSHA							
Social Security							
Medicare							
Federal Income Tax							
State Income Tax							
Federal Unemployment Tax							
MN Unemployment Insurance							
Workers' Compensation							
Child Labor Restriction							

Appendix A: Vang Family Tree

The members of the Vang Family Farm operation are:



Appendix A: Vang Family Example

Use the guide to help you determine which laws apply to each individual worker, including family members. Then, use this worksheet to help keep track of whether each worker qualifies for an exemption under each law. Write “Yes” if the worker qualifies for an exemption. Write “No” if the worker does not qualify for an exemption. You may need to use the 500 Man-Day Worksheet (Appendix B) and the Are Your Workers Doing Agricultural Work? Worksheet (Appendix C) in order to completely fill out this worksheet.

After you have written “Yes,” “No,” or “Not Applicable” (N/A) in every box, you can use the applicable guide section to determine your labor and employment obligations for each worker. Note that for many workers not all of the laws listed will apply.

Farm Employer(s): Mee Yang Cha Vang True Lee
(See pp. 2-6 – 2-7 to determine who is an employer on your farm.)

	<u>Worker 1</u>	<u>Worker 2</u>	<u>Worker 3</u>	<u>Worker 4</u>	<u>Worker 5</u>	<u>Worker 6</u>	<u>Worker 7</u>
<u>Name</u>	Youa Xiong	Kong Lee	Anne Lee	Kelly Jensen	Lyla Smith	Pao Vang	Meng Vang
<u>Relationship to Farm Employer</u> (Closest family relationship)	Mother	Husband	Daughter	None	None	Brother	Son
<u>Age</u>	70	35	16	26	31	45	28
Immediate Family Member (Yes/No)? (p. 2-9)							
Legal Spouse, Parent or Child of Farm Employer?	Yes	Yes	Yes	No	No	No	Yes
Volunteer or Independent Contractor (Yes/No)? (pp. 2-12 – 2-14) <i>Note: If Yes to Either, Exempt From Rest of Chart.</i>							
Volunteer (Occasional, No Compensation – p. 2-13)	No	No	No	No	Yes	No	Yes
Independent Contractor (Own tools, etc. – p. 2-14)	No	No	No	No	N/A	No	N/A
Exempt From Minimum Wage and/or Overtime (Yes/No)? (Chs. 2, 3) <i>Note: If Yes to Immediate Family Exemption, Skip the Gray 500 Man-Day and Agricultural Overtime Exemptions.</i>							
Federal Minimum Wage and Overtime <u>Immediate Family Exemption</u> (Legal Spouse, Parent, Child of a Farm Employer – p. 2-9)	Yes	Yes	Yes	No	N/A	No	N/A
Federal Minimum Wage and Overtime <u>500 Man-Day Exemption (Whole Farm)</u> (Approx. 7 Workers Doing Only Ag Work 5 Days/Wk; use 500 Man-Day Worksheet – Appx. B)	Probably *	Probably *	Probably *	Probably *	Probably *	Probably *	Probably *
Federal Agricultural Overtime Exemption (Use Are Your Workers Doing Ag Work Worksheet – Appx. C)	Depends on type of work #	Yes	Yes	Yes	N/A	Yes	N/A
State Minimum Wage and Overtime Exemption (2 Workers/\$386 Per Week – p. 4-11)	No	No	No	No	N/A	No	N/A

Name:	<u>Worker 1</u> Youa	<u>Worker 2</u> Kong	<u>Worker 3</u> Anne	<u>Worker 4</u> Kelly	<u>Worker 5</u> Lyla	<u>Worker 6</u> Pao	<u>Worker 7</u> Meng
Immediate Family Member?	Yes	Yes	Yes	No	No	No	Yes
Age:	70	35	16	26	31	45	28
Exempt from Federal or State Work Safety (Yes/No)? (Chs. 2, 7)							
OSHA (Individual) <i>(Immediate Family – p. 2-10)</i>	Yes	Yes	Yes	No	No	No	Yes
OSHA (Whole Farm) <i>(10 or fewer workers and no temporary housing – p. 7-5)</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
MN OSHA (Individual) <i>(NO EXEMPTION for family members – p. 2-10)</i>	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A
MN OSHA (Whole Farm) <i>(Partial training exemption for 10 or fewer workers – p. 7-8)</i>	Yes (Partial)	Yes (Partial)	Yes (Partial)	Yes (Partial)	Yes (Partial)	Yes (Partial)	Yes (Partial)
Exempt from Payroll Withholding and Taxes (Yes/No)? (Ch. 9, pp. 9-5 – 9-10)							
Social Security (Withhold/Pay) <i>(Farmer's Child Under Age 18, \$150/worker; \$2500/everyone)</i>	No ⁺	No ⁺	Yes	No ⁺	N/A	No ⁺	N/A
Medicare (Withhold/Pay) <i>(Farmer's Child Under Age 18, \$150/worker; \$2500/everyone)</i>	No ⁺	No ⁺	Yes	No ⁺	N/A	No ⁺	N/A
Federal Income Tax <i>(Farmer's Child Under Age 18, \$150/worker; \$2500/everyone)</i>	No ⁺	No ⁺	Yes	No ⁺	N/A	No ⁺	N/A
State Income Tax <i>(Farmer's Child Under Age 18, \$150/worker; \$2500/everyone)</i>	No ⁺	No ⁺	Yes	No ⁺	N/A	No ⁺	N/A
Exempt from Unemployment Tax and Insurance (Yes/No)? (Chs. 2, 9)							
Federal Unemployment Tax (Individual) <i>(NO EXEMPTION – p. 2-10)</i>	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A
Federal Unemployment Tax (Whole Farm) <i>(Exemptions: Less than \$20,000; Less than 10 workers – p. 9-8)</i>	Maybe [€]	Maybe [€]	Maybe [€]	Maybe [€]	Maybe [€]	Maybe [€]	Maybe [€]
MN Unemployment Insurance (Individual) <i>(Exemptions: Children under 16 or family farm corp. stockholder/officer within 3rd degree of kindred – p. 2-10 – 2-11)</i>	No	No	No	No	N/A	No	N/A
MN Unemployment Insurance (Whole Farm) <i>(Exemptions: Less than \$20,000; Less than 4 farm workers in 20 wks – p. 9-9. Do not count as workers children under 16 or family farm corp. stockholder/officer w/in 3rd deg. of kindred.)</i>	Maybe ^{**}	Maybe ^{**}	Maybe ^{**}	Maybe ^{**}	Maybe ^{**}	Maybe ^{**}	Maybe ^{**}
Exempt from Obtaining Workers' Compensation Insurance (Yes/No)? (Ch. 8)							
Workers' Comp Insurance (Individual) <i>(Legal Spouse, Parent, Child of Farm Employer)</i>	Yes	Yes	Yes	No	No	No	Yes
Workers' Comp Insurance (Whole Farm) <i>(Exemptions: Less than \$8,000; Less than \$26,000 plus insurance – p. 8-4)</i>	Maybe [!]	Maybe [!]	Maybe [!]	Maybe [!]	Maybe [!]	Maybe [!]	Maybe [!]
Child Labor Restriction on Type of Work or Hours (Yes/No)? (Ch. 5)							
Child Labor Restriction? <i>(Chapter 5)</i>	No	No	No <i>(except farm market)</i>	No	N/A	No	N/A

Vang Family Example continued (for additional workers)...

	<u>Worker 8</u>	<u>Worker 9</u>	<u>Worker 10</u>	<u>Worker 11</u>	<u>Worker 12</u>	<u>Worker 13</u>	<u>Worker 14</u>
<u>Name:</u>	Tou Vang						
<u>Relationship to Farm Employer</u> <i>(Closest family relationship)</i>	Grandson/ Nephew						
<u>Age</u>	12						
Immediate Family Member (Yes/No)? (p. 2-9)							
Legal Spouse, Parent or Child of Farm Employer?	No						
Volunteer or Independent Contractor (Yes/No)? (pp. 2-12 – 2-14) <i>Note: If Yes to Either, Exempt From Rest of Chart.</i>							
Volunteer <i>(Occasional, No Compensation – p. 2-13)</i>	No						
Independent Contractor <i>(Own tools, etc. – p. 2-14)</i>	No						
Exempt From Minimum Wage and/or Overtime (Yes/No)? (Chs. 2, 3) <i>Note: If Yes to Immediate Family Exemption, Skip the Gray 500 Man-Day and Agricultural Overtime Exemptions.</i>							
Federal Minimum Wage and Overtime <u>Immediate Family Exemption</u> <i>(Legal Spouse, Parent, Child of a Farm Employer – p. 2-9)</i>	No						
Federal Minimum Wage and Overtime <u>500 Man-Day Exemption (Whole Farm)</u> <i>(Approx. 7 Workers Doing Only Ag Work 5 Days/Wk; use 500 Man-Day Worksheet – Appx. B)</i>	Probably *						
Federal Agricultural Overtime Exemption <i>(Use Are Your Workers Doing Ag Work Worksheet – Appx. C)</i>	Depends on type of work #						
<u>State Minimum Wage and Overtime Exemption</u> <i>(2 Workers/\$386 Per Week – p. 4-11)</i>	No						

	<u>Worker 8</u>	<u>Worker 9</u>	<u>Worker 10</u>	<u>Worker 11</u>	<u>Worker 12</u>	<u>Worker 13</u>	<u>Worker 14</u>
Name:	Tou						
Immediate Family	No						
Age:	12						
Exempt from Federal or State Work Safety (Yes/No)? (Chs. 2, 7)							
OSHA (Individual) <i>(Immediate Family – p. 2-10)</i>	No						
OSHA (Whole Farm) <i>(10 or fewer workers and no temporary housing – p. 7-5)</i>	Yes						
MN OSHA (Individual) <i>(NO EXEMPTION for family members – p. 2-10)</i>	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A
MN OSHA (Whole Farm) <i>(Partial training exemption for 10 or fewer workers – p. 7-8)</i>	Yes (Partial)						
Exempt from Payroll Withholding and Taxes (Yes/No)? (Ch. 9, pp. 9-5 – 9-10)							
Social Security (Withhold/Pay) <i>(Farmer's Child Under Age 18, \$150/worker; \$2500/everyone)</i>	No ⁺						
Medicare (Withhold/Pay) <i>(Farmer's Child Under Age 18, \$150/worker; \$2500/everyone)</i>	No ⁺						
Federal Income Tax <i>(Farmer's Child Under Age 18, \$150/worker; \$2500/everyone)</i>	No ⁺						
State Income Tax <i>(Farmer's Child Under Age 18, \$150/worker; \$2500/everyone)</i>	No ⁺						
Exempt from Unemployment Tax and Insurance (Yes/No)? (Chs. 2, 9)							
Federal Unemployment Tax (Individual) <i>(NO EXEMPTION – p. 2-10)</i>	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A	No or N/A
Federal Unemployment Tax (Whole Farm) <i>(Exemptions: Less than \$20,000; Less than 10 workers – p. 9-8)</i>	Maybe [€]						
MN Unemployment Insurance (Individual) <i>(Exemptions: Children under 16 or family farm corp. stockholder/officer within 3rd degree of kindred – p. 2-10 – 2-11)</i>	Yes						
MN Unemployment Insurance (Whole Farm) <i>(Exemptions: Less than \$20,000; Less than 4 farm workers in 20 wks – p. 9-9. Do not count as workers children under 16 or family farm corp. stockholder/officer w/in 3rd deg. Of kindred.)</i>	Maybe ^{**}						
Exempt from Obtaining Workers Compensation Insurance (Yes/No)? (Ch. 8)							
Workers' Comp Insurance (Individual) <i>(Legal Spouse, Parent, Child of Farm Employer)</i>	No						
Workers' Comp Insurance (Whole Farm) <i>(Exemptions: Less than \$8,000; Less than \$26,000 plus insurance – p. 8-4)</i>	Maybe [!]						
Child Labor Restriction on Type of Work or Hours (Yes/No)? (Ch. 5)							
Child Labor Restriction? <i>(Chapter 5)</i>	Yes						

After you have completed the chart for each worker, you can determine what your labor and employment obligations are for each worker by referring to the appropriate sections of the guide. You can record what that means for your farm in the columns below.

<i>Farm Employer Obligations to Workers:</i>	<u>Worker 1</u>	<u>Worker 2</u>	<u>Worker 3</u>	<u>Worker 4</u>	<u>Worker 5</u>	<u>Worker 6</u>	<u>Worker 7</u>
	Youa	Kong	Anne	Kelly	Lyla	Pao	Meng
Required Federal or State Minimum Wage, If Any: <i>(Chapter 3)</i>	\$5.25/hr (state)	\$5.25/hr (state)	\$4.90/hr (state youth)	\$7.25/hr or \$5.25/hour w/ records*	N/A	\$7.25/hr or \$5.25/hour w/ records*	N/A
Overtime <i>(Federal or State)</i>	Pay State	Pay State	Pay State	Pay State	N/A	Pay State	N/A
Federal OSHA	Exempt	Exempt	Exempt	Exempt	N/A	Exempt	N/A
MN OSHA	Comply, except some training	Comply, except some training	Comply, except some training	Comply, except some training	N/A	Comply, except some training	N/A
Social Security ⁺	Withhold & Pay	Withhold & Pay	Exempt	Withhold & Pay	N/A	Withhold & Pay	N/A
Medicare ⁺	Withhold & Pay	Withhold & Pay	Exempt	Withhold & Pay	N/A	Withhold & Pay	N/A
Federal Income Tax ⁺	Withhold	Withhold	Exempt	Withhold	N/A	Withhold	N/A
State Income Tax ⁺	Withhold	Withhold	Exempt	Withhold	N/A	Withhold	N/A
Federal Unemployment Tax	Maybe pay [€]	Maybe pay [€]	Maybe pay [€]	Maybe pay [€]	N/A	Maybe pay [€]	N/A
MN Unemployment Insurance	Maybe pay ^{**}	Maybe pay ^{**}	Maybe pay ^{**}	Maybe pay ^{**}	N/A	Maybe pay ^{**}	N/A
Workers' Compensation	Exempt	Exempt	Exempt	Obtain, probably [!]	N/A	Obtain, probably [!]	N/A
Child Labor Restriction	None	None	Farm market	None	N/A	None	N/A

<i>Farm Employer Obligations to Workers:</i>	<u>Worker 8</u>	<u>Worker 9</u>	<u>Worker 10</u>	<u>Worker 11</u>	<u>Worker 12</u>	<u>Worker 13</u>	<u>Worker 14</u>
	Tou						
Required Federal or State Minimum Wage, If Any: <i>(Chapter 3)</i>	\$4.90 (federal & state youth)						
Overtime <i>(Federal or State)</i>	Pay State, Maybe pay federal [#]						
Federal OSHA	Exempt						
MN OSHA	Comply, except some training						
Social Security ⁺	Withhold & Pay						
Medicare ⁺	Withhold & Pay						
Federal Income Tax ⁺	Withhold						
State Income Tax ⁺	Withhold						
Federal Unemployment Tax	Maybe pay [€]						
MN Unemployment Insurance	Exempt						
Workers' Compensation	Obtain, probably [!]						
Child Labor Restriction	Yes						

See next page for notes.

Notes on Vang Family Example:

1. **The abbreviation “N/A”** means “not applicable.”
2. **The entries in dark gray text** (instead of black text) are irrelevant because the worker is exempt under a separate exemption. The dark gray text entries are for informational purposes only.
3. **The entries with the * symbol** (for example, **Probably ***) in the Federal Minimum Wage and Overtime Exemption category cannot be answered without additional wage and hour information from the Vang operation. The Vang family could use the 500 Man-Day Exemption worksheet (Appendix B) to answer that question.

It is likely the Vang operation could qualify for the 500 Man-Day exemption because they have only four full-time workers and four less-than full-time workers. However, without written records showing how many hours each worker worked in the past calendar year, the Vang operation cannot prove that it qualifies for the 500 Man-Day exemption. Thus, to be on the safe side, without records the Vang operation should probably not take the 500 Man-Day exemption and should pay Kelly and Pao the current federal minimum wage of \$7.25 per hour.

4. **The entries with the # symbol** (for example, **Depends on type of work #** under Tou and Youa) in the Federal Agricultural Overtime Exemption category cannot be answered without additional information about whether Tou and Youa were doing agricultural or non-agricultural work in a particular workweek. An example of non-agricultural work would be selling at a farmers’ market stall. For more information, see Chapter 4, especially pp. 4-7 – 4-10.
5. **The entries with the € symbol** (for example, **Maybe €**) in the Federal Unemployment Tax (Whole Farm) category cannot be answered without additional information about total wages. The farm does not fall into the “10 workers or more” category, but could fall into the “\$20,000 or more” category requiring the operation to pay federal unemployment tax. See Chapter 9, p. 9-8 for more information.
6. **The entries with the ** symbol** (for example, **Maybe ****) in the MN Unemployment Insurance (Whole Farm) category cannot be answered without additional information about total wages and the number of farm workers who are not children under age 16 working in particular weeks of the year. Tou is the only worker under age 16, so his wages would not count toward the “Less than \$20,000” exemption, and his work would not count toward the number of farm workers working in a particular week. The Vang Family Farm operation is not a family farm corporation, so all other worker wages and workers must be counted to determine whether the Minnesota unemployment insurance exemption applies. See Chapter 9, pp. 9-9 – 9-10 for more information.
7. **The entries with the + symbol** (for example, **No +**) in the Payroll Withholding and Taxes section, which includes Social Security, Medicare, and Federal and

State Income Taxes, cannot be answered with 100 percent certainty without additional information about wages. However, it is very unlikely that most farm operations will meet the \$150/worker or the \$2,500/everyone tests because the amount of wages that can be paid under these tests is so small. Thus, farm employers can generally assume they will pay and/or withhold Social Security, Medicare, and federal and state income taxes for all workers except farm employers' children under 18 years of age. See Chapter 9, pp. 9-8 for more information.

8. **The entries with the ! symbol** (for example, **Maybe !**) in the Workers' Compensation (Whole Farm) category cannot be answered without additional information about total wages paid to all workers and farm insurance policies. See Chapter 8, p. 8-4 for more information.

Appendix B

Worksheet: 500 Man-Day Exemption

The FLSA 500 Man-Day Exemption for Federal Minimum Wage and Federal Overtime

If you qualify for the 500 Man-Day exemption, you do not have to:

- Pay federal minimum wage and federal overtime for “agricultural work” (see Appendix C for worksheet, “Are Your Workers Doing Agricultural Work?”) to determine whether your workers are doing agricultural work).

To qualify for the 500 Man-Day Exemption, you must show that you have not hired workers for more than 500 “man-days” of “agricultural work” during any “calendar quarter” of the **preceding** calendar year. That means you need information from the **previous year** to know whether you qualify for the exemption during **the current year**.

Man-Day Definition: Any day during which an employee performs *one hour* or more of **agricultural work** (again, see Appendix C for worksheet, “Are Your Workers Doing Agricultural Work?” to determine what counts as “agricultural work”).

- If an employee does only 59 minutes of agricultural labor during a particular day, that day is NOT a man-day and does NOT have to be counted toward the 500 man-day limit. If an employee does 60 minutes or more of agricultural work in one day, however, that day is a man-day and must be counted.
- Work done by immediate family (legal spouse, parents, and children) does not need to be counted toward your man-day totals.
- Work done by neighboring farmers on your farm does not count toward your man-day totals, as long as no compensation is paid

for the work and you also help the neighboring farmers on their farms.

You must track the hours your employees spend on agricultural work every day of the year to determine whether you qualify for the 500 man-day exemption in the next year. To track hours, you should have your employees maintain a timesheet showing the times they worked each day. You can then use the timesheets to calculate the number of man-days used each week, month and quarter. It is important to have records because, if challenged, you must be able to provide evidence showing you qualify for the exemption. In other words, the burden of proving the exemption is on you.

After you have a man-day count for each employee in each calendar quarter, add up the man-days to see whether your employees, as a group, worked 500 or fewer man-days during each calendar quarter of the preceding calendar year.

EXAMPLE #1: 500 Man-Day Exemption Chart for 2012

Showing Number of Days Employees Did One Hour or More of Agricultural Labor (Man-Days) During Calendar Quarters of the Preceding Year (2011)

Employee Name	# of Man-Days Worked in Calendar Quarter 1 <i>(Jan 1, 2011 – Mar 31, 2011)</i>	# of Man-Days Worked in Calendar Quarter 2 <i>(Apr 1, 2011 – Jun 30, 2011)</i>	# of Man-Days Worked in Calendar Quarter 3 <i>(Jul 1, 2011 – Sep 30, 2011)</i>	# of Man-Days Worked in Calendar Quarter 4 <i>(Oct 1, 2011 – Dec 31, 2011)</i>
Ab	52	103	240	45
Bee	12	95	151	0
Cee	1	36	83	67
Dee	28	120	197	30
Totals:	93	354	671	142

The farmer in Example #1 above does **not** qualify for the 500 Man-Day exemption because her employees, as a group, worked more than 500 man-days in Calendar Quarter 3 of the preceding year (between July 1, 2011 and September 30, 2011). This farmer **must pay all employees at least the federal minimum wage** for all hours worked in all workweeks **in the current year** (unless an individual exemption applies, see Chapter 2). This farmer **must also pay federal overtime**

for all workweeks, unless the Agricultural Overtime exemption (applies where an employee did solely agricultural work during a particular workweek, see Chapter 4) or an individual exemption applies (see Chapter 2).

EXAMPLE #2: 500 Man-Day Exemption Chart for 2012

Showing Number of Days Employees Did One Hour or More of Agricultural Labor (Man-Days) During Calendar Quarters of the Preceding Year (2011)

Employee Name	# of Man Days Worked in Calendar Quarter 1 <i>(Jan 1, 2011 – Mar 31, 2011)</i>	# of Man Days Worked in Calendar Quarter 2 <i>(Apr 1, 2011 – Jun 30, 2011)</i>	# of Man Days Worked in Calendar Quarter 3 <i>(Jul 1, 2011 – Sep 30, 2011)</i>	# of Man Days Worked in Calendar Quarter 4 <i>(Oct 1, 2011 – Dec 31, 2011)</i>
Ge	2	56	100	40
Hue	23	50	85	0
Kou	0	28	135	52
Totals:	25	134	320	92

The farmer in Example #2 above **does** qualify for the 500 Man-Day exemption **during the calendar year 2012** because her employees, as a group, worked less than 500 man-days in each calendar quarter during the preceding calendar year (2011). This farmer **does not have to pay the federal minimum wage or federal overtime** for any week in 2012 as long as the workers are doing solely agricultural work. However, this farmer likely **does** have to pay the state minimum wage (\$5.25/hr) and state overtime (see Chapter 3, pages 3-5 and 3-6).

**CHART FOR RECORDING MAN-DAYS
WORKED BY EMPLOYEES**

Farm Name: _____

Week Beginning: _____

Hours of Agricultural Labor Worked Per Day				
	Employee A	Employee B	Employee C	Employee D
Monday Date: _____				
Tuesday Date: _____				
Wednesday Date: _____				
Thursday Date: _____				
Friday Date: _____				
Saturday Date: _____				
Sunday Date: _____				

Hours of Agricultural Labor Worked Per Day				
	Employee A	Employee B	Employee C	Employee D
Monday Date: _____				
Tuesday Date: _____				
Wednesday Date: _____				
Thursday Date: _____				
Friday Date: _____				
Saturday Date: _____				
Sunday Date: _____				

Appendix C

Worksheet: Are Your Workers Performing Agricultural Work?

Under the FLSA and MFLSA (the federal and state of Minnesota labor and employment laws), “agricultural work” involves “farming and all its branches.” This means “agricultural work” includes “the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities...[and] the raising of livestock, bees, fur-bearing animals, or poultry.” Agricultural work generally also includes certain activities done to support the farming operation, such as office work; equipment repair; preparing farm products for market; delivering the farm’s product to market or a storage facility; and selling the farm’s products at an on-farm store.

The exemptions discussed in this guide require that workers be performing “agricultural work” in order for the farmer to receive the benefit of the exemptions. **Farmers can use the exemptions only during workweeks when their workers did solely agricultural work for the entire workweek.** Essentially, unless workers do **only** agricultural work for an **entire workweek**, farmers must pay the federal minimum wage and federal overtime to the worker for that week—unless a worker qualifies for an individual exemption (for example, immediate family or volunteer (see Chapter 2)).

Each workweek is evaluated separately for purposes of the exemptions. Also, each worker is evaluated separately. For example, if Worker A has done only agricultural work in Week 1, but did two hours of non-agricultural work one day in Week 2, you could be exempt from federal minimum wage and overtime requirements for Week 1, but you would have to pay federal minimum wage and overtime for Worker A for Week 2. In contrast, if Worker B did only agricultural work in Week 1 and Week 2, you could be exempt from federal minimum wage and overtime rules for Worker B for both Week 1 and Week 2.

Ask the following questions for each worker to determine whether they performed non-agricultural work that would prevent you from taking advantage of the exemptions (500 Man-Day, Agricultural Overtime, Two Workers/\$386 Per Week).

During any workweek, did your worker...

- Do office work as a primary duty (not just to support the agricultural work of the farm)? Y N
- Maintain farm equipment as a primary duty (not just to support the agricultural work of the farm)? Y N
- Sell products off the farm (for example, selling at a farmers' market or staffing an off-farm farm stand)? Y N
- Help harvest crops for another farmer? Y N
- Work in a processing plant that handles produce or meat for another farmer (even if the plant is on my farm)? Y N
- Package crops or meat for another farmer (even if done on my farm premises)? Y N
- Load and transport another farmer's agricultural products to market or to storage (even if loading was done on my farm premises and the products were combined with my own)? Y N
- Perform housecleaning tasks? Y N
- Perform any other tasks that you believe do not fall within the federal definition of agricultural work? Y N

If you answered **YES** to **ANY** of these questions, you **CANNOT** use the exemptions for your worker during that particular workweek because your worker performed **NON**-agricultural work during that week.

If you cannot use the exemptions for a particular workweek because your worker performed more than one hour of non-agricultural work, you must pay your worker the federal minimum wage of \$7.25 per hour for all hours worked during that week (unless an individual exemption applies, see Chapter 2). You must also pay the federal overtime rate (\$10.88 per hour) for all hours worked over 40 hours during that week (except for fruit and vegetable transport hours, see below).

If you answered **NO** to **ALL** of these questions, you can generally assume your worker did only agricultural work during that week. That means you do not have to pay your worker the federal minimum wage or federal overtime. However, you will likely have to pay the state minimum wage (\$5.25/hr) and state overtime for hours worked in excess of 48 hours (unless the Two Worker/\$386 Per Week Exemption applies (see Chapter 4, page 4-11 or an individual exemption applies (see Chapter 2)).

Appendix D

Tax Resources

A. General

As a general resource for employment tax requirements, farmers may wish to review the publication, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, a publication created through a partnership of several governmental agencies, including the Minnesota Department of Revenue, the Minnesota Unemployment Insurance Program at the Minnesota Department of Employment and Economic Development, and the Internal Revenue Service. The publication is available online at http://www.uimn.org/uimn/images/employment_tax.pdf.

B. Federal Taxes

Employer Identification Number: This number is requested through Form SS-4, *Application for Employer Identification Number* (available at the IRS website, <http://www.irs.gov/pub/irs-pdf/fss4.pdf>.) Farmers may also apply for an identification number by toll-free telephone at 1-800-829-4933.

IRS Form W-4 is available online at <http://www.irs.gov/pub/irs-pdf/fw4.pdf>.

In order to comply with all the withholding and payment requirements, farmers and their tax professionals should obtain copies of the following IRS publications: IRS Publication 51 (Circular A), *Agricultural Employer's Tax Guide*; and Publication 15 (Circular E), *Employer's Tax Guide*. Both publications may be obtained through the Internal Revenue Service website, and are located at <http://www.irs.gov/publications/p51/index.html> and <http://www.irs.gov/publications/p15/index.html>.

If you must pay Social Security, Medicare, and federal income taxes because you do not meet the \$150 test or the \$2,500 test:

- Farmers must file IRS Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*, for each calendar year beginning with the first year that the farmer pays \$2,500 or more for farm work or employs a farmworker who meets the \$150 test described in Chapter 9, page 9-8.¹⁹¹ Form 943 can be obtained through the IRS website and is available on the agency's Forms page, located at <http://www.irs.gov/app/picklist/list/formsInstructions.html>.

If you must pay federal unemployment taxes:

- Farm employers who fail to meet either of the tests described in Chapter 9, page 9-8, are required to pay an unemployment tax and to file IRS Form 940, *the Employer's Annual Federal Unemployment Tax Return*.¹⁹² Form 940 can be obtained through the IRS website and is available on the agency's Forms page, located at <http://www.irs.gov/app/picklist/list/formsInstructions.html>.

C. State Taxes

Employer Identification Number: The form ABR is available through the Minnesota Department of Revenue's website at www.taxes.state.mn.us or by calling 651-282-5225.

Farmers who have withholding questions can call the state Department of Revenue's withholding tax hotline number at 651-282-9999 in the metro area, or 1-800-657-3594 in Greater Minnesota, or send those questions by e-mail to: withholding.tax@state.mn.us. Information about depositing state income tax withholdings can also be obtained through the publication, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, available online at http://www.revenue.state.mn.us/Forms_and_Instructions/abr.pdf.

For more information about the reporting requirements for unemployment insurance and how an employer's tax rate is calculated, farmers may wish to call the Minnesota Unemployment Insurance Program at 651-296-6141.

Appendix E

U.S. Federal and State Government Structure

The United States of America is a federal constitutional republic. The U.S. Constitution is the supreme law of the land, which means that the U.S. government must operate within the broad rules set forth in the Constitution. Structurally, the U.S. government is divided into three separate branches: Legislative, Judicial, and Executive. Power is shared among the three branches, and each branch is dependent on the other branches. This division of power is known as “checks and balances.”

A. Overview of Levels of Government

American law includes laws and rules made by many levels of government, including:

- 1. Federal Government (which includes federal agencies)**

The U.S. government is commonly referred to as the “federal” government. When the federal government makes laws, these laws apply to all places (states, counties, cities, etc.) within the United States.

- 2. State Government (which includes state agencies)**

Each state in the United States of America has a state government. State governments also have the power to make laws. However, state laws apply only to the people and places within that state. For example, Minnesota laws apply only to people and places within Minnesota. Minnesota laws would not apply in Wisconsin, Iowa, or any other state in the country.

- 3. County and City Governments**

Each state in the United States of America is divided into counties and cities. Counties and cities have the power to create laws that apply only to the people and places within county or city boundaries. Although county

and city laws (like zoning ordinances and food safety laws) are often important for farmers to understand, they rarely apply in the labor and employment context. Therefore, this guide will not discuss county and city laws.

B. Overview of the United States Federal Government System

The U.S. federal government system has three branches of government: (1) the Legislative Branch; (2) the Judicial Branch; and (3) the Executive Branch. Each branch is briefly discussed below. For more information, see <http://www.usa.gov/Agencies/federal.shtml>.

1. U.S. Legislative Branch

The federal Legislative Branch makes the federal laws of the United States. The Legislative Branch is composed of the two “houses” of the U.S. Congress: the U.S. Senate and the U.S. House of Representatives. Together, the U.S. Senate and the U.S. House of Representatives create the federal laws that apply to the entire country.

The U.S. Senate is made up of 100 U.S. Senators. Each of the 50 states is allowed to elect two Senators to represent the people of that state. Senators serve six-year terms.

The U.S. House of Representatives is made up of 435 U.S. Representatives. Each state elects a number of Representatives based on state population. States with more people have more Representatives, while states with fewer people have fewer Representatives. Minnesota has eight U.S. Representatives, and each Representative represents one of Minnesota’s eight Congressional districts during two-year terms.

Farmers can use the maps on this website to find their district and corresponding U.S. Representative: <http://www.govtrack.us/congress/members/MN>. If you live and farm in different locations, note that your district is determined by where you **live**, not where you farm.

2. U.S. Judicial Branch

The federal Judicial Branch interprets the laws created by the Legislative Branch. The Judicial Branch is controlled by the U.S. Supreme Court, a court of nine judges known as U.S. Supreme Court Justices. The Judicial Branch also includes lower federal appeals courts and federal district courts located around the country. Federal judges serve life-long terms.

3. U.S. Executive Branch

The federal Executive Branch is controlled by the President of the United States. U.S. Presidents can serve a maximum of two four-year terms. The President, with the help of federal executive agencies, carries out and enforces the laws that are created by the Legislative Branch and interpreted by the Judicial Branch. Executive agencies also create administrative rules based on these laws.

Executive agencies and their administrative rules are very important for family farmers. Agency rules govern many of the day-to-day aspects of farming, including how farmers must treat farm workers. Examples of executive agencies include: the U.S. Department of Agriculture (USDA) and its sub-agencies (like the Farm Service Agency (FSA) and the Natural Resources Conservation Service (NCRS)); the U.S. Department of Labor (DOL) and its sub-agencies (like the Wage and Hour Division and the Occupational Safety and Health Administration (OSHA)); and the Internal Revenue Service (IRS).

Farmers may be most familiar with the USDA, FSA, and NCRS. However, when dealing with farm worker issues, DOL, OSHA, and the IRS are the most important federal executive agencies. DOL, OSHA and IRS are each discussed below.

(a) Federal Executive Agency – U.S. Department of Labor (DOL)

The U.S. Department of Labor (DOL) is the federal executive agency within the Executive Branch that is responsible for creating and enforcing administrative rules related to employee wages and overtime, workplace safety, unemployment insurance benefits, and other labor-related issues.

DOL contains many sub-agencies. For purposes of this guide, the two most important sub-agencies are the Wage and Hour Division and the Occupational Safety and Health Administration (OSHA). For more information about DOL, see <http://www.dol.gov>.

- *DOL Sub-Agency: Wage and Hour Division*

The DOL Wage and Hour Division, a sub-agency of DOL within the Executive Branch, administers and enforces the federal laws regarding worker wages and overtime pay. The Division has the power to fine employers that fail to pay workers according to federal law. The Wage and Hour Division website is <http://www.dol.gov/whd/>.

- *DOL Sub-Agency: Occupational Safety and Health Administration (OSHA)*

The DOL Occupational Safety and Health Administration (OSHA), a sub-agency of DOL within the Executive Branch, administers and enforces federal safety and health laws to ensure safe working conditions. OSHA also provides safety- and health-related training, outreach, and education. Farmers covered by federal safety and health laws (often referred to as “OSHA regulations”) must comply with OSHA regulations and standards and provide workers with a workplace free from serious hazards. OSHA enforces work safety laws through workplace inspections and investigations, and fines employers who violate OSHA regulations. For more information about OSHA, see <http://www.osha.gov>.

(b) Federal Executive Sub-Agency – Internal Revenue Service (IRS)

The Internal Revenue Service (IRS) is a sub-agency of the federal Department of the Treasury within the Executive Branch. The IRS conducts tax collection and enforces tax laws. The IRS also creates regulations related to taxes and helps taxpayers understand and meet tax payment obligations. When U.S. citizens (like farmers) pay taxes on behalf of themselves and their employees, citizens must follow IRS rules and use tax forms created by the IRS. IRS penalties for failing to pay taxes owed can be severe, and can include jail time and heavy fines. For more information about the IRS, see <http://www.irs.gov>.

C. Overview of Minnesota State Government System

The Minnesota state government system structure is identical to the federal government structure, with three interdependent branches (Legislative, Judicial, and Executive). Note that the Minnesota state government’s power extends only throughout the state of Minnesota, and is not applicable to any other state. Again, American government is multi-layered, so **both** federal **and** state laws apply at the same time. For more details about the structure of Minnesota government, see <http://www.house.leg.state.mn.us/hinfo/govser/GOVSER9.pdf>.

1. Minnesota Legislative Branch

The Minnesota Legislative Branch makes the state laws of Minnesota. The Minnesota Legislative Branch is composed of the two “houses” of the Minnesota Legislature: the Minnesota Senate and the Minnesota House of

Representatives. Together, the Minnesota Senate and the Minnesota House of Representatives create the state laws that apply to Minnesota.

The Minnesota Senate is made up of 67 State Senators. State Senators serve two-year or four-year terms, depending on the year of their election. The Minnesota House of Representatives is made up of 134 Minnesota Representatives. Minnesota Representatives serve two-year terms. Each person in Minnesota is represented in the Legislature by a State Senator and a State Representative, determined by where you live. For more information about the Minnesota Legislature, see <http://www.leg.state.mn.us/>.

2. Minnesota Judicial Branch

The Minnesota Judicial Branch interprets the laws created by the Minnesota Legislature. The Judicial Branch is controlled by the Minnesota Supreme Court, a court of nine judges known as Minnesota Supreme Court Justices. The Judicial Branch also includes lower Minnesota appeals courts and state district courts located around the state. State court judges are elected or appointed by the Minnesota Governor for six-year terms.

3. Minnesota Executive Branch

The Minnesota Executive Branch is controlled by the Governor of Minnesota. Minnesota governors serve four-year terms. The Governor, with the help of state executive agencies, carries out and enforces the laws that are created by the Minnesota Legislative Branch and interpreted by the Minnesota Judicial Branch. Minnesota executive agencies also create administrative rules based on these laws.

Just like federal executive agencies, Minnesota executive agencies and their administrative rules are very important for family farmers. State agency rules govern many of the day-to-day aspects of farming, including how farmers must treat farm workers. Examples of state executive agencies include: the Minnesota Department of Agriculture (MDA); the Minnesota Department of Labor and Industry (DOLI) and its subdivisions (like the Apprenticeship and Labor Standards Division and the Minnesota OSHA Division); and the Minnesota Department of Revenue (MDR).

Farmers may be most familiar with MDA. However, when dealing with farm worker issues, DOLI and MDR are the most important state executive agencies. DOLI and MDR are each discussed below.

4. State Executive Agency – Minnesota Department of Labor and Industry (DOLI)

The Minnesota Department of Labor and Industry (DOLI) is the state executive agency within the Minnesota Executive Branch that is responsible for creating and enforcing administrative rules related to employee wages and overtime, workplace safety, unemployment insurance benefits, and other labor-related issues.

DOLI contains many divisions. For purposes of this guide, the two most important divisions are the Apprenticeship and Labor Standards Division and the Minnesota OSHA Division. For more information about DOLI, see <http://www.dli.mn.gov>.

- *DOLI Apprenticeship and Labor Standards Division*

The DOLI Apprenticeship and Labor Standards Division's goal is to ensure employers are following state laws and regulations on wages, conditions of employment, and apprenticeship programs. The Division protects workers by enforcing state laws on minimum wage and overtime, child labor, and other employee rights. Employers who fail to follow these state laws may be subject to fines. For more information, see <http://www.dli.mn.gov/Laborlaw.asp>.

- *DOLI Minnesota OSHA Division*

The DOLI Minnesota OSHA Division enforces the Minnesota Occupational Safety and Health Act (Minnesota OSHA) and federal OSHA standards. It works to assure safe and healthful working conditions for Minnesota workers through on-site inspections, citations for noncompliance, interpreting standards, and helping employers understand how to comply with standards. Minnesota OSHA also responds to employee complaints of workplace hazards and discrimination due to safety and health issues, and may fine employers who violate state health and safety laws. For more information, see <http://www.dli.mn.gov/MnOsha.asp>.

5. State Executive Agency – Minnesota Department of Revenue (MDR)

The Minnesota Department of Revenue (MDR) manages the collection of state taxes and the enforcement of state tax laws. When Minnesota residents pay taxes on behalf of themselves and their employees, residents must follow MDR rules and use tax forms created by MDR. MDR has the power to fine state employers who fail to properly pay taxes. For more information about MDR, see <http://www.revenue.state.mn.us>.

ENDNOTES

¹ Generally speaking, federal and state workplace laws apply to all people classified as employees. Although farmers may not think of family members as “employees,” in many cases family workers will be considered employees under applicable laws. These laws define employment very broadly, generally reaching “any individual” who is “suffer[ed] or permit[ted] to work.” 29 U.S.C. § 203(g). See also *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 325-26 (1992) (holding that the broad definition of “employ” in the Federal Labor Standards Act (FLSA) gives the Act wide coverage); Minn. Stat. § 177.23, subds. 5 and 7 (2011) (a similarly broad definition of “employee” applies under the Minnesota Fair Labor Standards Act).

² Under the Fair Labor Standards Act, an “employer” includes “any person acting directly or indirectly in the interest of an employer in relation to an employee.” 29 U.S.C. § 203(d). Under federal OSHA, the term “employer” means a person engaged in a business affecting commerce who has employees. 29 U.S.C. § 652(5).

Under the Minnesota Fair Labor Standards Act, an “employer” means “any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.” Minn. Stat. § 177.23, subd. 6 (2011). Under the Minnesota OSHA, “employer” means a “person who employs one or more employees and includes any person who has the power to hire, fire, or transfer, or who acts in the interest of, or as a representative of, an employer and includes a corporation, partnership, association, group of persons, and the state and all of its political subdivisions.” Minn. Stat. § 182.651, subd. 7 (2011). Finally, under the Minnesota Workers’ Compensation statute, “employer” means any person who employs another to perform a service for hire. Minn. Stat. § 176.011, subd. 10 (2011).

³ See Lukas *et al.*, *Wage and Hour Handbook: Federal and Minnesota*, First Ed., Minnesota CLE, at 18 (2011).

⁴ See *Fegley v. Higgins*, 19 F.3d 1126, 1131 (6th Cir. 1994) (holding that members of a general partnership may be liable under the FLSA, stating “We have noted that more than one ‘employer’ can be simultaneously responsible for FLSA obligations. The court determines as a matter of law whether a party is an employer using an ‘economic reality’ test.”).

⁵ See Lukas *et al.*, *Wage and Hour Handbook: Federal and Minnesota*, First Ed., Minnesota CLE, at 18-19 (2011).

⁶ See 29 C.F.R. § 780.307 (2011) (agricultural exemption for employer's immediate family); see also 29 U.S.C. § 203(d) (definition of "employer" under Fair Labor Standards Act). Read in conjunction, these laws appear to allow multiple farm employers to exempt immediate family members from applicable labor and employment laws.

⁷ See OSHA Regional Notice, Directive Number CPL 04-00 (LEP 009), Local Emphasis Program for Dairy Farm Operations, Region V, at V (November 1, 2011) (stating "Immediate family member means those in direct relation to the farm employer, such as a parent, spouse, or child. Step-children, foster children, step-parents and foster parents will also be considered as immediate family members. Other relatives, even when living permanently in the same household as the employer, will not be considered to be part of the immediate family.") (citing 29 C.F.R. § 780.308 "Definition of immediate family" regarding exemptions under minimum wage and overtime provisions), available at http://www.osha.gov/dep/leps/RegionV/Dairy_Farm_fy12.doc.

⁸ However, the test for whether a farmer must pay federal unemployment tax (which looks at how much money farmers pay in wages or how many workers a farmer employs) allows farmers to leave wages paid to a farmer's spouse or children out of the calculation, and also allows a farmer's spouse and children to be left out when counting the farmer's total number of workers.

⁹ See *Barrentine v. Arkansas-Best Freight System*, 450 U.S. 728, 739 (1981) (affirming that an employee cannot waive Federal Labor Standards Act benefits). See also Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 8 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf (noting that the state agencies responsible for enforcing workplace laws will look beyond agreements designating an individual as a non-employee and will instead determine employee status based on the facts of each case).

¹⁰ Each of the laws discussed in this guide may have slightly different definitions for the terms "employee," "volunteer," "trainee," and "independent contractor." Generally speaking, however, the agencies that enforce the laws use similar criteria to determine if an individual has been misclassified, and will typically arrive at the same determination about employee status.

¹¹ *Tony and Susan Alamo Foundation, et al. v. Secretary of Labor*, 471 U.S. at 290, 301, 303 (1985).

¹² *Tony and Susan Alamo Foundation, et al. v. Secretary of Labor*, 471 U.S. at 291, 302 (1985).

¹³ See *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 751 (1989).

¹⁴ See *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 751-752 (1989). See also *Ernster v. Luxco, Inc.*, 596 F.3d 1000, 1003 (8th Cir. 2010).

¹⁵ See U.S. Department of Labor, Wage and Hour Division, *Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act* (April 2010), available at <http://www.dol.gov/whd/regs/compliance/whdfs71.htm>; see also FLSA2004-5NA, *Family farm internship program and employment relationship under FLSA* (May 17, 2004), available at http://www.dol.gov/whd/opinion/FLSANA/2004/2004_05_17_05FLSA_NA_internship.htm.

Similar factors control whether an individual is classified as a trainee under other laws. See *Judd v. Sanatorium Commission of Hennepin County*, 35 N.W.2d 430, 432-434 (Minn. 1948) (holding an intern was an employee for purposes of the Minnesota Workers Compensation Act because, although she was working primarily to gain further experience and practical knowledge, “the sanatorium was still receiving the benefit of her labor in connection with the preparation of food for its patients at the time of her injury”); *Oelrich v. Schlagels, Inc.*, 426 N.W.2d 430, 432 (Minn. 1988) (holding an individual should be classified as an employee because, even though the individual did not receive any wage compensation or room and board from his “trainer,” the business clearly obtained a benefit from his training); *Johnson City Medical Ctr. v. United States*, 999 F.2d 973 (6th Cir. 1993) (holding where student nurses did not receive academic credit for their work, earnings were not nominal, and services were unconnected with an educational plan, hospital was required to pay FICA taxes upon wages paid to nursing students); see also Rev. Rul. 68-541, 1968-2 C.B. 456 (finding compensated high school trainees gaining practical knowledge and experience in occupational training programs to be employees for purposes of Social Security and Medicare taxes).

¹⁶ See United States Department of Labor, Wage and Hour Division, *Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act* (April 2010), available at <http://www.dol.gov/whd/regs/compliance/whdfs71.htm>; See also FLSA2004-5NA, *Family farm internship program and employment relationship under FLSA* (May 17, 2004), available at http://www.dol.gov/whd/opinion/FLSANA/2004/2004_05_17_05FLSA_NA_internship.htm.

¹⁷ Federal law also provides for a student-learner exemption which permits an employer to pay an employee receiving school credit for work at 85 percent of the minimum wage with prior authorization from the Department of Labor’s Wage and Hour Division. See 29 U.S.C. § 214; 29 C.F.R. §§ 520.200-520.508 (2011). However, the Wage and Hour Division will not authorize the payment of less than minimum wage to student workers unless the employer meets several requirements, including: (1) employment of student workers “will not create a substantial probability of reducing the full-time employment opportunities of the

other workers”; and (2) “[r]easonable efforts have been made to recruit workers paid at least the minimum wage.” See 29 U.S.C. § 214(a); 29 C.F.R. § 520.404(a) (2011).

In addition to the federal “trainee” and “student-learner” classifications, Minnesota allows for payment of less than the minimum wage to participants in state-certified apprenticeship programs. However, agricultural occupations have not yet been treated as apprenticeship occupations in Minnesota. Thus, farm workers may not be treated as apprentices under the provisions of these state-sanctioned programs at this point. See Memo from the Minnesota Department of Labor and Industry Director of Apprenticeship Roslyn Wade to individuals interested in apprenticeship training programs, *List of occupations with apprenticeship training programs*, available at <http://www.doli.state.mn.us/APPR/PDF/apptrn.pdf>. The Minnesota Department of Labor and Industry (MNDOLI) is the State Apprenticeship Agency in Minnesota.

¹⁸ 29 U.S.C. §§ 201 *et seq.*; 29 § C.F.R. parts 510-794 (2011).

¹⁹ Minn. Stat. Chapter 177 (2011).

²⁰ The Wage and Hour Division of the U.S. Department of Labor is responsible for enforcing the federal Fair Labor Standards Act (FLSA). According to the Wage and Hour Division, “[v]irtually all employees engaged in agriculture are covered by the [FLSA]....” Family farm workers working in Minnesota are also generally covered by the Minnesota FLSA (MFLSA). The Minnesota Department of Labor and Industry’s Labor Standards Unit is responsible for enforcing the MFLSA. United States Department of Labor, Wage & Hour Div., *Fact Sheet #12: Agricultural Employers Under the Fair Labor Standards Act (FLSA)* (July 2008), available at <http://www.dol.gov/whd/regs/compliance/whdfs12.htm>.

²¹ 29 U.S.C. § 206(a)(1)(C).

²² 29 U.S.C. § 206(g).

²³ 29 U.S.C. § 206(g)(2).

²⁴ Minn. Stat. § 177.24, subd. 1 (2011). The current minimum wage rates can be obtained through the state Department of Labor and Industry and are listed on its website at <http://www.doli.state.mn.us/ls/FedMinWage.asp>.

²⁵ Minnesota Department of Labor and Industry, *How federal minimum-wage increase affects Minnesota businesses*, available at <http://www.doli.state.mn.us/ls/FedMinWage.asp>.

²⁶ 29 U.S.C. § 207(a)(1).

²⁷ 29 U.S.C. § 207(a)(1); Minn. Stat. § 177.25 (2011).

²⁸ Minn. Stat. § 177.25 (2011).

²⁹ 29 U.S.C. § 207(a)(1); Minn. Stat. § 177.25 (2011).

³⁰ Minn. Stat. § 177.254, subd. 1 (2011); 29 C.F.R. § 785.19 (2011); Minn. R. 5200.1020 (2011). A shorter meal break might be appropriate under “special conditions.” Note, however, that the rules do not define what circumstances might qualify as “special conditions.” Additionally, the courts in Minnesota are split on whether the rules require a 30-minute meal break or whether an employer must simply provide employees with sufficient time to eat a meal. See *Frank v. Gold’n Plump Poultry, Inc.*, 2006 U.S. Dist. LEXIS 77901 (D. Minn. Oct. 25, 2006); *Rios v. Jennie-O Turkey Store, Inc.*, 793 N.W.2d 309 (Minn. App. 2011).

³¹ 29 C.F.R. § 785.19 (2011); Minn. Stat. § 177.254, subd. 2 (2011); Minn. R. 5200.0060 and 5200.0120, subp. 4 (2011).

³² Minn. Stat. § 177.253, subd. 1 (2011).

³³ 29 C.F.R. § 785.18 (2011) (requiring that employees be paid for rest breaks “of short duration, running from about 5 minutes to 20 minutes”); Minn. R. 5200.0120, subps. 1 and 4 (2011).

³⁴ The federal rules for deducting meal and lodging costs apply in cases where (1) the employer does not qualify for the 500 man-day exemption and is required to pay the federal minimum wage, and (2) the deductions for meals and lodging will cause a family farm worker’s wages to fall below the minimum hourly wage rate. 29 U.S.C. § 203(m); 29 C.F.R. § 531.36(a) (2011).

³⁵ Under the federal rules, farmers may only deduct the actual cost of the meal from employee pay. It is illegal under the federal rules for a farmer to furnish meals (or lodging) at a profit to the farmer if the deductions bring a worker’s pay below minimum wage. 29 C.F.R. § 531.36(a) (2011). In order to legally subtract the actual cost of meals, farmers must keep records that show the cost incurred in furnishing meals and lodging. Such records *must* include: itemized statements showing how the cost of food and lodging was computed; records showing the costs of maintenance, utilities, and repairs; and records showing weekly additions or deductions from wages paid for meals and lodging. All of the above records must be preserved for three years. 29 C.F.R. § 516.27(a)(1); 29 C.F.R. § 516.5 (2011).

³⁶ Minn. Stat. § 177.28 (2011); Minn. R. 5200.0060; 5200.0070; 5200.0160 (2011). Note that where a family farm worker is exempt from the Minnesota minimum wage because the family farm worker is paid the minimum weekly salary applicable to a small employer (\$386/workweek), deductions for food and lodging may not take the weekly salary below the minimum weekly amount of \$386. If the deductions result in the family farm worker being paid less than the minimum weekly salary, the farmer will lose the benefit of the state minimum wage and overtime exemptions, and will therefore have to pay the \$5.25

minimum wage and state overtime. Minn. Stat. § 177.28 (2011); Minn. R. 5200.0211 (2011).

³⁷ This allowance represents 60 percent of the adult minimum wage rate applicable to a small employer (\$5.25) for one hour of work per meal. Minn. R. 5200.0060 (2011). A meal is defined as “an adequate portion of a variety of wholesome, nutritious foods and shall include at least one food from each of the following four groups: fruits or vegetables; cereals, bread, or potatoes; eggs, meat, or fish; milk, tea, or coffee; except that for breakfast, eggs, meat, or fish may be omitted if both cereal or bread are offered.” Minn. R. 5200.0060 (2011).

³⁸ Minn. R. 5200.0060 (2011).

³⁹ Minn. R. 5200.0160 (2011).

⁴⁰ There are additional exemptions that apply to agricultural employees but are not discussed here because they are unlikely to apply to farm workers on small-scale specialty crop farms. More information about these exemptions can be found on the U.S. Department of Labor’s website at <http://www.dol.gov/whd/regs/compliance/whdfs12.htm>.

⁴¹ 29 C.F.R. § 780.305 (2011) (noting that 500 man-days generally equals seven full-time employees); see also Elizabeth R. Springsteen, *Agricultural Labor: An Employer’s Obligations and Responsibilities*, The National Agricultural Law Center, at 19 (2009), available at http://www.nationalaglawcenter.org/assets/articles/springsteen_aglabor-ppt.pdf.

⁴² 29 U.S.C. § 213(a)(6), (g).

⁴³ 29 C.F.R. § 780.305 (2011) (noting that 500 man-days generally equals seven full-time employees); see also Elizabeth R. Springsteen, *Agricultural Labor: An Employer’s Obligations and Responsibilities*, The National Agricultural Law Center, at 19 (2009), available at http://www.nationalaglawcenter.org/assets/articles/springsteen_aglabor-ppt.pdf.

⁴⁴ See 29 U.S.C. § 203(e) and (u); 29 C.F.R. § 780.301 (2011). This holds true regardless of the form of business organization (for example, sole proprietorship, partnership or corporation).

⁴⁵ 29 U.S.C. § 203(u); 29 C.F.R. § 780.301(a) (2011).

⁴⁶ 29 C.F.R. § 780.304(b) (2011).

⁴⁷ 29 C.F.R. § 780.306 (2011).

⁴⁸ 29 C.F.R. § 780.306 (2011).

⁴⁹ See 29 U.S.C. § 203(e) and (u); 29 C.F.R. § 780.301 (2011). This holds true regardless of the form of business organization (for example, sole proprietorship, partnership or corporation).

⁵⁰ See 29 C.F.R. § 780.308 (2011).

⁵¹ 29 C.F.R. § 780.332 (2011).

⁵² 29 C.F.R. § 780.332 (2011).

⁵³ 29 C.F.R. § 780.301 (2011). More information about the hand harvest laborer exemption can be found on the U.S. Department of Labor's website at <http://www.dol.gov/whd/regs/compliance/whdfs12.pdf>.

⁵⁴ 29 C.F.R. § 780.310 (2011).

⁵⁵ 29 U.S.C. § 213(a)(6)(C). The federal regulations interpreting this exemption state that "[t]he fact that a worker may live on the farm where the operations are performed would not be a reason for disqualification." 29 C.F.R. § 780.315(b) (2011). Thus, if a farmer's extended family lived on the farm or with the farmer, the exemption could still apply to them.

⁵⁶ For purposes of this exemption, a week is considered to be "a fixed and regularly recurring period of 168 hours consisting of seven consecutive 24-hour periods during which the employee worked at least 1 'man-day.'" All agricultural work for all employers in the previous year is counted toward the 13-week total. Consequently, it is the total of all weeks of agricultural employment by the employee for all employers in the preceding calendar year that determines whether he meets the 13-week test, not just the number of weeks he worked for a specific farmer. If a farmer claims this exemption, it is the farmer's responsibility to "obtain a statement from the employee showing the number of weeks he was employed in agriculture during the preceding calendar year." 29 C.F.R. § 780.316 (2011).

⁵⁷ The term "hand harvest laborer" means a farm worker who harvests crops by hand or with hand tools. It does not apply to workers who use electrically powered tools. The term only applies to workers who harvest soil-grown crops. Among other things, these crops include grains, fruits, and vegetables. "Hand-harvesting" does not include any work involving animals. In addition, performance by the hand harvester of any non-harvesting operation in the same workweek makes the exemption inapplicable. For example, workers who wrapped tomatoes in a packing shed would not qualify for the exemption because the wrapping is a non-harvesting operation. Likewise, workers who hand picked out small undesirable fruit before harvesting to ensure a better crop would not qualify for the exemption because that work would be considered a "preharvest culling operation performed as a part of the cultivation and growing operations not harvesting." 29 C.F.R. § 780.312 (2011).

⁵⁸ The exemption does not apply in any workweek in which the employee is compensated on any other basis. For example, if an employee is compensated on an hourly rate for part of the week and on a piece rate basis for part of the week, the exemption would not be available. 29 C.F.R. § 780.313 (2011). Another criteria for the exemption to apply is that the hand harvest operation “has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment.” This means that “agricultural employers and employees and other individuals in the region of employment who are familiar with farming operations and practices in the region and the method of compensation utilized in such operations and practices” would recognize a piece rate method of payment as being customary. 29 C.F.R. § 780.314 (2011).

Note also that non-local minors, “16 years of age or under, who are hand harvesters, paid on a piece rate basis in traditionally piece-rated occupations, employed on the same farm as their parent, and paid the same piece rate as those over 16 are also exempt from the federal minimum wage and overtime rules.” 29 C.F.R. § 780.318 (2011).

⁵⁹ 29 U.S.C. § 213(a)(6).

⁶⁰ 29 C.F.R. § 780.11 (2011).

⁶¹ See 29 U.S.C. § 203(f); 29 C.F.R. § 780.105 (2011). Employees whose work is classified as “primary agriculture” are considered to be doing agricultural work regardless of why or where the work is done (for example, agricultural production that takes place in a city is still considered agricultural work). 29 C.F.R. § 780.106 (2011).

⁶² See 29 U.S.C. § 203(f); *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, 762-763 (1949); *Holly Farms Corp. v. N.L.R.B.*, 517 U.S. 392, 398 (1995).

⁶³ 29 C.F.R. § 780.129 (2011).

⁶⁴ 29 C.F.R. § 780.132 (2011).

⁶⁵ 29 C.F.R. § 780.158 (2011).

⁶⁶ 29 C.F.R. § 780.158 (2011).

⁶⁷ 29 C.F.R. § 780.134 (2011).

⁶⁸ 29 U.S.C. § 203(f); 29 C.F.R. §§ 780.150-780.155 (2011).

⁶⁹ 29 C.F.R. § 780.150 (2011).

⁷⁰ 29 C.F.R. § 780.158 (2011).

⁷¹ 29 C.F.R. §§ 780.137; 780.141 (2011). Note that a separate federal exemption exists for workers engaged in the transportation of fruits or vegetables from the farm “to the place of first processing or first marketing within the same state.” This exemption might apply in cases where farm workers are delivering raw,

unprocessed produce of someone other than the farmer. 29 U.S.C. § 213(b)(16). It is permissible to combine exempt work under one exemption with exempt work under another exemption. Where the scope of the exemptions is not the same, however, the exemption with a more limited scope applies to the employee. 29 C.F.R. § 780.12 (2011). Thus, if a farm worker did some agricultural work and did deliveries for the employing farmer that included produce from another farm, the farm worker would need to be paid the minimum wage for that week but would not receive overtime because the fruit and vegetable transport overtime exemption would apply for that workweek.

⁷² 29 C.F.R. § 780.332 (2011). Harvesting a crop fits within the definition of primary agriculture and therefore is considered agricultural work regardless of where the activities are performed. 29 C.F.R. § 780.106 (2011).

⁷³ 29 U.S.C. § 213(b)(12).

⁷⁴ Minn. Stat. § 177.23, subd. 7(1) (2011). A salary is defined as a guaranteed predetermined weekly wage which does not change, even if work is only available for a portion of the week. See Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 60 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf. See also *In re: the Order to Comply: Labor Law Violation of Daley Farm of Lewiston*, No. A11–1788, 2012 Minn. App. LEXIS 65 (July 9, 2012).

Note that the \$386 weekly salary is for small employers and is based on the state minimum wage of \$5.25 per hour that applies to those employers. The \$386 figure is derived from the following language in the statute: “any individual employed in agriculture on a farming unit or operation who is paid a salary greater than the individual would be paid if the individual worked 48 hours at the state minimum wage [\$252] plus 17 hours at 1-1/2 times the state minimum wage per week [\$7.875 x 17 = \$133.88].” $\$252 + \$133.88 = \$385.88$. Rounding up to the nearest dollar, family farm workers should be paid a salary of at least \$386 per week (based on the minimum wage rate of \$5.25 that applies to small-scale employers with less than \$500,000 in gross annual sales) to be excluded from the definition of “employee.” Minn. Stat. § 177.23, subd. 7 (2011).

⁷⁵ A “salary” must be a “predetermined wage for each workweek,” and not an hourly rate. See *In re: the Order to Comply: Labor Law Violation of Daley Farm of Lewiston*, No. A11–1788, 2012 Minn. App. LEXIS 65 (July 9, 2012).

⁷⁶ Minn. R. 5200.0260 (2011).

⁷⁷ Minn. R. 5200.0260 (2011).

⁷⁸ See NCRS Practice Standard for High Tunnels (October 2010), available at http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1046313.pdf.

⁷⁹ A “salary” must be a “predetermined wage for each workweek,” and not an hourly rate. See *In re: the Order to Comply: Labor Law Violation of Daley Farm of Lewiston*, No. A11–1788, 2012 Minn. App. LEXIS 65 (July 9, 2012).

⁸⁰ See 29 U.S.C. § 212 (federal Fair Labor Standards Act); 29 C.F.R. Part 570 (2011) (federal regulations implementing the Fair Labor Standards Act); Minn. Stat. Ch. 181A (Minnesota Child Labor Standards Act) (2011); Minn. R. Ch. 5200 (Minnesota rules implementing the Child Labor Standards Act) (2011).

⁸¹ When both Minnesota state law and federal law apply, the law setting the most stringent standard must be observed. Note that state law allows the Minnesota Department of Labor and Industry to grant exemptions from state child labor laws on a case by case basis. See Minn. Stat. § 181A.07, subds. 5, 6 (2011).

⁸² See Minn. Stat. § 181A.11 (2011) (citing 29 U.S.C. § 213(c)(2)); see also 29 C.F.R. § 570.123(c) (2011).

⁸³ “School days” means any day when normal classes are in session during the regular school year in the school district. Minn. Stat. § 181A.03, subd. 6 (2011).

⁸⁴ Minn. Stat. § 181A.04, subd. 6 (2011).

⁸⁵ Minn. Stat. § 181A.04, subd. 6 (2011).

⁸⁶ 29 C.F.R. § 570.2(b) (2011).

⁸⁷ “School hours” means that period during which the student is required to be in school in the school district. Minn. Stat. § 181A.03 subd. 7 (2011); see also 29 C.F.R. § 570.123(c) (2011).

⁸⁸ See 29 C.F.R. § 570.2(b) (2011); Minn. Stat. § 181A.04, subd. 2 (2011). Note that there are certain exemptions from this rule for minor children who have been excused from compulsory school attendance by the state or other jurisdiction on religious grounds once they have reached at least 14 and/or attained a certain grade level, and they are employed in compliance with all the requirements of State school attendance law. 29 C.F.R. 570.122-23 (2011); see also U.S. Department of Labor, *Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act*, Child Labor Bulletin 102 (Publication No. WH1295), at 4 (June 2007), available at <http://www.dol.gov/whd/regs/compliance/childlabor102.pdf>. If a minor who has reached the age of at least 14 has been excused in this manner, the minor must also secure a Minnesota employment certificate pursuant to Minn. Stat. § 181A.05 in order to work on school days during school hours. See Minn. Stat. §§ 181A.04, subd. 2; 181A.05 (2011).

⁸⁹ Minn. Stat. § 181A.04, subd. 3 (2011).

⁹⁰ Minn. Stat. §§ 181A.07, subd. 1; 181A.04, subd. 4 (2011).

⁹¹ Minn. Stat. § 181A.04, subd. 4 (2011).

⁹² 29 C.F.R. § 570.2(b) (2011); Minn. Stat. § 181A.04, subd. 5 (2011); Minn. R. 5200.0920(K) (2011) (adopting the list of occupations in agriculture that the U.S. Secretary of Labor declares particularly hazardous for the employment of children under the age of 16).

However, 14- and 15-year-olds enrolled in vocational agricultural education programs and/or who hold certain 4-H or vocational agricultural training certificates may be able to perform some of the particularly hazardous jobs. See 29 C.F.R. § 570.72 (2011); Minn. Stat. § 181.04A, subd. 5 (2011); Minn. R. 5200.0930 (2011).

⁹³ See 29 C.F.R. § 570.2(b) (2011).

⁹⁴ “School hours” means that period during which the student is required to be in school in the school district. Minn. Stat. § 181A.03, subd. 7 (2011).

⁹⁵ See 29 C.F.R. § 570.2(b) (2011); Minn. Stat. § 181A.04, subd. 2 (2011).

⁹⁶ Minn. Stat. § 181A.04, subd. 3 (2011).

⁹⁷ Minn. Stat. §§ 181A.07, subd. 1; 181A.04, subd. 4 (2011).

⁹⁸ Minn. Stat. § 181A.04, subd. 4 (2011).

⁹⁹ 29 C.F.R. § 570.2(b) (2011); Minn. Stat. § 181A.04, subd. 5 (2011); Minn. R. 5200.0920(K) (2011) (adopting the list of occupations in agriculture that the U.S. Secretary of Labor declares particularly hazardous for the employment of children under the age of 16).

¹⁰⁰ See Minn. Stat. §§ 181A.04, subd. 1; 181A.07, subd. 1; 181A.11 (2011) (citing 29 U.S.C. § 213(c)(2)).

¹⁰¹ “Home chore” means work usual to the home of the employer. Work performed in connection with or as part of the business, trade, or profession of the employer is not a home chore. Minn. R. 5200.0900 (2011).

¹⁰² Minn. Stat. § 181A.07, subd. 4 (2011).

¹⁰³ Minn. R. 5200.0900 (2011).

¹⁰⁴ The regulations governing the FLSA list several examples of off-farm work and various types of sales arrangements that may be considered as agricultural work (including roadside stands, mail order, and “house to house” sales). 29 C.F.R. §§ 780.144; 780.158 (2011). Farmers’ market sales are not included in either of these lists. Although we spoke with representatives from the federal Department of Labor’s Wage and Hour Division and the Minnesota Department of Labor and Industry to obtain clarification about whether farmers’ market sales are defined as agricultural work, the representatives could not provide an answer to that question. Because the regulations are unclear on this issue, and there is no interpretive guidance from the enforcing agencies, farmers should assume such activities are not included within the definition of agriculture.

¹⁰⁵ Minn. Stat. §§ 181A.04, subd. 1; 181A.07 (2011) (exemptions do not apply to off-farm sales work). Note that farmers may apply to the Minnesota Department of Labor and Industry for an exemption from the child labor requirements for a particular worker who is a minor. Minn. Stat. § 181A.07, subd. 5. To receive an exemption, the farmer must be able to show “the minor has a special talent, unique qualifications, or special need for the particular employment for which the exemption is sought,” and that “the health, education, or welfare of the minor will not be detrimentally affected by the employment or by the environment in which the employment is to be conducted.” Minn. R. 5200.0940 (2011). A copy of the exemption application form can be found on the Minnesota Department of Labor and Industry’s website and is available at <http://www.doli.state.mn.us/lis/Pdf/child2b.pdf>.

¹⁰⁶ Minn. Stat. § 181A.04, subds. 2, 4 (state law rules) (2011); federal law does not provide restrictions for 14- and 15-year-olds doing non-agricultural work exclusively for their parent or guardian. See 29 C.F.R. § 570.126 (2011); see also U.S. Department of Labor, *Youth Employment Provisions for Nonagricultural Occupations Under the Fair Labor Standards Act*, Child Labor Bulletin 101 (Publication No. WH1330), at 5 (February 2005), available at http://www.dol.gov/whd/regs/compliance/childlabor101_text.htm.

¹⁰⁷ 29 C.F.R. § 570.2 (2011); see also U.S. Department of Labor, *Youth Employment Provisions for Nonagricultural Occupations Under the Fair Labor Standards Act*, Child Labor Bulletin 101 (Publication No. WH1330), at 5 (February 2005), available at http://www.dol.gov/whd/regs/compliance/childlabor101_text.htm.

¹⁰⁸ Minn. Stat. 181A.04, subd. 6 (2011) (state law rules); see also U.S. Department of Labor, *Youth Employment Provisions for Nonagricultural Occupations Under the Fair Labor Standards Act*, Child Labor Bulletin 101 (Publication No. WH1330), at 5 (February 2005), available at http://www.dol.gov/whd/regs/compliance/childlabor101_text.htm (federal rules do not provide hours restrictions for 16- and 17-year-olds doing non-agricultural work).

¹⁰⁹ Minn. Stat. § 181A.06 (2011).

¹¹⁰ Minn. Stat. § 181A.07, subd. 4 (2011).

¹¹¹ 29 C.F.R. § 516.2, 516.33(f) (2011); see also U.S. Department of Labor, *Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act*, Child Labor Bulletin 102 (Publication No. WH1295), at 7 (June 2007), available at <http://www.dol.gov/whd/regs/compliance/childlabor102.pdf>.

¹¹² 29 C.F.R. § 516.33(f) (2011); see also 29 C.F.R. § 516.2 (2011); see also U.S. Department of Labor, *Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act*, Child Labor Bulletin 102 (Publication No.

WH1295), at 7 (June 2007), available at <http://www.dol.gov/whd/regs/compliance/childlabor102.pdf>.

¹¹³ See 29 C.F.R. part 579 (2011).

¹¹⁴ See Minn. Stat. § 181A.12 (2011).

¹¹⁵ 29 C.F.R. § 570.71 (2011); see also 29 C.F.R. § 570.70 (2011); see also U.S. Department of Labor, *Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act*, Child Labor Bulletin 102 (Publication No. WH1295), at 4-5 (June 2007), available at <http://www.dol.gov/whd/regs/compliance/childlabor102.pdf>.

¹¹⁶ The MSPA regulates worker housing if workers are “migrant” or “seasonal” workers. In considering whether a worker qualifies as a “migrant” or “seasonal” worker, there are two key factors: (1) whether the worker is doing agricultural work of a seasonal or temporary nature; and (2) whether the worker is required to be *absent overnight* from their “permanent place of residence.” 29 C.F.R. § 500.20(p) (2011). If the answer to either question is yes, the worker will generally be protected under the MSPA. If the worker is protected by the MSPA and the farmer provides worker housing, the farmer must follow the housing regulations set forth in MSPA.

¹¹⁷ If you require your workers to live on the farm, or if they have to live on the farm because there is no other available nearby housing, the housing you provide to your workers will most likely be considered a temporary labor camp, and you will have to comply with the OSHA standard governing temporary labor camps.

¹¹⁸ The Wage & Hour Division (WHD) of the Employment Standards Administration (ESA) of the U.S. Department of Labor has shared authority with OSHA over two standards: the Field Sanitation standard (1928.110), and the Temporary Labor Camp standard (1910.142). OSHA, *Field Enforcement Manual*, at 10-6, available at http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-148.pdf.

¹¹⁹ 29 U.S.C. § 654. The Act provides that each employer: “(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees; and, (2) shall comply with occupational safety and health standards promulgated under this Act.”

¹²⁰ OSHA, *Field Enforcement Manual*, at 10-2 and 10-3, available at http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-148.pdf; see also Jack L. Runyan, *Summary of Federal Laws and Regulations Affecting Agricultural Employers*, USDA Agricultural Handbook No. 719 (2000). This exemption arises from annual appropriations bills for the U.S. Department of Labor that exclude some small-farm employers from OSHA audits and inspections.

¹²¹ 29 C.F.R. § 1975.4(b)(2) (2011).

¹²² See OSHA Regional Notice, Directive Number CPL 04-00 (LEP 009), Local Emphasis Program for Dairy Farm Operations, Region V, at V (November 1, 2011) (stating “Immediate family member means those in direct relation to the farm employer, such as a parent, spouse, or child. Step-children, foster children, step-parents and foster parents will also be considered as immediate family members. Other relatives, even when living permanently in the same household as the employer, will not be considered to be part of the immediate family.”) (citing 29 C.F.R. § 780.308 “Definition of immediate family” regarding exemptions under minimum wage and overtime provisions), available at http://www.osha.gov/dep/leps/RegionV/Dairy_Farm_fy12.doc.

¹²³ OSHA generally defines a farming operation to mean “any operation involved in the growing or harvesting of crops, the raising of livestock or poultry, or related activities conducted by a farmer on sites such as farms, ranches, orchards, dairy farms or similar farming operations.” OSHA, *Field Operations Manual*, at 10-2, available at http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-148.pdf.

¹²⁴ 29 C.F.R. § 1928.110(a) and (c); Department of Labor, Occupational Health and Safety Administration, *Fact Sheet No. OSHA 92-25, OSHA's Field Sanitation Standard (1992)*, available at <http://www.nmsu.edu/safety/resources/forms/OSHA-FieldSanitationStd1992.pdf>.

¹²⁵ 29 U.S.C. §§ 667, 651(b)(11). The federal Occupational Safety and Health Administration approves and monitors the state plan and helps to pay its operating costs.

¹²⁶ Minn. Stat. § 182.652, subd. 1 (2011).

¹²⁷ Minn. Stat. § 182.666 (2011).

¹²⁸ Minn. Stat. §§ 182.666, 182.667 (2011).

¹²⁹ Minn. Stat. §§ 182.653, 182.654, 182.655 (2011).

¹³⁰ See Minn. Stat. § 182.653, subd. 8 (2011) (requiring employers with NAICS codes to create AWAIR plans); see also Minn. R. 5208.1500, Standard Industrial Classification System for AWAIR (2011) (listing North American Industry Classification System (NAICS) codes for agriculture, forestry, fishing, and hunting); see also Minnesota Department of Labor and Industry Occupational Safety and Health Division, *An Employer's Guide to Developing A Workplace Accident and Injury Reduction (AWAIR) Program*, at 1-2 (April 2009), available at <http://www.dli.mn.gov/OSHA/PDF/awair.pdf>.

¹³¹ See Minn. Stat. § 182.653 subd. 8 (2011); see also Minnesota Department of Labor and Industry Occupational Safety and Health Division, *An Employer's*

Guide to Developing A Workplace Accident and Injury Reduction (AWAIR) Program, at 1, available at <http://www.dli.mn.gov/OSHA/PDF/awair.pdf>.

¹³² Minn. Stat. § 182.653, subd. 4(e) (2011). The training requirements are set forth in sections 5206.1600 through 5206.1900 of the Minnesota Rules, available on the website for the Minnesota Office of the Revisor of Statutes at <https://www.revisor.mn.gov/data/revisor/rule/current/5206/5206.pdf>. Farmers with a temporary labor camp are also required to provide farm workers with farming operation training, regardless of how many workers they employ. Minn. Stat. § 182.653, subd. 4(e) (2011); Minn. R. 5206.1400 (2011).

¹³³ Minn. Stat. § 176.021, subd. 1 (2011).

¹³⁴ Minn. Stat. § 176.011, subd. 9 (2011).

¹³⁵ Minn. Stat. § 176.041 (2011). The Minnesota workers' compensation insurance statute also excludes: (1) business partners in farm operations; (2) executive officers of family farm corporations; (3) executive officers of closely held corporations; (4) spouses, parents, or children of any person excluded by these categories; and (5) farmers or members of their family "who exchange work with other farmers in the same community." See *Monson v. Arcand*, 58 N.W.2d 753, 754 (Minn. 1953) (holding that the partnership is the employer when it is an entity distinct from its members). "Family farm corporation" means "a corporation founded for the purpose of farming and the ownership of agricultural land in which the majority of the stock is held by and the majority of the stockholders are persons, the spouses of persons, or current beneficiaries of one or more family farm trusts in which the trustee holds stock in a family farm corporation, related to each other within the third degree of kindred according to the rules of the civil law, and at least one of the related persons is residing on or actively operating the farm, and none of whose stockholders are corporations." Minn. Stat. § 500.24, subd. 2(c) (2011). A closely held corporation is defined as having fewer than 22,880 hours of payroll in the preceding calendar year, if the executive officer owns at least 25 percent of the stock of the corporation. Minn. Stat. § 176.041(7), 176.011, subd. 9 (2011).

¹³⁶ Minn. Stat. § 176.011, subd. 11a (2011); see also Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 47 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf (stating that current average state annual wage is approximately \$26,000).

¹³⁷ Minn. Stat. § 176.011 (2011).

¹³⁸ The U.S. Congress created the Medicare program in 1965.

¹³⁹ The U.S. Congress created the first version of Social Security in 1935. Mikki D. Waid, *Social Security: A Brief Overview*, AARP Public Policy Institute (March 2012), available at:

http://www.aarp.org/content/dam/aarp/research/public_policy_institute/econ_sec/2012/social-security-brief-overview-fs-AARP-ppi-econ-sec.pdf.

¹⁴⁰ The law creating this unemployment compensation system is called the Federal Unemployment Tax Act, known as “FUTA.” Minnesota unemployment benefits are governed by the State Unemployment Tax Act.

¹⁴¹ Form SS-4 is available from the IRS website, <http://www.irs.gov/pub/irs-pdf/fss4.pdf>, or by toll-free telephone at 1-800-829-4933.

¹⁴² Farms run as sole proprietorships with no employees are likely exempt from having to obtain an Employer Identification Number. See IRS website, available at <http://www.irs.gov/businesses/small/article/0,,id=97872,00.html>.

¹⁴³ The form ABR is available through the Minnesota Department of Revenue’s website at http://www.revenue.state.mn.us/Forms_and_Instructions/abr.pdf or by calling 651-282-5225.

¹⁴⁴ In order to comply with all the withholding and payment requirements, farmers and their tax professionals should obtain copies of the following IRS publications: IRS, Publication 51 (Circular A), *Agricultural Employer’s Tax Guide*; and Publication 15 (Circular E), *Employer’s Tax Guide*. Both publications may be obtained through the Internal Revenue Service website, and are located at <http://www.irs.gov/publications/p51/index.html> and <http://www.irs.gov/publications/p15/index.html>.

¹⁴⁵ The W-4 form is available online at <http://www.irs.gov/pub/irs-pdf/fw4.pdf>.

¹⁴⁶ See, Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 13 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf.

¹⁴⁷ I.R.C. § 3121(b)(3). Note that the exemption for children under the age of 18 applies when a child is employed by the child’s father or mother. Therefore, this exception may not apply where the employer is a corporation or partnership.

¹⁴⁸ Internal Revenue Service, Publication 51 (Circular A), *Agricultural Employer’s Tax Guide*, at Section 5 Federal Income Tax Withholding (2012), available at <http://www.irs.gov/publications/p51/index.html>.

¹⁴⁹ Internal Revenue Service, Publication 51 (Circular A), *Agricultural Employer’s Tax Guide*, at Section 4 Social Security and Medicare Taxes (2012), available at <http://www.irs.gov/publications/p51/index.html>.

Internal Revenue Service, Publication 51 (Circular A), *Agricultural Employer’s Tax Guide*, at Section 4 Social Security and Medicare Taxes (2012), available at <http://www.irs.gov/publications/p51/index.html>. The \$150 and \$2,500 tests do not apply to wages paid to a farmworker who receives less than \$150 in annual cash wages, even if the farmer pays \$2,500 or more in that year to all

farmworkers if the farmworker: (1) is employed in agriculture as a hand-harvest laborer; (2) is paid piece rates in an operation that usually pays on a piece-rate basis in the region of employment; (3) commutes daily from his or her permanent home to the farm; and (4) was employed in agriculture less than 13 weeks in the preceding calendar year.

¹⁵¹ Internal Revenue Service, Publication 51 (Circular A), *Agricultural Employer's Tax Guide*, at Section 4 Social Security and Medicare Taxes (2012), available at <http://www.irs.gov/publications/p51/index.html>.

¹⁵² 26 U.S.C. § 3306(a)(2).

¹⁵³ Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 22-24 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf.

¹⁵⁴ Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 25 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf. Note that employees who are residents of North Dakota or Michigan and work in Minnesota are not required to have Minnesota income tax withheld from their wages if they complete Form MWR, Reciprocity Exemption/Affidavit of Residency.

¹⁵⁵ Minn. Stat. § 268.035, subd. 11 (2011). Note, however, that services provided by these individuals will count where the family farm corporation or the farmer is regulated under FUTA.

¹⁵⁶ Minn. Stat. §§ 268.035, subd. 2; subd. 11 (5), (6); and subd. 16 (2011).

¹⁵⁷ Minn. Stat. § 268.035, subd. 11 (2011); see also Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 32 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf; Unemployment Insurance Minnesota, *Employer Handbook*, at 9, available at <http://www.uimn.org/uimn/employers/publications/emp-hbook/index.jsp>. Minnesota law defines the calendar quarters for unemployment insurance purposes to be January 1 to March 31; April 1 to June 30; July 1 to September 30; and October 1 to December 31. Minn. Stat. § 268.035, subd. 7 (2011).

¹⁵⁸ Minn. Stat. § 268.042, subd. 1 (2011); Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 31 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf.

¹⁵⁹ Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 33 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf.

¹⁶⁰ Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 38 (June 2011), available at

http://www.uimn.org/uimn/images/employment_tax.pdf. If the due date falls on a Saturday, Sunday, or legal holiday, the report and tax payment are due on the next department business day.

¹⁶¹ Business Tax Education Partnership, *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, at 31 (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf.

¹⁶² 42 U.S.C. §§ 2000e – 2000e-17.

¹⁶³ 42 U.S.C. § 2000e(k).

¹⁶⁴ 42 U.S.C. § 2000e(b).

¹⁶⁵ 29 U.S.C. § 206(d).

¹⁶⁶ 29 U.S.C. §§ 621 – 634

¹⁶⁷ 29 U.S.C. § 630(b).

¹⁶⁸ 29 U.S.C. § 206(g).

¹⁶⁹ 42 U.S.C. §§ 12101 – 12213.

¹⁷⁰ 42 U.S.C. § 12102.

¹⁷¹ 42 U.S.C. § 12112(b)(5)(A).

¹⁷² 42 U.S.C. § 12111(5)(A).

¹⁷³ 42 U.S.C. §§ 2000ff – 2000ff-11.

¹⁷⁴ 42 U.S.C. § 2000ff(2)(B).

¹⁷⁵ Minn. Stat. Chapter 363A (2011).

¹⁷⁶ Minn. Stat. § 363A.08, subd. 6(a) (2011).

¹⁷⁷ Minn. Stat. §§ 181.66 – 181.71 (2011).

¹⁷⁸ Minn. Stat. § 177.30(a)(5) (2011).

¹⁷⁹ For detailed information about the Form I-9 requirements, see the *Handbook for Employers: Instructions for Completing Form I-9 (Employment Eligibility Verification Form)*, prepared by the U.S. Citizenship and Immigration Service (June 2011), available at <http://www.uscis.gov/files/form/m-274.pdf>.

¹⁸⁰ Current version available at <http://www.uscis.gov/files/form/i-9.pdf>.

¹⁸¹ Minn. Stat. § 256.998 (2011).

¹⁸² The Center's website at <https://newhire-reporting.com/MN-Newhire/Default.aspx> has instructions for online reporting and a downloadable form for paper or email filing. A help desk is available toll-free at 1-800-672-4473 during business hours.

¹⁸³ Minn. Stat. § 181A.06 (2011); see also Minnesota Department of Labor and Industry, *A guide to Minnesota's wage standards: Records and payments* (2008), available at http://www.doli.state.mn.us/ls/Pdf/record_payment.pdf.

¹⁸⁴ See IRS, *Topic 753 – Form W-4 – Employee's Withholding Allowance Certificate*, available at <http://www.irs.gov/taxtopics/tc753.html/>. More generally, see IRS, Publication 15 (Circular E), *Employer's Tax Guide* (2012), available at <http://www.irs.gov/publications/p15/index.html>.

¹⁸⁵ An employee must use Form W-4MN if the employee wants to claim exemption from state or federal withholding; claim fewer Minnesota allowances than federal allowances; claim more than ten (10) Minnesota allowances; or request additional Minnesota withholding. See Minnesota Department of Revenue's *2012 Minnesota Income Tax Withholding Instruction Booklet and Tax Tables*, available at http://www.revenue.state.mn.us/Forms_and_Instructions/2012/wh_inst_12.pdf.

The employer may be required to file this form with the Minnesota Department of Revenue if: the employee claims more than ten (10) Minnesota allowances; the employee claims to be exempt from Minnesota withholding, and the employer reasonably expects the employee's wages to exceed \$200 per week (unless the employee is a resident of a reciprocity state and has completed Form MWR); the employee requests additional Minnesota withholding be deducted each pay period; or the employer believes the employee is not entitled to the number of allowances claimed. (However, note that employers are not required to verify the number of withholding allowances claimed by each employee.) There is a \$50 penalty for each Form W-4MN that is required to be filed with the department but is not submitted.

Additionally, residents of Michigan and North Dakota who are working for a Minnesota employer may complete Form MWR to request exemption from Minnesota income tax on their earnings (they will instead be taxed on the Minnesota income by their home state). See *Reciprocity Exemption/Affidavit of Residency for Tax Year 2012*, available at http://www.revenue.state.mn.us/Forms_and_Instructions/2012/mwr_12.pdf. Form MWR must be retained for five years.

¹⁸⁶ Minn. Stat. § 177.30(a)(1)-(3) (2011); see also Minnesota Department of Labor and Industry, *A guide to Minnesota's wage standards: Records and payments* (2008), available at http://www.doli.state.mn.us/ls/Pdf/record_payment.pdf.

¹⁸⁷ Minn. Stat. § 177.30(a)(1)-(3) (2011); see also Minnesota Department of Labor and Industry, *A guide to Minnesota's wage standards: Records and payments* (2008), available at http://www.doli.state.mn.us/ls/Pdf/record_payment.pdf.

¹⁸⁸ Minn. Stat. § 177.30(a)(1)-(3) (2011); see also Minnesota Department of Labor and Industry, *A guide to Minnesota's wage standards: Records and payments* (2008), available at http://www.doli.state.mn.us/ls/Pdf/record_payment.pdf.

¹⁸⁹ Minnesota Department of Labor and Industry, *A guide to Minnesota's wage standards: Records and payments* (2008), available at http://www.doli.state.mn.us/ls/Pdf/record_payment.pdf.

¹⁹⁰ See *Minnesota OSHA Compliance – Recordkeeping Standard*, available at <http://www.dli.mn.gov/OSHA/Recordkeeping.asp>. Some non-agricultural industries are exempt from this recordkeeping requirement even for employers with more than ten (10) employees.

¹⁹¹ Internal Revenue Service, Publication 51 (Circular A), *Agricultural Employer's Tax Guide*, at Section 8, Form 943 (2010), available at <http://www.irs.gov/publications/p51/index.html>.

¹⁹² See *Introduction to Employment Taxes and Employer Issues and Responsibilities Guide*, Business Tax Education Partnership (June 2011), available at http://www.uimn.org/uimn/images/employment_tax.pdf.