When hiring employees or taking on interns, individuals and organizations need to be aware of the variety of state and federal laws that regulate employers. As many may know, these employment laws establish minimum wages, maximum hours, ages of employment, and provide other protections for employees and employers. There are exceptions for agricultural employees and interns, but an employer must be careful to comply exactly with these laws.

**Workers Under the Fair Labor Standards Act**

The Fair Labor Standards Act (FLSA)\(^1\) is a federal law that sets minimum wage, overtime, recordkeeping, and child labor requirements for employers.

**What requirements do employers have to meet?**

**Minimum wage:** Farmworkers still have to be paid the minimum wage rate. Under the Act, employers must pay at least $7.25 per hour, but because Michigan’s minimum wage rate is higher ($7.40 per hour), farmworkers must be paid at whichever rate is higher.\(^2\)

- **Recordkeeping:** Every employer covered by the Act must keep certain records for each covered, nonexempt worker. Most of this data is the type that employers generally maintain in ordinary business practice. There is no required form for the records. The following is a listing of the basic payroll records that an employer must maintain:
  - Employee's full name, as used for Social Security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records
  - Address, including zip code
  - Birth date, if younger than 19
  - Sex and occupation
  - Time and day of week when employee's workweek begins
  - Hours worked each day and total hours worked each workweek
  - Basis on which employee's wages are paid (e.g., "$9 per hour", "$440 a week", "piecework")
  - Regular hourly pay rate
  - Total daily or weekly straight-time earnings

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\(^{2}\) MCL 408.381
• Total overtime earnings for the workweek
• All additions to or deductions from the employee's wages
• Total wages paid each pay period
• Date of payment and the pay period covered by the payment

Who does the act apply to?

Virtually all employees engaged in agriculture are covered by the Act. There are some exemptions which exempt certain employees from the minimum wage and overtime protections. To qualify for these exemptions, the employee must be engaged in activity that constitutes “agriculture” under the act (see next section).

Under the Act, farmworkers are exempt from the overtime provisions, meaning that employers do not have to pay the employee “time and a half” for hours worked beyond forty per week.

There are several exemptions from both minimum wage and overtime provisions in the Act, but the following two are most relevant to urban farms:

• If an employer did not utilize 500 “man days” (any day during which an employee performs agricultural work for at least one hour) in any calendar quarter of the preceding calendar year is exempt from both the minimum wage and overtime pay provisions for the current calendar year.
• Employees who are immediate family members of their employer.

What is considered agriculture under the Act?

The Act defines agriculture as “farming in all its branches,” which includes the cultivation and tillage of the soil, raising livestock and poultry, keeping bees, and anything else done by a farmer or on a farm as an incident to or in conjunction with such farming operations, such as packing up produce and selling it at market, or transporting farm products.3

Can I employ youths?

Employing children on farms is complicated. Historically, they have been major contributors to farm households’ labor force. However, they also are generally expected to be in school, rather than working on farms and there can be issues of children of migrant laborers being exploited. The labor law tries to balance these issues by allowing children under sixteen to work on farms in very limited circumstances. The exact restrictions vary according to the child’s age, their parents’ consent, and the type of work the child is doing. If considering employing a child under sixteen, an employer should consult an attorney.

Farmworkers under the age of 16 may not perform certain hazardous tasks. Some examples:

• Operating a power saw or chain saw
• Working on a ladder or scaffold over 20 feet high
• Driving a vehicle to transport passengers
• Using agricultural chemicals, such as pesticides or fertilizers, that have a skull and crossbones or the words “poison,” “danger,” or “warning” on the label.

What about interns and volunteers under the Act?

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3 29 U.S.C. § 203(f)
Many farms employ interns to help keep labor costs down, train the “new blood,” and pass on the knowledge of how to run a market or farm. There is big difference between an internship at a farm or market run as a business and an internship at a farm that is operating as a non-profit civic organization.

Internships at for-profit businesses
If operations are traditional, “for-profit” businesses, then internships are subject to strict regulations. Generally, interns at for-profit enterprises must be paid the minimum wage unless the internship is for the interns sole educational benefit. There are six criteria that have to be considered
1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern, and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If all of the factors listed above are met, an employment relationship does not exist under the FLSA, and the Act’s minimum wage and overtime provisions do not apply to the intern. If even one of these factors is not met, then the intern must be paid minimum wage.

Generally, volunteers may not work on for-profit urban farms, even if the volunteers are friends or are only volunteering for a very short period of time. Generally, anyone working on a for-profit farm would be legally considered an employee, unless that person is an owner/officer of the farm (with some exceptions) or meets the definition of an intern or independent contractor. There are otherwise very few examples of situations where people have been able to legally work on for-profit farms without pay.

Internships at non-profit institutions
The FLSA makes a special exception under certain circumstances for individuals who volunteer to perform services for a state or local government agency and for individuals who volunteer for humanitarian purposes for private non-profit food banks. There is also an exception for individuals who volunteer their time, freely and without anticipation of compensation for religious, charitable, civic, or humanitarian purposes to non-profit organizations. Unpaid internships in the public sector and for non-profit charitable organizations, where the intern volunteers without expectation of compensation, are generally permissible.

Generally speaking, people who volunteer on a charitable, religious, or non-profit farm are not considered employees and do not have to be paid. If someone is an employee of a nonprofit organization, he or she may not also volunteer for the nonprofit unless the volunteer activities are separate from what the employee does on a day-to-day basis. For example, someone who is a grant-writer and fundraiser for a community garden many not volunteer to help with a fundraising event for the nonprofit; however, that person may volunteer to help in the gardens from time to time, so long as helping in the gardens is not part of that person’s normal job description. Also, if volunteers come to depend on a charitable, religious, or non-profit farm in some manner -- being paid in food, given shelter -- they may also be deemed workers under federal labor law.

The Volunteer Protection Act
The Volunteer Protection Act (Public Law 105-19) is a federal law passed by Congress that limits volunteers’ risk of legal liability while acting as a volunteer for nonprofit or governmental organizations. The creation of the law was motivated by instances where volunteers would be sued after accidentally harming another person. Congress found that this liability discouraged volunteerism across the nation, which burdens organizations that rely on volunteers to carry out their missions.

**When does the VPA apply?**

Generally speaking, the VPA eliminates a volunteer’s legal liability if the three following circumstances were met:
- The volunteer acted only negligently, rather than recklessly or intending to cause harm
- The volunteer was acting within the scope of their responsibilities to the organization
- The harm was not caused by the volunteer operating a vehicle.

**When does the VPA not apply?**

Some activities and actions do not receive any protection from the Act:
- Crimes of violence
- Acts of international terrorism
- Hate crimes
- Sexual offenses
- Civil rights violations
- When the volunteer was using drugs or alcohol.

Additionally, this law only affects whether volunteers will be liable; it does not change the liabilities of the group or organization, which still may be sued.

**Does the VPA apply in Michigan?**

Under the law, states cannot have laws that conflict with the Act, but they can have laws that provide additional protections to volunteers. Additionally, states may completely opt out of the VPA, meaning that volunteers can be sued if they are negligent. Michigan does not have any laws that offer extra protections to volunteers in the agricultural context. Michigan also has not opted out of the VPA, meaning the Act applies to Michigan volunteers.

**Workers’ Compensation Laws**

Workers’ compensation is a form of insurance available for employees. The employees enroll in Michigan’s workers’ comp program, which pays the employee certain amounts of money in the event that he or she is injured on the job. In return for these payments, the employee gives up any right to sue his or her employer if it negligently caused the injury.

There is no applicable federal workers’ compensation program for agricultural employees and the program is administered and regulated through the state of Michigan. Michigan’s workers’ comp law, the Worker’s Disability Compensation Act of 1969 (MCL 418.101 et seq.) is administered through the Workers’ Compensation Agency, a part of the Department of Licensing and Regulatory Affairs (LARA).

**Who must comply with the Worker’s Disability Compensation Act of 1969?**

An agricultural employer have to comply with Michigan’s workers’ comp laws if
- It employs of three or more regular employees paid hourly wages or salaries and not paid on a piecework basis, and
Those employees are employed 35 or more hours per week by that same employer for 13 or more consecutive weeks during the preceding 52 weeks. Additionally, an employer must pay the medical and hospital expenses for an employee if the following three conditions are met:

- The employee has been employed 35 or more hours per week by that employer for 5 or more consecutive weeks.
- The injury “arose out of and in the course of employment,” meaning it happened on the job, while the employee was performing his or her job. Additionally, such employees have the right to sue for recovery of lost wages.

**Health and Safety Regulations for Agricultural Workers**

**Michigan Occupation Safety and Health Act (MIOSHA)**

All employers must maintain a safe and healthy work environment for all workers. Additionally, there are other things that employers must do. Employers must:

- Display the MIOSHA and OSHA posters.
- Report all fatalities and any hospitalization of three or more employees resulting from the same accident or health hazard to MIOSHA within 8 hours.
- Employers with 11 or more employees must keep a log of occupational injuries and illnesses and post a summary of them annually. You may use MIOSHA Form #300A. Employers with 10 or fewer employees during all of the previous calendar year may be requested, in writing, to keep these records.

- Important standards include but are not limited to the following:
  1. SMV (slow-moving vehicle) signs.
  2. Anhydrous ammonia equipment.
  3. Pulpwood logging.
  4. Labor camps.
  5. Roll-over protection and tractor safety.
  7. Field sanitation.
  8. Employees’ right to know about pesticides and other toxic chemicals and hazardous substances and their handling.

- Remember, agricultural operations doing non-agricultural work, such as hauling, will need to follow the general industry health and safety standards as applicable.

- In addition to following the specific health and safety standards, employers have a general duty to furnish a place of employment that is free from recognized hazards that cause or are likely to cause death or serious physical harm.

**Field Sanitation Rules**

Where 11 or more workers are employed on any day within the past 12 months (including your family members), you must provide toilets, hand-washing facilities and cooled drinking water, in a fountain or with single-use cups, within 1/4 mile of where the workers are working.
Additionally, you must notify each worker of the location of the toilet and hand-washing facilities and drinking water and allow each worker reasonable opportunities during the workday to use them. 
- You must also inform employees of good hygiene practices.
- Where fewer than 11 workers are employed, you must provide potable water and access to toilet and hand-washing facilities in locations readily accessible to all employees.

### The Federal Worker Protection Standard (WPS)

Any employer who uses pesticides for the production or maintenance of agricultural plants must comply with the WPS.

**What must an employer do to comply?**

- Follow all restricted-entry interval (REI) requirements listed on the pesticide container label and notify workers about treated areas.
- Post relevant pesticide application information in a central location and tell workers and handlers where the location is.
- Provide approved decontamination sites.
- Provide WPS training to all workers and handlers every 5 years. Training must be done by a certified pesticide applicator or by someone who has completed an official WPS train-the-trainer program.
- Keep the required records and maintain them for 2 years (USDA standard).

### Michigan Unemployment Insurance Law

An employer must provide unemployment insurance coverage for its employees if either 1) that employer has 10 or more workers in each of 20 weeks during the current or preceding calendar year, or 2) that employer has a cash payroll of $20,000 or more in any calendar quarter of the current or preceding calendar year.

If an employer falls into either of these categories, the employer must:

- Provide unemployment insurance coverage for your employees. The Michigan Unemployment Insurance Agency is the carrier. It is the employer’s responsibility to determine and report eligibility.
- You must submit to the state quarterly a Quarterly Wage Detail Report (UC 1017). This form can be submitted electronically at [http://www.michigan.gov/uia](http://www.michigan.gov/uia).
- You must post the UIA unemployment compensation poster.
- Seasonal employers may apply to the Unemployment Insurance Agency for a “seasonal employer” designation, which may limit off-season claims if the employer complies with all posting and notice requirements.

More information is available at UIA’s website: [http://www.michigan.gov/uia/0,4680,7-118-26898---00.html](http://www.michigan.gov/uia/0,4680,7-118-26898---00.html).

### Taxes, Social Security and Medicare
The federal tax law pertaining to agricultural employers is somewhat complicated, and this is merely a glance at requirements placed on employers. More information can be found at the IRS website. For more information, IRS Publication 51, Circular A (Agricultural Employer’s Tax Guide) is particularly useful.

All agricultural employers must track worker wages and withhold federal income tax as appropriate. Generally, an agricultural employer is treated the same as most other employers. An employer must do the following:

- Deduct federal income tax if 1) the employer paid that employee $150 in cash wages that year, or 2) the employer paid $2500 in cash wages to all employees. The term “cash wages” also includes checks or money orders.
- Issue W-2s at the end of the tax year showing wages paid and taxes withheld.
- Issue Form 1099 to all bona fide independent contractors.

Additionally, an employer must do several other things:

- Obtain an employer identification number (EIN) through the IRS if the employer is new. This can be done through the IRS website. Employers must also submit the social security number (SSN) and name of each employer.
- Have a W-4 form on file for each employee. This is usually given to the employee at the beginning of his or her employment
- Deposit withheld payroll tax and Social Security and Medicare taxes into the IRS’s Electronic Federal Tax Payment System.

**Michigan Income Tax**

Every employer that is required to withhold federal income tax must withhold Michigan income tax as well. Generally, Michigan employers must withhold 4.35% of wages paid to employees.

Similar to the IRS requirements, new Michigan employers must register with the Michigan Department of Treasury by completing “Michigan Business Taxes Registration” (Form 518). If the employer already has an EIN through the IRS, this process can be done on the Department of Treasury’s e-Registration website, located at [www.michigan.gov/business](http://www.michigan.gov/business).

Employers must also get a “Withholding Exemption Certificate” (Form MI-W4) from each employee. Although it is similar to the federal W-4, the two are not interchangeable. The employer needs both the federal and Michigan forms for each employee.

Additional information, including how to calculate withholding for each employee, how to make payments into the system, and other requirements, is available at the Department of Treasury’s website.

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6 Visit IRS.gov and click on the *Apply for an Employer Identification Number (EIN) Online* link.

Conclusion

Hiring employees and taking on volunteers and interns exposes farm operators to a complex set of labor-related laws. In addition to minimum wage and employee protection laws, the employer must also be conscious of properly filing and paying taxes, social security and Medicare to the appropriate state and federal agencies. While there are limited exceptions to some of these laws for agriculture and for educational interns, none of them universally apply. If having extra workers on the farm, in any form, a farmer should consult with an attorney to ensure they are not potentially in violation of the law. This guide cannot substitute for the specific advice, tailored to every farmer’s unique situation, that only one on one legal counseling can provide.