

# CALIFORNIA GUIDE TO LABOR LAWS FOR SMALL FARMS

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WRITTEN BY

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National Center  
for Appropriate  
Technology

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## Disclaimer:

This Guide is intended for use as educational material to assist farmers in understanding various federal and California state labor laws and regulations. It is not intended, and should not be used, as a substitute or replacement for individual legal or tax advice. Farm operators should consult a lawyer and other relevant professionals prior to hiring any individual as an employee or taking on farm interns or apprentices. While significant efforts have been made to ensure the accuracy of the information contained in this Guide; the content and interpretation of laws and regulations are subject to change. The effect of future legislative, administrative, and judicial developments cannot be predicted. For these reasons, the utilization of these materials by any person represents an agreement to hold harmless the authors, the National Center for Appropriate Technology and California FarmLink for any liability, claims, damages, or expenses that may be incurred by any person as a result of reference to or reliance on the information contained in this Guide.

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# INTRODUCTION

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Over the last five decades, hands on learning, in the form of on-farm internships and apprenticeships, has played a key role in the training of new farmers in California and across the country. While the structure of on-farm internships and apprenticeships vary greatly, it is clear that working with established farmers provides an essential training opportunity for beginning farmers. These relationships are often informal and viewed by both parties as a work exchange instead of employment – on-farm training in exchange for help on the farm. However, such informal relationships often occur without the knowledge of existing laws that govern labor on farms. This guide is intended to help farmers become familiar with the labor laws that govern California agriculture as they pertain to having someone work on your farm, whether in an educational capacity or not. It includes basic information about farm labor law as well as discussion of alternative options for small growers who host interns or have an apprenticeship program. This guide is written for California and does not discuss the labor laws in other states; however the information on federal laws and alternative options may be applicable in all states and may help lay the foundation for understanding state-specific requirements.

## **WHY WE WROTE THIS GUIDE**

Over the last several years, many small farms in California and Oregon have been fined for running apprenticeships and internships that violate federal and state minimum wage, workers' compensation, and other labor laws. As a result of these incidents, the National Center for Appropriate Technology (NCAT), California FarmLink (CLF) and other individuals and organizations across California, came together to discuss what should be done. At the heart of the matter was the recognition that on-farm learning opportunities are scarce, and, at a time when more farmers are needed to replace the ageing farmer-population, farms that are willing to take the time and energy to provide learning opportunities must be supported in that endeavor. Over the course of several years from 2010 to 2012, these organizations met on quarterly conference calls to discuss options for farmers with apprenticeships, ways to increase farmer knowledge of labor laws and to encourage farmers to offer high quality apprenticeships while minimizing legal risk. During that time, several more established farms began to pilot the models we illustrate below. This is the first guide that describes innovative ways that California farmers have created legal apprenticeships and lays out what small farms need to know about federal and state employee laws and guidelines.

## **WHAT THIS GUIDE DOES NOT INCLUDE**

Agricultural labor law in California has a long history and is clearly a complicated subject. Our goal is to present information about how the environment for farm apprenticeships has changed, describe alternatives to the “traditional” internship model, and help small farms begin to come into compliance with the law as quickly as possible. We were unable to cover all labor laws that affect California farms, and there are still questions to explore. It is our hope that this guide will be a foundation for others to build on, with the goal of improving and adding to it as we learn more about how to navigate this complicated subject.

Here are some topics that this Guide does not address and opportunities for others to research and write about:

- CSA members working on the farm in exchange for produce, or as a requirement of membership
- Non-profit organizations (non-farms) that have volunteers who then work on another farm as part of their volunteer efforts
- Housing farm workers (both federal and state laws)
- The Migrant Seasonal Worker Protection Act
- Family members as employees
- Child labor

The Farmers' Legal Action Group (FLAG) covers some of these topics in their publications which address both federal law and Minnesota state law pertaining to farm workers, interns and apprentices. The sections on federal laws are applicable to California farmers as well. See their publications listed under Resources.

# MOST FARM INTERNS ARE CONSIDERED EMPLOYEES UNDER THE LAW

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**M**ost agricultural lawyers would argue that the majority of the interns and apprentices on small farms today are in fact **employees** in the eyes of the law. Regardless of how two people may casually refer to their working relationship, be it “internship,” “apprenticeship,” or “volunteer”, chances are that under federal labor law, the agreement between them actually falls under the legal definition of an employer/employee relationship unless it meets very specific exemptions, which are explored later in this document.

Therefore, it is critical for farmers to be aware of both federal and state labor laws as they apply to agricultural workers. The consequences of not following these laws can include heavy fines and potential jail time if you are issued a citation during an inspection from the California Department of Industrial Relations (DIR), Division of Labor Standards Enforcement (DLSE). Several small farms in California with interns or apprentices have incurred heavy fines in the last few years for non-compliance with employment and workers compensation laws. It is the responsibility of farmers and ranchers to know and understand federal and state labor laws.

## WHY MOST FARM INTERNS WON'T QUALIFY AS VOLUNTEERS, TRAINEES OR INDEPENDENT CONTRACTORS

The Fair Labor Standards Act (FLSA) is a federal law established in 1938 by Congress to protect workers from exploitation. It banned child labor and established a minimum wage and maximum hour work week.<sup>1</sup> In order to be considered a **NON-EMPLOYEE** (i.e. an intern, trainee, or apprentice) and **exempt** from the FLSA, **all six of these standards must be met:**

### FLSA Six-Point Test

- 1 The training is similar to what would be given in a vocational school or academic educational instruction;
- 2 The training is for the benefit of the trainees or students
- 3 The trainees or students do not displace regular employees, but work under close observation
- 4 The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion the employer’s operations may actually be impeded
- 5 The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and
- 6 The employer and the trainers or students understand that the trainees or students are not entitled to wages for the time spent in training.<sup>2</sup>

Most apprenticeship or internship programs on small farms would **not** be able to meet these standards, particularly numbers 3 and 4. Most farms come into conflict with number 3 – *close observation* – because

often interns are shown how to do something, and while they may practice it for a bit under close observation, they are often sent off to do the bulk of the work solo or with another intern so that the farmer can attend to another task. That would not be considered ‘close observation,’ and that work may very well be a task that a hired employee would perform. Concerning number 4 – *no immediate advantage to farmer* – it can be argued that interns are not skilled laborers and do in fact impede operations at times, but it would be hard to argue that a farmer derives no immediate advantage from the activities of an intern.

## **INDEPENDENT CONTRACTORS:**

Structuring an apprenticeship or internship as an independent contractor relationship is likely not appropriate. Generally, there are a number of common factors used to determine if someone is an independent contractor. Among the most important criteria are: a) independent contractors customarily own their own business and file their own income tax return showing self-employment income as either a farm manager or a farmer b) independent contractors bring their own tools and equipment c) independent contractors work on their own time and make their own schedule, d) independent contractors work with multiple businesses at one time, and e) independent contractors often carry their own insurance and workers compensation.<sup>3</sup>

There are substantial penalties associated with misclassifying an employee as an independent contractor. If the Internal Revenue Service or the California Franchise Tax Board determines you have misclassified an *employee* as an *independent contractor* and thus have not been paying the employer’s share of payroll taxes, you will owe back payroll taxes with interest (compounded daily) and penalties – with interest charged on the penalties. California Labor Code section 226.8, which went into effect on January 1, 2012, provides for fines of up to \$10,000 per employee for each pay period the employee was misclassified and paid as an independent contractor rather than an employee. In the typical internship or apprenticeship situation, you will not likely prevail in an argument that a worker was an independent contractor.

### **Students:**

Having farm interns who are also students enrolled in an accredited university or college may seem like a simple and legal way to run an internship program. However, interns from accredited educational programs, just like any other person who works on your farm, are subject to the FLSA six-point test. California continues to enforce this six-point test in relation to interns and apprentices, paying close attention in particular to whether the interns’ activities are primarily educational and whether their activities are replacing paid employees.

If you are confident that you can pass the six-point test, working with an educational institution is a great way to find students who are interested in learning the farming trade and to bolster the credibility of your farm’s educational internship/apprenticeship program. Students can often arrange to get credit from these institutions for the work they are performing, which may help them meet the degree or certificate requirements from their institution.<sup>4</sup>

### **Volunteers:**

Farmers must also be careful with having volunteers work on their farm. According to federal law, volunteers are allowed only for charitable, religious or faith-based 501(c)3 organizations.<sup>5</sup> This means that for-profit businesses, which *include all for-profit farms*, are **not** legally allowed to have volunteers work for them.

If some part of your farming operation has non-profit status, California Labor Code Section 1720.4 governs the use of volunteers. Non-profit organizations are subject to the same FLSA six-point labor test in relation to interns or apprentices. However, the U.S. Department of Labor (DOL) Wage and Hour Division denotes that individuals can volunteer with non-profit organizations as a public service. The DOL classifies this work as “ordinary volunteerism.” In evaluating whether work performed is “ordinary volunteerism” the DOL considers the following factors:<sup>6</sup>

1. The type of entity receiving the volunteer services
2. Compensation of any sort (such as money, room & board, perks, etc.)
3. Expectations of benefits in the future
4. Whether the activity is less than a full-time occupation
5. Whether regular employees are displaced
6. Whether the services are offered freely without pressure or coercion, and
7. Whether the services are of the kind typically associated with volunteer work.

We want to be clear that having volunteers work on a non-profit farm would **not** constitute an internship or apprenticeship program, **nor** should the volunteers be considered a replacement for an employee. Many non-profit farms have well-established educational programs that work with schools, or youth programs. Students are occasionally brought on farm as volunteers as part of a field trip. This type of volunteerism is in line with the spirit of the law. Pie Ranch, located in Pescadero, CA, is an applicable example of a non-profit farm hosting volunteers that satisfies DOL statutes. Visit their website at [www.pieranch.org](http://www.pieranch.org). Note that Pie Ranch has an apprenticeship program as well, but their apprentices are treated as employees, and comply with all federal and state employee regulations.

# IS IT POSSIBLE TO LEGALLY HAVE AN APPRENTICESHIP PROGRAM ON MY FARM?

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**A**s part of this project NCAT and California FarmLink gathered information on five alternative options for structuring apprenticeships and internships. Here are the results of our research.

## CREATE A REGISTERED APPRENTICESHIP PROGRAM FOR AGRICULTURE THROUGH DAS

On farm apprenticeship programs can exist legally if the program is certified and registered with the California Department of Industrial Relations (DIR), Division of Apprenticeship Standards (DAS). The DAS currently oversees 500 apprenticeship programs around the state in the trade industries, including plumbing, electrical, masonry and carpentry. In 2011, DAS approved the first organic farming apprenticeship program in the state. The program was created in Marin County in conjunction with the College of Marin and Fresh Run Farm. DAS apprentices are required to complete a certain number of courses at an accredited educational institution (such as a community college or technical school), and a certain number of hours of on-farm learning. These hours are determined on an individual program basis by the DAS.

The DAS works with the employer to set up standards for the program and in turn monitors the program to make sure that those standards are being met. Apprentices are paid for their work and most registered apprenticeship programs in other industries pay the apprentices higher than minimum wage. However, DAS gave an exemption to the Fresh Run Farm/Marin College apprenticeship program with the understanding that agricultural workers make far less on average than other sectors with which the DAS currently works. Fresh Run was permitted to start their apprentices at slightly below minimum wage, and after six months, the wage increased to slightly higher than minimum wage. Wages typically are required to be increased as the apprentice completes the program. At the end of the program, the farm can hire the apprentice at a journeyman's wage.<sup>1</sup>

Contact the DAS for more information on creating a registered apprenticeship program on your farm or visit [www.californiafarmlink.org](http://www.californiafarmlink.org) and read Case Study One of the Apprenticeship Resource Series, which details the Fresh Run Farm/ Marin College program.

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<sup>1</sup> A journeyman is someone who has completed an apprenticeship and is fully educated in a trade or craft, but not yet a master. In the case of the DAS organic farming apprenticeship program, the journeymans' wage was determined to be \$12.00 per hour. Apprentices were started below minimum wage and worked up to \$12.00 per hour over two years.

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## **LEASE SOME OF YOUR LAND TO A BEGINNER FARMER**

In this model, there are two separate farm businesses: one owned by the more experienced farmer (lessor), who serves as both landlord and mentor, and one owned by the beginner farmer (lessee), who leases a small plot of land from the more experienced farmer. A written agreement between parties must be worked out before entering this type of arrangement. The agreement should take into consideration the following components:

- 1) A clear lease agreement. The two parties must draw a map of the property and indicate what land is to be leased, the lease rate and terms, and any common areas the lessee can access. California FarmLink provides basic sample lease templates and technical assistance to adapt a lease to your specific situation.
- 2) Inputs and supplies. The two parties must agree on inputs and supplies. The beginning farmer may purchase everything entirely on his/her own, or may buy some inputs from the lessor. The beginning farmer will need to maintain a full set of records including receipts for all inputs to document their own business expenses in order to fill out their own income tax returns for farming at year-end. Questions to consider regarding the purchase of inputs include: Will the farmer sell at cost? And, how often will the lessee reimburse the lessor?
- 3) Equipment, water and utilities. There needs to be a clear written agreement regarding equipment, water and utilities. Equipment questions to consider include: Will the beginning farmer lease equipment from the mentor farmer, and if so under what terms? Which equipment is available when? How will fuel and maintenance expenses be tracked? What happens if the beginning farmer breaks something? As for water and utilities, a simple way of sharing these expenses should be identified and included in the written agreement.
- 4) Sales Agreement. If the mentor farmer plans to purchase product from the lessee to integrate into existing sales channels such as a subscription program (Community Supported Agriculture), farmers' market, or wholesale accounts, this may be addressed in the agreement.

This model holds multiple benefits for both the experienced and the beginner farmer. The experienced farmer can mentor a novice farmer while avoiding many risks associated with running a traditional farm internship program. It may also be a way for the mentor farmer to access an additional product to sell (such as eggs or flowers grown by the beginner), potentially creating a new income stream. The beginner has the opportunity to operate their own farm business with the support of a mentor. This new farmer can minimize start-up costs associated with capitalizing a new farm, and can begin to fill out tax returns as an independent farmer, thereby positioning him/herself to obtain financing in the future and take another step towards running an independent business.

In some cases the experienced farmer may want to hire the apprentice as a paid employee to work for the mentor farmer on his/her own operation.

## **CREATE A SECOND BUSINESS: A FARM SCHOOL**

In this model, the farm operates as a normal farm business, and the farm school operates as a for-profit educational center for training farmers. Keeping a full set of accounting records for the two separate businesses, a farm and a farm school, is a necessary requirement. There should be a separate checking account for each and the bookkeeper should write and record activities separately for the two businesses. There will be shared expenses. A filed memo should explain clearly which expenses are “farm school” which are “farm” and which are “shared.” For shared expenses one or the other of the two businesses can pay all the expenses during the year and at the end of the year the other business can write a reimbursement check. The school also needs to have a separate written agreement with the farm explaining under what circumstances the students are on the farm, and explaining what services the farmer will provide (i.e. access to viewing and participating in daily activities and instruction) and stating the fee the school will pay the farm for services rendered.

Below are critical documents you will need to establish the relationship between the two businesses:

- 1) Two separate checking accounts;
- 2) Two separate sets of books to record income and expenses (in QuickBooks this is two separate companies);
- 3) A memo clearly explaining how the two businesses work together, which entity will pay the “shared” expenses during the year and how often the other entity will reimburse the first entity for shared expenses;
- 4) A spreadsheet of the shared expenses (such as utilities, office or kitchen supplies and road maintenance) allocated between the two businesses;
- 5) An agreement for the explicit amount the school will pay the farm for the use of the farm as a teaching site;
- 6) Records of actual transfers of money as described in the agreements above;
- 7) Annual income tax returns which report farming income and expense separately from teaching income and expense. For a sole proprietor this will mean a Schedule F and a Schedule C. For a Partnership or an S-Corp this will mean the teaching income is reported as ordinary income and expense and the farm income is reported on a Schedule F.

There are a few different variations on how the money can flow:

- 1) Apprentices pay tuition and perform no labor outside of the labor that is integral to learning.
- 2) Apprentices pay tuition to the school and are also hired by the farm to perform labor on the farm – these amounts do not have to cancel each other out. Regardless of whether tuition is more than wages paid or vice-versa, the critical component is that each step must take place and be recorded separately. The student needs to pay tuition and the farm needs to pay wages – including all associated payroll taxes and fees. All associated reporting requirements must be met.

One alternate possibility is for the Farm School to be operated by a non-profit organization or educational institution<sup>2</sup>. In this case there is a service agreement as described above and the farmer simply receives a payment for services rendered. The farmer would report this as “other farm income” on Schedule F of the annual income tax return.

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<sup>2</sup>A precaution that this may subject to regulation under the California Department of Consumer Affairs and the US Department of Education. Of concern is the definition of a post-secondary educational institution found in California Education Code section 94858: “Private postsecondary educational institution” means a private entity with a physical presence in this state that offers postsecondary education to the public for an institutional charge. For more information see: <http://www.cde.ca.gov/re/lr/cl/>

## SIGN UP WITH THE EMPLOYMENT TRAINING PANEL (ETP)

The California Employment Training Panel (ETP) is a state agency that provides financial assistance to California businesses to support customized worker training. ETP's purpose is to provide workers with secure jobs that pay competitive wages; further opportunities for advancement; help employers offset costs of job skills training and support training among employers and assist employers in keeping their businesses competitive. The program is performance-based, providing funds for trainees who successfully complete training and are retained in well-paying jobs for a specific period of time. ETP funding may be an option for funding apprenticeship programming, but only for programs registered with the Division of Apprenticeship Standards described above. You can refer to the ETP website at [www.etp.ca.gov](http://www.etp.ca.gov) or call an ETP office in your area. More offices are listed online at [www.etp.ca.gov/contact\\_us.cfm](http://www.etp.ca.gov/contact_us.cfm).

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## HIRE AN EMPLOYEE ON YOUR SMALL FARM

Commonly, farmers who take on apprentices offer them housing, meals, and a stipend during their experience on the farm. In order to come into compliance with minimum wage law, many farms in California have begun to hire their “interns” as employees, and pay them the state mandated \$8.00/hr minimum wage. In addition these employers pay federal and state payroll taxes, workers compensation and unemployment taxes. In keeping with state minimum wage law, farmers are allowed to credit the value of meals and lodging towards the minimum wage requirement. In order to do this, there must be a written agreement between the employee and the farm-employer that such deductions may be taken from the employee's paycheck.<sup>7</sup> For tax purposes, employers are also generally allowed to exclude the value of meals and lodging before calculating certain payroll and income taxes. **These rules are different for federal and state taxes, so you will need to treat them differently.** We discuss this in more detail under *Payroll and Income Taxes* later in this guide.

Once meals and lodging are legally deducted, farmers often find they are paying their trainees-turned-employees comparable amounts in wages as they were in stipends, and many have reported feeling relieved now that they know they are in line with federal and state labor laws. Should they choose to go this route, farmers must come into compliance with all federal and state regulations outlined in the following chapters. The following sections are meant to help the small farmer understand the legal requirements of hiring an employee, and what steps they will need to follow.

# RULES FOR PAYING FARM WORKERS (INCLUDING INTERNS)

In this section, our research efforts are focused more heavily on California law than on federal law. Therefore, explanation of federal regulation is brief. However, a very detailed and thorough interpretation of federal labor laws pertaining to agriculture has been completed by the Farmers' Legal Action Group (FLAG) in their 2012 publication, *Farmers' Guide to Farm Employees*. They also wrote a publication specifically pertaining to apprentices and interns, called *Farmers' Guide to Farm Internships: Federal and Minnesota Labor and Employment Law*.

Federal and state laws sometimes have different standards for the same statute, which can be confusing. When state and federal laws have different standards, whichever law is more beneficial for the workers will override the other. Employers are required to pay the higher wage, or adhere to the stricter standard. In most cases, California state laws regarding labor are more rigorous than federal laws, with a few exceptions.

## FEDERAL AND STATE MINIMUM WAGE

### Federal Minimum Wage Law

Federal law states that employees must be paid a minimum of \$7.25 per hour after July 24, 2009. There is an exemption for agricultural employers. However, the California minimum wage law trumps the federal minimum wage law, and the federal exemption. Employers are required to follow the California minimum wage law, outlined below.<sup>8</sup>

### State Minimum Wage Law

California minimum wage is \$8.00/hour as of Jan 1, 2008. Employers are required to pay the higher wage to an employee when state and federal minimum wages are different.

## WHAT IF I PROVIDE MEALS & LODGING?

Meals and lodging may be credited against the minimum wage, but only with a *written agreement between the employer and the employee*. If you are going to use the value of meals and lodging to meet part of the minimum wage requirement, you must not credit more than the following amounts<sup>9</sup>:

LODGING:	EFFECTIVE JAN 1, 2008
Room occupied alone	\$37.63 per week
Room shared	\$31.06 per week
Apartment—two-thirds (2/3) of the ordinary rental value, and in no event more than	\$451.89 per month
Where a couple are both employed by the employer, two-thirds (2/3) of the ordinary rental value, and in no event more than	\$668.46 per month
MEALS:	
Breakfast	\$2.90
Lunch	\$3.97
Dinner	\$5.34

## **FEDERAL AND STATE OVERTIME PAY REQUIREMENTS**

### **Federal Overtime pay requirements**

An employer is required to pay an employee one and one-half times their hourly rate for any hours worked in excess of 40 hours in one workweek.<sup>10</sup>

### **California Overtime and Double Time**

California has strict overtime requirements, particularly for agricultural workers. The state also has different overtime standards depending on if a worker is in the field, or involved in packing. If your workers do both, then you must be careful about how you pay overtime. Overtime must be paid at a rate of 1.5 times the regular rate of pay. Double Time must be paid at 2 times the regular rate of pay. Whether overtime or double time must be paid depends on whether the employee works more than a set number of hours in a workday. “Workday” is usually any consecutive 24 hour period beginning at the same time each calendar day. Payment of overtime/double time is also dependent on whether the work occurs on the 6<sup>th</sup> or 7<sup>th</sup> day of the workweek. “Workweek” is usually any seven consecutive days starting with the same calendar day of each week and is a regularly recurring period of 168 hours, seven (7) consecutive 24-hour periods. The beginning of the workweek can be set at any time the employer chooses as long as it follows this formula. A common workweek begins at 12:01 a.m. Sunday night/Monday morning but you can choose to set it on another day or at another time as long as it begins a regularly recurring period.

### **Field Workers Only (Wage Order 14).**

Employees that are working the field must be paid overtime after working over 10 hours in one day, or more than 6 days in one week. Double time must be paid for all hours worked over 8 hours on the 7<sup>th</sup> day of work in a workweek.

### **Packing Shed Workers**

Employees that work in packing sheds are subject to different overtime rules depending on whether they are packing crops the employer grew themselves, or crops that other farmers grew.

### **Operations that Pack the Crops they Grow Themselves (Wage Order 13)**

Workers must be paid overtime after working 8 hours in one day or 40 hours in a workweek. Packing workers may work an additional 9<sup>th</sup> and 10<sup>th</sup> hour **at regular pay** if the additional work is performed in the field. Packing workers may also work an additional 6<sup>th</sup> day of the week at **regular pay** if it is in the field. Workers are considered “packers” if the last work they do in a day is packing. Double time must be paid for all hours worked in excess of 12 in any workday and for all hours worked in excess of the first 8 on the 7<sup>th</sup> consecutive day of work in a workweek.

### **Operations that Pack Crops Grown by Other Farmers (Wage Order 8)**

Workers must be paid overtime after working 8 hours in one day, or if working more than 40 hours in a workweek. There are no exemptions for packers to do field work in this case. Double time must be paid for all hours worked in excess of 12 in any workday and for all hours worked in excess of the first 8 on the 7<sup>th</sup> consecutive day of work in a workweek.<sup>11</sup>

# EXEMPTIONS FROM MINIMUM WAGE & OVERTIME

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## EXEMPTIONS FROM FEDERAL LABOR STANDARDS ACT MINIMUM WAGE AND OVERTIME RULES

### The 500 Man-Day Exemption

Any employer in agriculture who did not utilize more than 500 “man days” of agricultural labor in any calendar year is exempt from the minimum wage and overtime pay provisions of the FLSA for the current calendar year. A “man-day” is defined as any day during which an employee performs agricultural work for at least one hour.<sup>12</sup>

California Labor Code and applicable IWC wage orders supersede this exemption by requiring payment of overtime and giving employees a more generous wage than the FLSA. Therefore, the 500-day exemption does not apply in California.<sup>13</sup>

### Agricultural Exemption to Overtime Rules

Agricultural workers are exempt from federal overtime rules, and may work more than forty hours in one work week. However, as noted above, California overtime rules are very strict and trump the federal law. Employers will be required to follow California’s overtime rules.<sup>14</sup>

## EXEMPTIONS FROM CALIFORNIA MINIMUM WAGE AND OVERTIME RULES

### 1) Exemptions to California Minimum Wage law:

- a) If the employee is a member of the immediate family of the employer (ie. parent, spouse, or child)
- b) If the employee is enrolled in a Registered Apprenticeship Program through the Division of Apprenticeship Standards and for which the DAS has granted an exemption.
- c) If the employee has no previous similar or related experience to the job in which they are hired, they may be paid “not less than 85% of the minimum wage rounded to the nearest nickel” for the first 160 hours of employment. After that, they must be paid the minimum wage that is in effect by the state of California.<sup>15 16</sup>

### 2) Exemptions to Overtime Rules

There are very few exemptions to California Overtime Rules for agricultural workers. An employee is allowed to work 7 days a week with no overtime only if the total hours worked do not exceed 30 in one workweek, or 6 hours in one day. There are also exemptions for agricultural employees who are salaried, or if half their time is spent performing irrigation duties. Other exemptions are for those working in “Executive” or “Professional” roles, as defined in Wage Order #13 and #8.<sup>17</sup> For more detailed explanations, refer to the FAQ sheet for overtime exemptions on the DLSE website: [http://www.dir.ca.gov/dlse/faq\\_overtimeexemptions.htm](http://www.dir.ca.gov/dlse/faq_overtimeexemptions.htm).

# CREATING A SAFE ENVIRONMENT FOR YOUR WORKERS

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## **FEDERAL OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)**

Federal OSHA regulations set out the standards that are meant to ensure a safe working environment for all employees. Small farm operations may be exempt from federal OSHA requirements based on the size of their workforce, whether they are providing temporary housing, and who they are employing. OSHA standards include very specific safety and training requirements for farm employers, such as providing toilets, hand-washing facilities, shade, and even training their employees about good hygiene practices. Refer to FLAG's publications, *Farmers' Guide to Farm Employees* and the *Farmers' Guide to Farm Internships: Federal and Minnesota Labor and Employment Law* for a detailed explanation of federal OSHA requirements.

## **CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH ACT (CAL OSHA)**

All California employers are required to provide a safe and healthful work environment.<sup>18</sup> CAL OSHA sets out very specific standards that employers must meet, which are laid out in the California Code of Regulations, Title 8. Farm employers are also generally required to maintain an Injury and Illness Prevention Program, have a Heat Illness Prevention Program, keep records, and comply with unannounced inspections from CAL OSHA to verify standards compliance.<sup>19</sup>

## **INJURY & ILLNESS PREVENTION PROGRAM (IIP PROGRAM)**

According to California Code of Regulations (CCR) Title 8 §3202, all California employers are required to develop and maintain an Injury & Illness prevention program that will identify on-farm hazards and provide guidance on employee illness and injury avoidance. Cal/OSHA provides guidelines as to what the program should contain. Employers are allowed to create their own programs, but they must contain the following elements (in writing):

- Responsibility
- Compliance
- Communication
- Hazard assessment
- Accident/exposure investigation
- Hazard correction
- Training & Instruction
- Keeping Records

Cal/OSHA maintains a website with more information and resources that include models of IIPs, guides for developing a program, sample forms and checklists, and an online etool: <http://www.dir.ca.gov/DOSH/etools/09-031/seasonal.htm>

## Notes and Exemptions

The requirements for written documentation of the IIP Program are less stringent for:

- Employers with fewer than 20 employees who are not in the annually designated list of California's high-hazard industries<sup>3</sup> and who have a workers' compensation experience modification rate of 1.1 or less<sup>4</sup>.
- Employers with fewer than 20 employees who are in designated low-hazard industries.

There are also special exemptions for employers with seasonal or intermittent employees, and for local government. For more detail on the elements of an IIP Program, you can also see the OSHA User Guide: [http://www.dir.ca.gov/dosh/dosh\\_publications/osha\\_userguide.pdf](http://www.dir.ca.gov/dosh/dosh_publications/osha_userguide.pdf)

## **HEAT ILLNESS PREVENTION PROGRAM**

All California employers are required to comply with the Cal/OSHA Heat Illness Prevention Standard, which is outlined in the CCR Title 8 §3395. In order to comply with the standard, employers are required to take these four steps:

- 1. Training.** Employees and Supervisors must all be trained about heat illness prevention
- 2. Water.** Employees must be provided with enough fresh water in order to drink at least 1 quart per hour, and employers must encourage them to do so.
- 3. Shade.** Employees must be provided with shade, and encouraged to take a rest in the shade for at least 5 minutes *before* any feelings of illness occur. Employees should not wait until they feel sick to cool down.
- 4. Planning.** Employers must develop and implement written procedures for complying with the Cal/OSHA Heat Illness Prevention Standard.<sup>20</sup>

More information and resources for how to develop a program, workshops and meetings, and free consultation services from Cal/OSHA can be found on their website at <http://www.dir.ca.gov/dosh/HeatIllnessInfo.html>. The details of the CCR Title 8 §3395 standard can be found through the Department of Industrial Relations webpage: <http://www.dir.ca.gov/Title8/3395.html>.

## **RECORD KEEPING REQUIREMENTS**

Record keeping requirements for Cal/OSHA are exempted if you employ less than ten people. If you have more than ten employees, however, you are required to keep records of work place illnesses and injuries, and report them. For more information on record keeping requirements, we suggest you review the OSHA User Guide [http://www.dir.ca.gov/dosh/dosh\\_publications/osha\\_userguide.pdf](http://www.dir.ca.gov/dosh/dosh_publications/osha_userguide.pdf) and the Cal/OSHA publication Record Keeping Overview: [http://www.dir.ca.gov/dosh/dosh\\_publications/RecKeepOverview.pdf](http://www.dir.ca.gov/dosh/dosh_publications/RecKeepOverview.pdf)

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<sup>3</sup> Every year California OSHA designated a list of the industries with the highest ratio of workplace accidents. In 2013, agriculture was not on that list. Check with California OSHA or your workmans' comp broker.

<sup>4</sup> This ratio is calculated on a per farm basis. Check with your workmans' comp broker.

## **CAL/OSHA INSPECTIONS**

Cal/OSHA is authorized to conduct workplace inspections to enforce occupational safety and health standards. Every workplace covered by Cal/OSHA may be subject to inspection by compliance safety and health staff.

Inspections are conducted by Cal/OSHA safety engineers and industrial hygienists (Cal/OSHA inspectors) from district offices throughout California. Planned inspections occur when a specific industry is targeted for safety inspections that year. Unplanned inspections occur when there is an accident (which should be reported by the employer) or a complaint. A formal complaint comes from an employee, and an informal complaint comes from someone who is not an employee.

The OSHA User Guide discusses what one should expect during an OSHA inspection. The inspector will ask permission to conduct the inspection from the employer. If you refuse, then Cal/OSHA will obtain an inspection warrant. Cal/OSHA inspectors will usually identify themselves and present their credentials to the employer. The employer should have them sign in as a visitor at the main office. Recording visitors to the farm is a good practice, and may be required for some programs such as food safety. Read the OSHA User Guide for further information and resources on what to expect during a health and safety inspection.

OSHA User Guide: [http://www.dir.ca.gov/dosh/dosh\\_publications/osha\\_userguide.pdf](http://www.dir.ca.gov/dosh/dosh_publications/osha_userguide.pdf)

# WORKERS' COMPENSATION INSURANCE

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## WORKERS' COMPENSATION IS REQUIRED BY ALL EMPLOYERS IN CALIFORNIA

Workers' compensation is insurance that the farm employer purchases for each employee on his/her farm that will protect and cover an employee in the case of a work-related injury. Workers' Compensation requirements are administered by each state. Workers' Compensation is required for all employees in California except those who work for the state. This law protects both farm laborers and the farmer. Employees involved in a work-related accident are eligible for medical treatment through the workers' compensation system as well as other benefits such as temporary and permanent disability payments. Also, the liability for the farmer-employer and their exposure to a lawsuit is limited. If you do not have Workers' Compensation for your employees, medical treatment and other benefits due the injured worker will be paid by the Uninsured Employers Benefit Trust Fund (UEBTF), administered by the DIR, which will then pursue the uninsured employer for reimbursement and fines. The UEBTF can ask the Bureau of Field Enforcement (BOFE) to issue a stop work order or BOFE can issue one on its own in addition to imposing fines. The fines are \$1500 per employee on the payroll at the time the stop work order is issued. There are additional fines that can also be imposed if you do not acquire workers' compensation insurance. You can typically acquire workers' compensation insurance through your normal insurance agent for your farm or through the State Compensation Insurance Fund, which is a quasi-public agency established to provide workers' compensation insurance to California employers. The California Department of Insurance maintains a list of insurance carriers who provide workers' compensation insurance. Call your regular insurance agent to discuss options. You can also contact the Division of Workers' Compensation for more information, or visit their website at [www.dir.ca.gov/dwc](http://www.dir.ca.gov/dwc).

Provide this pamphlet to your employees at the time of hire: <http://www.dir.ca.gov/dwc/DWCPamphlets/TimeOfHirePamphlet.pdf>

## WHAT TO DO IF AN INJURY OCCURS

If a work-related injury occurs on your farm, it is important to report it immediately as required by law. Not only does the injury need to be treated in a timely manner, but if it goes unreported there can be serious ramifications, such as additional fines. Awareness of an injury can come from the injured worker, a family member, friends, coworkers, or observation by the farmer him/herself. If you notice that one of your employees is injured, you need to deal with it immediately.

Below are some of the forms that are required:

- A claim form (DWC form 1) within one working day of finding out about an injury or illness.  
<http://www.dir.ca.gov/dwc/DWCForm1.pdf>
  - -Complete employer portion of the returned claim form and give a copy to the employee
- Form DLSR 5020. This form should be sent to the claims administrator within five days of being informed of the injury or illness<sup>21</sup>

Stay involved and maintain an open dialogue with the employee – don't assume the claims administrator is taking care of everything.

More information can be found by downloading the *Division of Workers' Compensation Fact Sheet*:  
[http://www.dir.ca.gov/DWC/FactSheets/Employer\\_FactSheet.pdf](http://www.dir.ca.gov/DWC/FactSheets/Employer_FactSheet.pdf)

# PAYROLL AND INCOME TAXES

Payroll taxes and withholding can be a complicated subject for an agricultural employer. There are many forms and deadlines to navigate, and the penalties for mistakes can be quite high. Because of this, we encourage farm businesses to contract with a payroll service if you hire employees. While a payroll service may seem expensive, the amount of time spent on learning about and maintaining your own payroll also has a cost. The overview below will help you understand, in general, what will be required of you if you choose to do your own payroll, or, if you choose to use a payroll service.

As an employer, every farm will need to withhold taxes from each employee’s paycheck, and pay and report those taxes to the IRS and the state on a regular schedule. Employers are responsible for submitting both the employer *and* employee portion of federal and state payroll taxes, and if indicated, federal and state income taxes. Generally, employers report and pay quarterly, and at the end of each year they file year-end summary forms. There is a special case for employers who provide meals and lodging to their employee’s based on certain conditions. This allows employers to exclude the value of meals and lodging from certain payroll tax calculations. These are different for federal and state, so use caution. The chart below is a general overview, adapted from the Farmers’ Legal Action Group (FLAG), that compares the tax responsibilities for an employer for both federal and state taxes:

GENERAL FEDERAL PAYROLL WITHHOLDING AND TAX RESPONSIBILITIES OVERVIEW	GENERAL CALIFORNIA PAYROLL WITHHOLDING AND TAX RESPONSIBILITIES OVERVIEW
Obtain Federal Employer ID number (EIN)	Register with Employment Development Department
Medicare Tax Employee Withholding <i>and</i> Employer Contribution	
Social Security Tax Employee Withholding <i>and</i> Employer Contribution	
	California State Disability Tax (SDI)
Federal Income Tax Withholding	California Personal Income Tax (PIT)
Federal Unemployment Tax Payment (Employer only)	California Unemployment Insurance (UI) (Employer only)
	Employment Training Tax (ETT) (Employer only)

Adapted from the Farmers’ Guide to Farm Employees: Federal and Minnesota Labor and Employment Law for Small-Scale Family Farmers, August 2012, Farmers’ Legal Action Group, Inc.

## FEDERAL PAYROLL TAXES SUMMARY

Generally speaking, IRS requires all employers to do the following to comply with federal payroll taxes (all of these forms are available from the IRS website at [www.irs.gov](http://www.irs.gov), and most are in English and Spanish). In order to comply with federal payroll taxes, you must:

- Register for an **Employment Identification Number (EIN)**. This will register you as an employer with the federal government, and you will be assigned a number to use on all state and federal documents related to taxes and employment. You can apply for an EIN online, download the EIN application, IRS form SS-4, with instructions, or call 1-800-TAX-FORM to have one sent by mail.
- Have your employee fill out an **I-9 form** when they are first hired, to verify their eligibility to work legally in the US. Employers are to verify documents such as a driver’s license, passport or social security card.
- Have your employee complete a **Form W-4**. This will determine how much federal tax you will withhold from your employee’s paycheck, based on the number of exemptions they claim on their W-4.
- Withhold the proper amount of **Social Security and Medicare** taxes from your employee’s paycheck. You will also add your portion of Social Security and Medicare taxes to this amount for each pay period and electronically deposit the total to the Federal Reserve Bank accurately and on time.
- Withhold **federal income taxes** from each employee’s paycheck each pay period and deposit it on time to the Federal Reserve Bank. Many agricultural laborers will not owe federal income tax and so will not need to have federal income taxes withheld. The employee makes this decision and communicates it to you using the form W-4.
- Pay **federal unemployment tax (FUTA)** on time each pay period to the Federal Reserve Bank.
- File **payroll tax returns** in a timely manner. For farm employers, these will typically be the IRS **Form 943** (*Employer’s Annual Federal Tax Return for Agricultural Employees*); **Form 940** (*Employers Annual Federal Unemployment (FUTA) Tax Return*). Some farms may also have employees who do not qualify as agricultural laborers, and so may also file an IRS **Form 941** (*Employer’s Annual Federal Tax Return for Employees*).
- Provide a **Form W-2** to each employee no later than January 31 of the following calendar year, and transmit a **Form W-3**, “Transmittal of Annual Tax and Wage Statements” *along with copies of all W-2’s* to the Social Security Administration by February 28th.<sup>22</sup>

Farms of all sizes choose to hire an outside payroll service to manage payroll, keep track of employee and employer payroll tax contributions and submit payroll tax contributions to federal authorities in a timely fashion. The small monthly fee charged by a payroll service provider may be far more economical and efficient than doing it yourself.

See the Resources Section for links to some important tax forms.

## **CAN I DEDUCT MEALS AND LODGING BEFORE CALCULATING FEDERAL PAYROLL TAXES?**

An agricultural employer is allowed to credit the value of meals and lodging that is provided on the premises against the minimum wage, which is clearly beneficial to the employer. The amounts are listed in the tables from IWC Wage Orders 8, 13 and 14 (see the table under *State Minimum Wage Law* above). For federal purposes, the value of meals and lodging cannot be counted as cash wages<sup>23</sup> and is *not considered taxable income*. This means that the wages are not subject to income tax withholding and social security, Medicare, and FUTA taxes, as long as meals and lodging are furnished for the employer’s convenience on the premises.<sup>24</sup> Meals and lodging, therefore, may be deducted from an employee’s wages *before* calculating federal payroll or income taxes. Please see the Appendix for references on meals and lodging determinations for payroll.

## **SOCIAL SECURITY AND MEDICARE**

Most agricultural employers will be required to pay Social Security and Medicare taxes. IRS provides a test to determine whether you qualify as an employer, which can be found in IRS Pub 51. You are required to pay Social Security and Medicare if:

- you pay an individual employee \$150 or more during the year, or
- you pay all of your employees a total of \$2500 or more during the year<sup>25</sup>

The tax rate for Social Security and Medicare is calculated as a percentage of gross cash wages, and it changes occasionally depending on the tax year. To find out the current rates you'll need to look in ***IRS Publication 51 (Circular A) Agricultural Employer's Tax Guide***, or ***IRS Publication 15 (Circular E)*** if you have non-agricultural laborers on your farm. The employee and employer rates are the same in some years and different in others. The employer is responsible for calculating and sending in their portion of these taxes alongside those of their employee. These deadlines are very strict, and penalties with interest begin the first day the payment is late.

## **FEDERAL UNEMPLOYMENT TAX (FUTA) REQUIREMENTS**

IRS provides a test to see if you qualify for FUTA tax. You will be required to pay FUTA tax only if you:

- Paid cash wages of \$20,000 or more to farmworkers in any calendar quarter this year or the previous year
- Employed 10 or more farmworkers during at least some part of a day (whether or not at the same time) during 20 or more different weeks in the previous year, or 20 or more different weeks in the current tax year

If you hired any migrant farm workers through the H2A program, you will need to count those wages as part of the test, however, you won't have to pay the FUTA tax on their wages specifically (they are exempt).<sup>26</sup>

If you meet this test, then you are required to file a Form 940. Make sure to read Section 10 in *Publication 51. (Circular A). Agricultural Employers Tax Guide* for more specific information.

### **Federal Income Tax Requirements**

In most cases, employers must withhold income taxes from the employee's wages with each paycheck. The amount of withholding is figured on the employee's total gross wages, and is calculated based on the withholding allowances that your employee claimed on Form W-4. Refer to IRS Publication 51, Section 4 to for more detailed information.

### **Electronic Federal Tax Payment System**

Employers are now required to deposit all taxes owed to the federal government electronically using the Electronic Federal Tax Payment System (EFTPS). There are options available if you don't want to use the EFTPS, which include going through a tax professional, or by phone. There are financial penalties for not depositing the full amount owed and not depositing on time.

To sign up for the EFTPS, or to enroll in EFTPS, call 1-800-555-4477 (business) or 1-800-316-6541 (individual). You can also visit the EFTPS website at <https://www.eftps.gov/eftps/>. Additional information about EFTPS is also available in IRS Publication 966, *The Secure Way to Pay Your Federal Taxes*.<sup>27</sup>

## **DEPOSITING AND REPORTING FEDERAL TAXES**

Generally, employers report and pay (deposit) federal taxes quarterly. At the end of each year, they must file year-end summary forms which include employee W-2 forms showing individual earnings and deductions for the year. Form W-3, showing the total of all the W-2 forms for the year, must also be submitted. Both of these forms have fill-in boxes which can be used to comply with similar state reporting requirements.

Tracking and deducting payroll taxes, which includes calculating the proper amounts for each employee, calculating the employer's share, factoring in meals and lodging, and depositing the funds on time in a Federal Reserve Bank can be a complicated process. The following are various ways to handle tracking, collecting, calculating and paying federal (and state) payroll taxes:

### **1) Use a Payroll Service**

There are thousands of payroll services, both small local and large national firms, that can efficiently manage your payroll, payroll tax withholding and submission of payroll tax payments to the Federal Reserve Bank at very low cost. By ensuring that your payroll is efficiently managed, outsourcing payroll may also help you to avoid owing back taxes with interest and penalties.

### **2) QuickBooks or another computer software program**

These methods may be less expensive than a full payroll service, however they require more of your time and you're faced with some additional risk of making a mistake that may cost you in back taxes with interest and penalties.

### **3) Do it yourself**

If you go this route, all the forms and information you need is available on the IRS web site – the most important thing is to develop a meticulous system of checking and re-checking your work and ensuring that you make all payments on time.

Regardless of which method you choose, take some time to familiarize yourself with the IRS information on employment taxes in IRS Publication 51, Circular A. (<http://www.irs.gov/pub/irs-pdf/p51.pdf>)

**IMPORTANT:** Note the definition of agricultural laborers is limited to field labor. If you have workers who also work in a packing house or on value-added, or participate in sales, or in office-based activities, you will also need to look at IRS Publication 15, Circular E.<sup>28</sup>

## **CALIFORNIA PAYROLL TAXES SUMMARY**

In California, the **Employment Development Department** (EDD) is the department (under the California Labor and Workforce Agency) that sets the rules for the taxes that employers must pay to the state, and whether or not a farmer will need to pay towards unemployment benefits. The EDD will calculate the rate (a percentage of your payroll) the farmer-employer will pay for those programs that specifically benefit workers in California. You will also be expected to withhold taxes from your employees' wages and pay them on time to the EDD. In general, the EDD requires all employers to do the following things to comply with state payroll taxes:

- **Register with the EDD** within fifteen (15) days after paying over \$100 in wages for employment in a calendar quarter. You can register by phone, fax, mail or online. There is a specific form for

Agricultural Employers that you can download from the website.

- Pay **Unemployment Insurance (UI)** to the EDD each quarter on time, based on the current annual rate. UI is paid by the employer.
- Pay **Employment Training Tax (ETT)** to the EDD each quarter on time, based on the current rate. ETT is paid by the employer.
- Withhold **State Disability Insurance (SDI)** from each employee's paycheck each pay period and deposit it on time to the EDD.
- In California, wages from agricultural labor are not subject to **Personal Income Tax (PIT)** withholding. Many agricultural laborers will not earn enough to pay state income taxes and so it is not required to withhold a portion of their income towards their year-end personal tax liability. However, employer and employee may voluntarily agree to withhold PIT. Employees themselves will make this determination based on their W-4.
- **Report any new or rehired employees** who work in California to the New Employee Registry within twenty (20) days of their start-of-work date. The start-of-work-date is the first day services were performed for wages. Submit a Report of New Employees form via online or mail. See the "Required Filings and Due Dates" section on the EDD website for more information.
- **Report any services from an Independent Contractor** to the EDD within 20 days of paying the contractor \$600 or more in services. See the "Required Filings and Due Dates" sections of the EDD website for more information.

**Employment Development Department Website:** <http://www.edd.ca.gov/>

**If you are concerned about an Audit,** see this information sheet: [Employment Tax Audit Process Information Sheet](#)

## **CAN I DEDUCT MEALS AND LODGING BEFORE CALCULATING CALIFORNIA PAYROLL TAXES?**

Meals and lodging that are provided on the premises and for the employer's convenience are *included* as part of the employee's gross wages, *which will be used to calculate UI, ETT and SDI*. The value of meals and lodging should be excluded from the employee's gross wages before calculating and reporting the employee's PIT. **Note that this is different from the way IRS allows you to treat meals and lodging.** Refer to pages 11, 28 and 32 in the *California Employer's Tax Guide* (DE 44) and the EDD Wages Information Sheet (DE 231a) for more information. Please see Appendix for references for meals and lodging determinations for payroll.

## **REGISTERING WITH EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD)**

An employer is required by law to file a registration form with the Employment Development Department (EDD) within fifteen (15) days after paying over \$100 in wages for employment in a calendar quarter. Complete the registration process by doing **one** of the following:

- Register online from EDD's e-Services at <https://eddservices.edd.ca.gov> **or**
- Mail your completed registration form to EDD, Account Services Group (ASG) MIC 28, PO Box 826880, Sacramento, CA 94280-0001 **or**
- Fax your completed registration form to EDD at (916) 654-9211 **or**

- Call for telephone registration at (916) 654-8706
- NOTE: If you are already registered and have a change in form or ownership, please complete a *Change of Employer Account Information* (DE 24)

You can download an Agricultural Employer Registration Form here: [http://www.edd.ca.gov/pdf\\_pub\\_ctr/de1ag.pdf](http://www.edd.ca.gov/pdf_pub_ctr/de1ag.pdf)

## **UNEMPLOYMENT INSURANCE AND EMPLOYMENT TRAINING TAX**

Unemployment Insurance compensation (UI) provides unemployment insurance benefits to employees who are unemployed through no fault of their own and is designed to soften the financial hardship of being out of work. You may receive notice of a claim for unemployment insurance benefits if you fire a worker for reasons other than misconduct or lay an employee off due to lack of work or lack of funds. The notice will include directions on how to respond to the claim. An employer's contribution rate for UI is determined by his/her experience rating and the condition of the UI Fund. New employers are required to pay a set rate for two to three years. For additional information, refer to the UI Tax Program section of the *California Employer's Guide* (DE 44). You may learn more about unemployment insurance claims and how it works by visiting the website for the California Unemployment Insurance Appeals Board ([www.cuiab.ca.gov](http://www.cuiab.ca.gov)).

The state's Employment Training Tax (ETT) funds a program that trains workers in targeted industries thereby allowing California to remain competitive in the world economy. The ETT 2013 tax rate was 0.1% of payroll. You can learn more about the ETT by visiting the website: [http://www.edd.ca.gov/payroll\\_taxes/Employment\\_Training\\_Tax.htm](http://www.edd.ca.gov/payroll_taxes/Employment_Training_Tax.htm)

## **STATE DISABILITY INSURANCE AND PERSONAL INCOME TAX**

The State Disability Insurance program (SDI) is also administered by the EDD and is designed to provide disability benefits to workers for nonindustrial injuries and illnesses. You may receive a notice of a claim for state disability insurance benefits if one of your employees is unable to work because of a non-work-related injury or illness, such as a pregnancy, or a chronic illness such as Crohn's disease or rheumatoid arthritis. You may learn more about SDI by going to the EDD website ([www.edd.ca.gov](http://www.edd.ca.gov)).

California Personal Income Tax (PIT) is the tax on the income of all California residents, and nonresidents that make money in CA, which provides resources to fund public services for the state, such as schools, public parks, roads, and health and human services. It is administered by the EDD as well as the Franchise Tax Board. Employers are not necessarily required to withhold PIT for agricultural labor thus benefiting low income workers who will not earn enough money to pay income taxes. Many agricultural laborers, however, do earn enough to owe personal income taxes. The employee will have to make the decision whether to withhold a portion of each paycheck and perhaps receive a tax refund at the end of the year, or not to withhold a portion of each paycheck, and perhaps owe income taxes at the end of the year. Employees themselves will make this determination based on their W-4.

From time to time an employee will owe back taxes or child support to the federal or state authorities. You may be ordered to garnish an employee's wages, and submit a portion of their pay directly to the authorities.

## KEEP RECORDS OF YOUR EMPLOYEES

Records for each worker should include the worker's name, Social Security number (copied from the Social Security card), cash wages paid and taxes withheld. You will also need to keep track of their hours, (which may need to be segmented by the type of enterprise they are working on) for payroll purposes and worker's compensation records. See the Timecard example in the Appendix. If the farm worker is subject to the Migrant and Seasonal Agricultural Workers Protection Act<sup>5</sup>, the record also must show:

- Rate of pay
- Total hours worked each day and each week
- Date that wages were paid, and
- Period of time covered by the payment.

### Paystub Information

If you use a payroll service you will be in compliance with the paystub requirements, but if you choose to do it yourself, take note of the specific information required on the pay stub given to the employee with each pay check:

- The name and address of the employer
- The dates of the pay period for which the check is written (month, day and year)
- The employee name and last 4 digits of their social security number
- All hourly rates paid during that period, and corresponding number of hours worked at each different rate
- All piece rates paid during that period, and number of pieces paid at each rate if applicable
- Total hours worked by employee for that period
- Gross earnings for that pay period
- Total deductions for that pay period
- Net earnings for that pay period

This information is set out by the state legislature. To see the information required on an employees pay stub, visit this link and look under **Labor Code 226**: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=00001-01000&file=200-243>

As discussed above, you can hire a payroll service, use a combination of a computer program such as Quickbooks and your own labor, or calculate all payroll taxes and complete all payroll tax forms on your own.

Regardless of how you decide to prepare your state payroll tax fillings, you should familiarize yourself with the basic requirements. The California Employment Development Department (EDD) website has forms, instructions and other resources: [http://www.edd.ca.gov/payroll\\_taxes/](http://www.edd.ca.gov/payroll_taxes/)

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<sup>5</sup> The term "migrant agricultural worker" means an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence. The term "migrant agricultural worker" does not include any immediate family member of an agricultural employer or a farm labor contractor; or any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 101(a)(15)(H)(ii)3 and 214(c) of the Immigration and Nationality Act.

# EMPLOYER POSTING REQUIREMENTS

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## **FEDERAL WORKPLACE POSTING REQUIREMENTS**

- See the FLAG publication, *Farmers Guide to Farm Employees: Federal and Minnesota Labor and Employment Law for Small-Scale Family Farmers*, August 2012, Farmers' Legal Action Group, Inc.

## **CALIFORNIA WORKPLACE POSTING REQUIREMENTS**

In California, all employers no matter the number of employees must meet workplace posting obligations. Workplace postings are usually available at no cost from the requiring agency. The Department of Industrial Relations requires employers to post information related to wages, hours and working conditions in an area frequented by employees where it may be easily read during the workday. Additional posting requirements apply to some workplaces, and not others.

Some examples of the posters that are required by DIR are as follows:

- Industrial Welfare Commission (IWC) Wage Orders #8, #13, #14 (specific for agricultural employers)
- Minimum Wage Law
- Payday Notice
- Safety and Health Protection on the Job
- Emergency Phone Numbers

You can see a list of required posters on the DIR website under Workplace Safety Postings: <http://www.dir.ca.gov/wpnodb.html>. They encourage you to download the posters and print them yourself. You can also call **415-703-5070** to order the required posters, but they are limited in quantity. If you need more than five copies of any posting, you may fax your order to (415) 703-4807. Also note that most payroll services will provide this sort of additional information to you as a part of the service.

## CONCLUSION

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This intent of this guide is to demystify and improve understanding of labor laws among California farmers and help farmers to minimize legal and financial risks associated with apprentices or interns and employees. Many labor laws are relatively easy to comply with (for example maintaining employee records) yet small businesses, including farms, may not be aware of them. While the number and complexity of some of the labor laws described in this guide may seem daunting, a sincere attempt by each farmer to know what the laws are and to comply with as many as possible will go a long way in the event that your farm is inspected by a labor official. Some of the farms in California and Oregon that were inspected and cited received multiple violations and fines, many of which could have been easily avoided.

This Guide represents a fruitful collaboration between NCAT, the National Center for Appropriate Technology, USDA Risk Management Agency, California FarmLink, farm attorneys, accountants and farmers. We hope it helps small farms to thrive and gain the confidence they need to develop high quality apprenticeship programs and continue training the next generation of California farmers.

# RESOURCES

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## **LABOR LAW ASSISTANCE**

### IRS Assistance

The IRS holds Small Business Workshops to help employers comply with federal and state tax obligations. To get information on a workshop in your area, call 1-800-829-4933.

### Non-profit Organizations

Sustainable Economies Law Center **SEL**C (San Francisco, CA)

[www.theselc.org](http://www.theselc.org)

Farm Commons (Wisconsin)

<http://farmcommons.org/farm-interns-employees-and-volunteers/>

Farmer Legal Action Group **FLAG** (Minnesota)

<http://www.flaginc.org/>

- *Farmers Guide to Farm Employees: Federal and Minnesota Labor and Employment Law for Small-Scale Family Farmers*, August 2012, Farmers' Legal Action Group, Inc.
- *Farmers' Guide to Farm Internships: Federal and Minnesota Labor and Employment Law*, February 2013, Farmers' Legal Action Group, Inc.

Farm Employment Labor Services **FELS** (California)

[www.fels.net](http://www.fels.net)

## **IMPORTANT TAX FORM LINKS**

**Download Form W-4:** <http://www.irs.gov/pub/irs-pdf/fw4.pdf>

**You can also download Formulario W-4 in Spanish:** <http://www.irs.gov/pub/irs-pdf/fw4sp.pdf>

**Download Form 943 Annual Federal Tax Return for Agricultural Employees:** <http://www.irs.gov/uac/Form-943,-Employer%27s-Annual-Federal-Tax-Return-for-Agricultural-Employees>

**Download Form I-9:** You can download the I-9 form below. It can be located on the U.S. Citizenship & Immigration Service (USCIS) homepage: <http://www.uscis.gov/i-9>, or request it by calling USCIS at 1-800-870-3676. Farmers need to keep this form for 3 years from when the person was hired, or for 1 year after they stop working for you, whichever is later. You do not need to send this form to anyone, but will need to produce it if requested by a U.S. government official.

PDF in English: <http://www.uscis.gov/files/form/i-9.pdf>

PDF in Spanish: [http://www.uscis.gov/files/form/i-9\\_spanish.pdf](http://www.uscis.gov/files/form/i-9_spanish.pdf)

## **PUBLICATIONS ON MENTORING NEW FARMERS**

From the **New England Small Farm Institute**: [www.smallfarm.org](http://www.smallfarm.org)

- *Cultivating a New Crop of Farmers – Is On-Farm Mentoring Right for You and Your Farm? A Decision-Making Workbook* (\$20)
- *The On-Farm Mentor’s Guide – practical approaches to teaching on the farm* (\$35)

Order these online at <http://www.smallfarm.org/main/bookstore/publications/>

From the **Northeast Organic Farming Association (NOFA)-NY**: [www.nofany.org](http://www.nofany.org)

- *Internships in Sustainable Farming: A Handbook for Farmers*. 1999. Northeast Organic Farming Association New York.

Available free online: <https://www.nofany.org/catalog/publications/internships-sustainable-farming-handbook-farmer-information-you-need-become-far>

## **NCAT AND CALIFORNIA FARMLINK**

**The National Center for Appropriate Technology (NCAT)** helps people by championing small-scale, local, and sustainable solutions to reduce poverty, promote healthy communities, and protect natural resources. NCAT’s primary sustainable agriculture project is **ATTRA, the National Sustainable Agriculture Information Service**. Since 1987, ATTRA staff have provided technical assistance to farmers and ranchers nationally on a myriad of sustainable agriculture issues, providing one on one technical assistance, and writing informative technical publications on over 400 topics. **ATTRA’s Sustainable Internships and Apprenticeships Database** is the oldest database of its kind. Created in the 1980’s, it was originally mailed out to individuals requesting it. Farmers can post internship opportunities online for a \$5 fee, which allows access to update listings all year. Resources will soon be available for farmers seeking educational curriculum, mentorship information, and on how to improve the quality of their trainings. Beginning or aspiring farmers will find resources on what to look for in a quality apprenticeship, how to connect with mentor farmers, and help on how to transition from an apprenticeship to running your own farm. <https://attra.ncat.org/attra-pub/internships/>

**California FarmLink** strengthens independent family farms and builds sustainable food systems by helping small-scale farmers to lease and purchase land, access capital, plan for farm succession and improve business and financial management skills. For more information about FarmLink’s Land Access Program, Farm Loan Program or Individual Development Account Program, visit <http://www.californiafarmlink.org>. To accompany this Guide FarmLink and NCAT have developed short Fact Sheets and Case Studies on the following topics. They can be downloaded from FarmLink or NCAT-ATTRA’s website. FarmLink is also working with Pie Ranch to develop a multi-farm apprenticeship program in the Central Coast.

### **Fact Sheets**

- Structuring a Registered Apprenticeship Program with the DAS
- Program Funding from the California Employment Training Panel
- Lease Model
- Farm School Model

### **Case Studies**

- Rogue Farm Corps - Collaborative Mentorship Program in Oregon
- Full Belly Farm Employee/Internship Program
- Fresh Run Farm Registered Apprenticeship Program

# APPENDIX A. MEALS AND LODGING PAYROLL DETERMINATION

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## MINIMUM WAGE CREDIT

**IWC Wage Order#14; pg.4:** “(C) Meals or lodging may not be *credited against the minimum wage* without a voluntary written agreement between the employer and the employee. *When credit for meals or lodging is used to meet part of the employer’s minimum wage obligation.*”

## FEDERAL PAYROLL DETERMINATIONS

**IRS Pub 51; pg. 9:** “Cash wages include checks, money orders, etc. *do not count as cash wages the value of food, lodging, and other noncash items.* For more information of what payments are considered taxable wages, see Pub 15 (Circular E).”

**IRS Pub 15; pg. 16:** “*The value of meals is not taxable income and is not subject to income tax withholding and social security, Medicare, and FUTA taxes* if the meals is furnished for the employer’s convenience and on the employer’s premises. *The value of lodging is not subject to income tax withholding and social security, Medicare, and FUTA taxes* if the lodging is furnished for the employer’s convenience, on the employer’s premises, and as a condition of employment.”

**IRS Pub 15B; pg.16:** “You can *exclude the value of meals* you furnish to an employee from the employee’s wages if they meet the following tests. They are furnished on your business premises. They are furnished for your convenience. This exclusion does not apply if you allow your employee to choose to receive additional pay instead of meals.”

“You can *exclude the value of lodging* you furnish to an employee from the employee’s wages if it meets the following tests. It is furnished on your business premises. It is furnished for your convenience. The employee must accept it as a condition of employment. Different tests may apply to lodging furnished by educational institutions. See section 119(d) of the internal Revenue Code for details. This exclusion does not apply if you allow your employee to choose to receive additional pay instead of lodging. “

## CALIFORNIA STATE PAYROLL DETERMINATIONS

**California Employers Tax Guide (DE44); pg. 11:** “Meals and lodging that are provided free of charge or at a reduced rate to an employee *are wages.* If your employees are covered under a contract of employment or union agreement, the taxable value of meals and lodging cannot be less than the estimated value stated in the contract or agreement. If the cash value is not stated in an employment contract or union agreement, please refer to the table below for the value of the meals and/or lodging. To determine the value of lodging, multiply the amount you could rent the property of (ordinary rental value) by 66 2/3 percent (0.6667). Ordinary rental value may be calculated on a monthly or weekly basis as follows: [see table]. For more information on meals and lodging, access the EDD’s website at [www.edd.ca.gov/Payroll\\_Taxes/Rates\\_and\\_Withholding.html](http://www.edd.ca.gov/Payroll_Taxes/Rates_and_Withholding.html)

**EDD Wages Information Sheet (DE231a):** “Wages include, but are not limited to the following: ...

Meals and Lodging: 1. Except that meals and lodging are *not subject to PIT withholding or reportable as PIT wages* when furnished on the employer’s premises for the employer’s convenience and in the case of lodging when it is furnished as a condition of employment.

**California Employer’s Tax Guide (pg. 28):** This table identifies special types of payments and whether the type of payment is subject to California payroll taxes. For additional information on the taxability for a particular type of payment, refer to the Code section(s) noted under the specific tax. If you have questions regarding if or how an individual payment is taxed, please call the Taxpayer Assistance Center at 888-745-3886. [Table on pg. 32]

Types of Payments	TREATMENT FOR TAX PURPOSES			
	Unemployment Insurance and Employment Training Tax <sup>1</sup>	State Disability Insurance	Personal Income Tax Withholding	Personal Income Tax Wages
<b>Health Savings Accounts (HSAs):</b> Contributions as defined in IRC Section 106(d).  A. Contributions to a HSA not under an IRC Section 125 Cafeteria Plan.	Subject CUIC Section 926	Subject CUIC Section 926	Subject CUIC Section 13009(q) and R&TC Section 17131.4	Reportable CUIC Section 13009.5 and R&TC Section 17131.4
	Subject CUIC Section 926	Subject CUIC Section 926	Subject CUIC Section 13009(q) and R&TC Section 17131.5	Reportable CUIC Section 13009.5 and R&TC Section 17131.5
<b>Life Insurance Premiums Paid on Behalf of Employees</b>	Not subject CUIC Section 931(c)	Not subject CUIC Section 931(c)	Not subject if group-term life insurance. CUIC Section 13009(l)	Reportable if face value of group-term life insurance exceeds \$50,000. CUIC Section 13009.5 refer to endnote 3
<b>Lodging</b>	Subject CUIC Section 926 and Title 22, CCR, Sections 926-3, 926-4, and 926-5	Subject CUIC Section 926 and Title 22, CCR, Sections 926-3, 926-4, and 926-5	Subject unless furnished on employer’s premises, for the employer’s convenience, and as a condition of employment. Title 22, CCR, Section 4309-1(b)(9)	Reportable unless furnished on employer’s premises, for the employer’s convenience, and as a condition of employment. CUIC Section 13009.5
<b>Meals</b>	Subject CUIC Section 926 and Title 22, CCR, Section 926-3, 926-4, and 926-5	Subject CUIC Section 926 and Title 22, CCR, Section 926-3, 926-4, and 926-5	Subject unless furnished for employer’s convenience and on employer’s premises. Title 22, CCR, Section 4309-1(b)(9)	Reportable unless furnished for employer’s convenience and on employer’s premises. CUIC Section 13009.5

This table was adapted from the California Employer Guide (2013 edition) [http://www.edd.ca.gov/pdf\\_pub\\_ctr/de44.pdf](http://www.edd.ca.gov/pdf_pub_ctr/de44.pdf)

# APPENDIX B. SAMPLE MEMORANDUM OF UNDERSTANDING (MOU)'S FOR FARM APPRENTICESHIP PROGRAMS

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## SAMPLE INTERNSHIP WAGE CONTRACT

\_\_\_\_\_(FARM NAME)\_\_\_\_\_ and I have come to a mutually agreed upon working arrangement which will include the following:

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

I am being provided with Room and Board. Room and Board will be deducted from my paycheck according to the schedule of the Industrial Welfare Commission. The rates will be Room= \$163.06/month and Board=\$370.37/month. I understand that my taxes will be calculated on the gross pay which includes this room and board.

I understand that there are certain” house keeping” chores that are inherent with living at the farm that I will not be part of my 10 hours/week.: for example making lunch, certain animal chores, yard work etc.

I will keep a monthly time card and return a signed copy to the office before I am paid..

I understand that the hours I will work will vary by season, as daily workload requires. I am aware that I am entitled to two 15- minute breaks and a half- hour lunch break each working day.

I understand that five months after my first day, I will be eligible for \_\_\_\_ (FARM NAME)\_\_\_\_ health insurance. I understand that this internship is an educational opportunity for me to gain a deeper understanding of agriculture and farming.

I am accepting this position and wage with free will.

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Farm Partner: \_\_\_\_\_ Date: \_\_\_\_\_

## **SAMPLE MEMORANDUM OF UNDERSTANDING**

### **Mission of the Apprenticeship at {Organization Name}**

Emerging Farmers refers to our Apprenticeship & Internship program at {Organization Name}. This is one of three ways we work toward our mission. The Apprenticeship works toward growing farmers & farmer-educators who will become leaders and change-makers in the sustainable farming & food justice movement with a deep connection to the land, community, and the larger movement.

### **{Fill in General Description of Apprenticeship}**

#### **Payment to apprentices includes:**

Apprentices are expected to be present for 50 hours/week. They are paid \$9/hour for 47.5 hours per week. 2.5 hours/week are for formal instruction & is valued as tuition. We deduct housing, board, and tuition costs outlined below:

- Housing valued at \$602.50/month (includes electrical, gas, water, telephone).
- Board valued at approx. \$350/month (includes {Organization Name} produce, eggs, milk, grains, meat, and pies as well as simple bulk items including rice, beans, pasta, and spices).
- Tuition is valued at \$400/month.

Apprentices end up receiving \$500 after deductions. They are entitled to an additional health stipend of \$100/month upon expense submission. They are also covered under Worker's Compensation. Questions regarding pay & benefits can be directed to \_\_\_\_\_.

### **{Activities for winter, spring, summer, fall}**

#### **Roles and Responsibilities**

- Actively participate in field walks and prioritization of weekly work 5%
- Assist and take ownership of and sometimes leads (in the case of rotations) all aspects of farm work (irrigation, greenhouse management, weeding, transplanting, direct sowing, harvesting and post-harvest handling, perennial fruit tree and berry care, gopher/rat trapping and caring for chickens, goats, and cows, and thorough recordkeeping 60%
- Lead and fully engage with youth doing farm activities, meets with youth educators to coordinate youth days and debriefs at the end of these days 15%
- Manage farm stand on Saturdays; including set-up of farm stand, customer service and sales, and closing down at the end of the day 5%
- Maintain order and cleanliness of the building structures and coordinates and orients the summer interns to domestics at the farm 5%
- Assist with other events at {Organization Name}

#### **Expectations**

- Understanding of {Organization Name} Policies, Staff Bios, Community Agreements, Staff Schedule and other documents in your binder
- Understanding of the rustic living conditions & public space (only private spaces are the yurts)
- Ability to make decisions as a team and individually and carry out farm work efficiently and effectively
- Ability to execute irrigation, harvest coordination and newsletter writing after given instruction and guidance

- Commitment to great customer service at our farm stand
- Ability to work together as a team in all aspects of farm management
- Desire to learn and ask questions; openness to different ideas/ways of doing things; think about what you're learning, what you don't know, observe & take notes of your observations; program debriefs
- Setting a good pace: think about how you're working/how quickly & well you are accomplishing tasks; imagine this as your own farm
- Full engagement with school groups, events, work days; being friendly & welcoming to all people visiting the ranch
- Open & direct communication: participation in weekly check-ins; monthly honey & millet – opportunity to share appreciations & challenges
- Self care – balancing work with physical, mental, spiritual well being
- Ask questions when you don't know something, aren't sure about something...there is no silly question!
- Assume ownership of tasks & rotations
- Ability to work 8 hour days of crouching, squatting, lifting up to 50 lbs, and being on foot. Walking up hill with full wheelbarrows is also common.
- Creating a happy, functioning, domestic community
  - Maintain cleanliness of kitchens, house, yurts, and surrounding area on the lower-slice. Please feel free to decorate personal space without anything permanent. Refrain from decorating public areas unless cleared by staff.
  - We suggest you meet once a week in the evening to go over your own domestic/community needs. For lunches, one apprentice can break away ½ hour early to prepare.
  - Washing & hanging of kitchen, goat, chicken and house cleaning towels
  - Keep truck clean and organize the cab. Diesel runs.
- Daily check-in around to-do list
- Observe work schedule & timeliness

**{Insert Sample Apprentice Work Week:}**

**Chores**

You will sign up on Tuesdays after the field walk for chores & will be on them for one week. Chores happen at 7am each morning, it's your responsibility that you're done w/your chore & breakfast by 8:30 when farm work commences.

**{Insert List of Chores and when they happen}**

**Apprentice Days Off/Vacation**

- The apprentice work-week is Tuesday through Saturday. Apprentice days off are Sunday and Monday
- 10 days of vacation and the equivalent of federal holidays are honored. We request that apprentices stay mindful of the schedule & take their allotted vacation time! Two apprentices may not take vacation at the same time to ensure the work load isn't too much on one apprentice and the Farm Managers.
- Education/Readings/Discussion
- We encourage keeping a daily journal that includes your observations on the farm, with the animals, your own diet, your learning process, experiences with youth, community work days, leading tours.
- Weekly review of learning progress, this can be your own reflection time, or shared at the weekly meeting, program debriefing/reflection time, blog & facebook posts



# APPENDIX C. SAMPLE TIMECARD FOR AGRICULTURAL WORKERS

## SAMPLE AGRICULTURAL TIMESHEET

Employee name:
Manager name:

Week starting:	3/16/13
Week ending:	3/31/13

	Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	3/16/13	3/17/13	3/18/13	3/19/13	3/20/13	3/21/13	3/22/13	3/23/13
Time In/ Empezar								
Time Out/ Terminar								
Meal Break/ Lonche								
Time In/ Empezar								
Time Out/ Terminar								
Total Hours								
	F	P	F	P	F	P	F	P

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
	3/24/13	3/25/13	3/26/13	3/27/13	3/28/13	3/29/13	3/30/13	3/31/13
Time In/ Empezar								
Time Out/ Terminar								
Meal Break/ Lonche								
Time In/ Empezar								
Time Out/ Terminar								
Total Hours								
	F	P	F	P	F	P	F	P

For Office use only	Reg
	OT
	DT

Pay Period Total	
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Signature \_\_\_\_\_

Reg= Regular Time    F= Field Work  
 OT= Overtime        P= Packing Shed  
 DT= Double Time

# APPENDIX D: AG LABOR NOT SUBJECT TO PIT WITHHOLDING

This table identifies special cases of employment and whether the type of employment is subject to California payroll taxes. According to CUIC Section 13009(a); “wages” shall not include remuneration paid under any of the following conditions: (a) For agricultural labor, as defined in subdivision (g) of Section 3121 of the Internal Revenue Code.

Types of Employment	TREATMENT FOR TAX PURPOSES			
	Unemployment Insurance and Employment Training Tax <sup>1</sup>	State Disability Insurance	Personal Income Tax Withholding	Personal Income Tax Wages
<b>Agricultural Labor</b> Also refer to the federal Agricultural Employer’s Tax Guide Internal Revenue Service (IRS) (Publication 51, Circular A).	Subject California Unemployment Insurance Code (CUIC) Section 611	Subject CUIC Section 611	Not subject <sup>2</sup> CUIC Section 13009(a)	Reportable CUIC Section 13009.5

# CITATIONS:

1. Fair Labor Standards, 29 U.S.C. 201, et seq., Cited August 19, 2013: <http://www.law.cornell.edu/uscode/text/29/chapter-8>
- 2 U.S. Department of Labor Wage and Hour Division Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act. Cited August 19, 2013: <http://www.dol.gov/whd/regs/compliance/whdfs71.pdf>
- 3 IRS Independent Contractor Guide, cited August 12, 2013: [http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-\(Self-Employed\)-or-Employee%3F](http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-(Self-Employed)-or-Employee%3F)
- 4 U.S. Department of Labor Wage and Hour Division Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act. Cited August 19, 2013: <http://www.dol.gov/whd/regs/compliance/whdfs71.pdf>
- 5 Federal Volunteer Protection Act of 1997. Cited August 22, 2013: <http://www.gpo.gov/fdsys/pkg/PLAW-105publ19/pdf/PLAW-105publ19.pdf>
- 6 *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 US 290, 303 (1985)
- 7 Industrial Commission Wage Orders #8, 13 and 14. Cited August 20, 2013: <http://www.dir.ca.gov/iwc/wageorderindustries.htm>
- 8 US Department of Labor Website, cited August 21, 2013: <http://www.dol.gov/whd/flsa/>
- 9 Industrial Commission Wage Orders #8, 13 and 14. Cited August 19, 2013: <http://www.dir.ca.gov/iwc/wageorderindustries.htm>
- 10 Maximum Hours. 29 U.S.C. § 207(a)(1) <http://www.law.cornell.edu/uscode/text/29/207>
- 11 Industrial Commission Wage Orders #8, 13 and 15. Cited August 19, 2013: <http://www.dir.ca.gov/iwc/wageorderindustries.htm>
- 12 U.S. Department of Labor Wage and Hour Division Fact Sheet, Fact Sheet #12. Cited August 22, 2013: <http://www.dol.gov/whd/regs/compliance/whdfs12.htm>
- 13 *Pacific Merchant Shipping Association v. Aubry* 918 F.2d 1409 (1990)
- 14 U.S. Department of Labor Wage and Hour Division Fact Sheet, Fact Sheet #12. Cited August 19, 2013: <http://www.dol.gov/whd/regs/compliance/whdfs12.htm>
- 15 Industrial Commission Wage Orders #8, 13 and 15. Cited August 19, 2013: <http://www.dir.ca.gov/iwc/wageorderindustries.htm>
- 16 California Department of Minimum Wage. Cited August 19, 2013: [http://www.dir.ca.gov/dlse/faq\\_minimumwage.htm](http://www.dir.ca.gov/dlse/faq_minimumwage.htm)

17 Industrial Commission Wage Orders #8, 13 and 15. Cited August 19, 2013: <http://www.dir.ca.gov/iwc/wageorderindustries.htm>

18 California Labor Code sections 6400-6404. Cited August 19, 2013: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=06001-07000&file=6400-6413.5>

19 California OSHA Code of Regulations, Title 8. Cited August 19, 2013: <http://www.dir.ca.gov/title8/index/T8index.asp>

20 Department of Industrial Relations, Heat Illness Information, Cited August 22, 2013: <http://www.dir.ca.gov/dosh/heatillnessinfo.html>

21 Division of Workers' Compensation Fact Sheet. Cited August 19, 2013: [http://www.dir.ca.gov/DWC/FactSheets/Employer\\_FactSheet.pdf](http://www.dir.ca.gov/DWC/FactSheets/Employer_FactSheet.pdf)

22 IRS Publication 15, IRS Publication 51. Cited August 19, 2013: <http://www.irs.gov/pub/irs-pdf/p15.pdf>, <http://www.irs.gov/pub/irs-pdf/p51.pdf>

23 IRS Publication 51 pg 9. Cited August 19, 2013: <http://www.irs.gov/pub/irs-pdf/p51.pdf>

24 IRS Publication 15 pg 16. Cited August 19, 2013: <http://www.irs.gov/pub/irs-pdf/p15.pdf>

25 Circular A. Agricultural Employer's Tax Guide. Cited August 19, 2013: <http://www.irs.gov/pub/irs-pdf/p51.pdf>

26 Circular A. Section 10. FUTA Tax. Agricultural Employers Tax Guide. Cited August 19, 2013: <http://www.irs.gov/pub/irs-pdf/p51.pdf>

27 Circular A. Agricultural Employer's Tax Guide. Cited August 19, 2013: <http://www.irs.gov/pub/irs-pdf/p51.pdf>

28 Circular E. IRS pub 15 pg 16. Cited August 19, 2013: <http://www.irs.gov/pub/irs-pdf/p15.pdf>





