

AGRIBUSINESS LEGAL ALERT

June 30, 2010

FARMERS FACING INCREASED SCRUTINY BY THE DOL: MUST METHODICALLY FOLLOW CHILD LABOR LAWS

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Harvest time is a farm's busiest season; in a small window of time, much labor-intensive activity occurs. It is tempting for a farmer to allow any willing set of hands to help out at harvest time. However, doing so may be exposing your farm to legal risks: the Obama administration has hired hundreds of new investigators with the stated goal of enforcing Federal labor laws and fining violators. Labor Secretary Hilda L. Solis, herself the daughter of an immigrant farm worker, has said enforcement of these laws at farms is a top priority. In May of this year, a sting operation in North Carolina forced many blueberry farmers to scramble during the busiest weeks of the season. Closer to home, 35 blueberry farms in Michigan were investigated by the Department of Labor during the 2009 harvest, and were assessed thousands of dollars of fines for violations.

The rules regarding the employment of minors are complex and involve age limits, hour restrictions, and other rules. Agriculture receives special treatment in all of these areas. Farm operators should be sure they know the rules, and have proof that they are following them, to ensure that they do not suffer the same fate as the blueberry farms in North Carolina.

It is also important to note that Michigan has rules that are slightly stricter than the Federal laws. In cases where Michigan law is stricter than Federal law, the Michigan law applies. So farmers in Michigan should not rely solely on information

from the federal government or from colleagues in other states. This article will briefly summarize some of the many complex child labor rules that apply to farms. Note that this summary is specific to farms and is not all-inclusive.

Children Under the Age of 13: Employment

Federal law: Children of any age may be employed outside of school hours on farms owned or operated by their parent or guardian, or with a parent's written permission on a "small farm." A small farm is defined as a farm that did not use more than 500 "man days" of agricultural labor in any calendar quarter during the preceding year. A "man day" is defined as any day during which any employee performs agricultural labor for at least 1 hour; 500 man days is the approximate equivalent of the work of seven full-time employees throughout the calendar quarter.

Michigan law: Does not permit a child under age 13 to work in agriculture except on a farm owned by a parent.

Children Ages 12-13: Employment

Federal law: Children aged 12 or 13 may be employed outside of school hours on the same farm as their parent/guardian or with the parent/guardian's written consent in non-hazardous jobs.

Michigan law: Does not permit a child under age 13 to work in agriculture except on a farm owned by a parent.

Children Ages 14 and Older: Employment

Federal law: As long as the agricultural occupation is not deemed “hazardous” by the Secretary of Labor, a youth age 14 or older may be employed by any farm any time school is not in session. Some examples of “hazardous” agricultural operations include operating or riding on a tractor of over 20 HP; operating or any close activity around grain combines, hay movers, hay balers, or other specified farm machines; working in a pen with certain animals (such as stud bulls or boars); working on a ladder or scaffold at a height over 20 feet; and handling or applying Category I or II agricultural chemicals.

Children Under the Age of 16: Hours of Work

Michigan law: Limits the hours of work for youth under age 16 to a maximum of 10 hours per day, 48 hours per week (or 11 hours per day, 62 hours per week with parental consent during a school vacation), up to 6 days per week. Michigan also sets working times for youth under age 16 between 7 a.m. and 9 p.m.

Children Ages 16-17: Employment and Hours of Work

Federal law: Once a youth turns age 16, he or she can do any job in agriculture, on any day and for any number of hours per day.

Michigan law: Limits 16 and 17 year olds to a combined total of 48 hours of school and work in any week.

Children Under the Age of 18: Wages

Federal and Michigan law: During the first 90 calendar days of employment, youth under age 18

may be paid a “training wage” of \$4.25 per hour. (Note that the training wage may only be paid during one 90 day period, and is not available if that same youth returns to work at the same farm the following year.) After that time, minors must be paid at least the federal minimum wage of \$7.25 per hour (which is less than Michigan’s minimum wage of \$7.40/hour) or a piece rate that cannot work out to less than the hourly minimum wage. The Michigan Administrative Code establishes varying piece rates depending on the crop being harvested. Note that children working on farms owned by a parent are exempt from this requirement.

Age Certificates

Because the rules are very different depending on the age of the child involved, it is highly recommended that farm operators require any child who will be working for them to produce an Age Certificate. An Age Certificate is an official statement of a child’s age based upon the best available documentary evidence of that age. It is issued by either the state or federal government and signed by both the minor and the issuing governmental official. Note that this document is separate and different from a Birth Certificate, and is meant to be placed on file with the employer. The benefit of keeping Age Certificates on file is significant: the law provides that employers are fully protected against unintentional violations of child labor laws if they rely on an unexpired Age Certificate.

The laws in this area are complex, and sometimes contradictory. It is critical that all farm operators employing minors have a solid grasp of the rules to pass government scrutiny.

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