

July 2002

E.B. 2002-10

# **FARM LABOR REGULATIONS**

**Dale Arrison Grossman**

**Jason D. Minard**

Department of Applied Economics and Management  
College of Agriculture and Life Sciences  
Cornell University, Ithaca, New York 14853-7801

It is the Policy of Cornell University actively to support equality of educational and employment opportunity. No person shall be denied admission to any educational program or activity or be denied employment on the basis of any legally prohibited discrimination involving, but not limited to, such factors as race, color, creed, religion, national or ethnic origin, sex, age or handicap. The University is committed to the maintenance of affirmative action programs, which will assure the continuation of such equality of opportunity.

Publication Price Per Copy: \$8.00

For additional copies, contact:

Carol Fisher  
Dept. of Applied Economics  
and Management  
357 Warren Hall  
Cornell University  
Ithaca, New York 14853-7801

E-mail: [cf44@cornell.edu](mailto:cf44@cornell.edu)  
Fax: 607-255-1589  
Phone: 607-255-1585

# CONTENTS

<b>Preface .....</b>	<b>1</b>
<b>Employee or Independent Contractor? .....</b>	<b>1</b>
<b>Employment Verification System.....</b>	<b>3</b>
<b>Taxes .....</b>	<b>4</b>
Social Security .....	4
Federal Income Tax .....	6
State Income Tax .....	7
<b>Collection of Wages .....</b>	<b>8</b>
The Federal Wage-Hour Law .....	8
New York State Minimum Wage Standards for Farm Workers.....	12
Eviction When Housing Is Provided by Employer.....	17
New York State’s Wage Reporting System.....	18
<b>Insurance .....</b>	<b>19</b>
Worker’s Compensation Insurance.....	19
Disability Benefits .....	22
Unemployment Insurance.....	23
<b>Safety and Health.....</b>	<b>27</b>
Occupational Safety and Health Act.....	27
Hazardous Substances.....	32
New York Right-to-Know Law .....	32
OSHA Hazard Communication Standard .....	34
Pesticide Use Regulations.....	37
Certification of Pesticide Applicators.....	40
Respirators and Gas Masks Approved for Pesticides .....	43
<b>Migrant Workers .....</b>	<b>44</b>
Registration of Farm Labor Contractors.....	44
Migrant Camps and Commissaries .....	47
Minimum Wage and Wage Statements.....	48
<b>Youth Employment.....</b>	<b>48</b>
Minimum Age for Employment.....	49
Prohibited Occupations.....	50
Workers’ Compensation Insurance.....	53

## **Preface**

Farm employers must comply with a variety of state and federal laws and regulations. This publication contains information on the regulations of concern to New York farm employers and employees. It does not constitute a legal document; it is for general educational use. Requests for information on specific rulings or legal interpretations should be directed to the appropriate state or federal agencies or to an attorney. The information contained in this publication is accurate as of January 24, 2002. It is the employer's responsibility to keep abreast of current changes in state and federal farm labor laws.

**Agricultural Employers** - Those who employ persons who perform services:

1. On a farm in connection with cultivating the soil, or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, fur bearing animals and wildlife;
2. In the employ of the owner, tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;
3. In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage, market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed in the employ of an operator of a farm (a) as an incident to farming operations, or (b) in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market.

Services performed in relation with any agricultural or horticultural commodity after its delivery to a terminal market for distribution, or in commercial canning or commercial freezing, are not considered agricultural employment. Also, services in connection with converting a primary product to a secondary derivative, such as grapes to wine, and services in retail operation, even if located on a farm are NOT considered agricultural employment.

## **Employee or Independent Contractor?**

Independent contractors are not considered to be employees and they are either excluded from coverage or treated differently under most of the labor laws and regulations discussed in this publication. Therefore it is important for a farmer to know whether an individual doing work is an employee or an independent contractor.

Independent contractors are persons who are actually in business for themselves and hold themselves available to the general public to perform services. A person is an independent contractor only when free from control and direction of an employer in the performance of those services.

Although the laws described here do not define an independent contractor, court decisions have held that all the factors concerning the relationship between the two parties must be considered to determine if the farmer contracting for services has the right to exercise supervision, direction, or control over the person performing the services. If an employer has any doubt about

the nature of the relationship, the best course of action is to ask the state or federal agency administering the law for a written determination, because in almost all circumstances an ambiguous situation is interpreted in favor of the worker.

Although no single factor or group of factors is conclusive in deciding if an employer-employee relationship exists, the following conditions tend to indicate that a person is an employee:

- A person who is told how, when, and where to work is usually an employee.
- A person who must be trained by an experienced worker is normally an employee.
- The existence of a continuing relationship between the worker and the employer, especially if set work hours are established, indicates control.
- When an individual works full time for one party, especially if the work is done on the employer's premises, the worker is normally an employee.
- When the employer pays the worker's expenses, provides fringe benefits, or furnishes tools or equipment, it indicates control by the employer.
- An employee is usually paid by the hour, week, or month and has the right to quit at any time without incurring any liability.
- An employee is not in a position to realize a profit or suffer a loss as a result of services performed (although an employee may be paid a commission or on a piece rate).
- An individual who performs unskilled labor is usually considered to be under the supervision of an employer.

To protect themselves when hiring an independent contractor to do custom work, farmers must eliminate any confusion about the nature of the relationship. The farmer should leave the method of work to the independent contractor's discretion and specify only the desired result. In addition, the farmer should pay for the job as a whole and not on an hourly basis, refrain from furnishing the independent contractor with any equipment, and tailor the work contract (which ideally should be in writing) to deal with the other factors listed above. Obtaining proof that the independent contractor carries liability insurance and that he or she pays self-employment tax are two other safeguards that can be used.

For federal tax purposes, if you want a decision about whether a worker is an employee, file Form SS-8, "Information for Use in Determining Whether a Worker Is an Employee for Federal Employment Taxes and Income Tax Withholding," which can be obtained at IRS offices. For more information, contact the agency responsible for administering the law in question. The relevant addresses and telephone numbers are listed in the Appendix.

## **Employment Verification System**

### **Immigration Reform and Control Act of 1986**

The Immigration Reform and Control Act of 1986 makes it illegal to hire aliens who are unauthorized to work in the United States. The act also establishes stiff penalties for violation of its provisions, so it is important to recognize how this new law applies to farm employers. In addition, the act established a legalization program that provides temporary and then permanent resident status to aliens who entered the United States prior to January 1, 1982, and who registered with the Immigration and Naturalization Service (INS).

### **Employment Verification System**

Form I-9 is the key for documenting compliance with the new law. It is the employer's responsibility to be sure that new employees fill out their part of Form I-9 when they start work. The employer must physically examine documents establishing employees' identity and eligibility to work. An employer should not rely on any document that does not reasonably appear to be genuine. These documents should be requested promptly because the employer must complete the employer's section of Form I-9 within three business days of hiring. While not required, it is a good idea to make photocopies of the submitted documents to keep with the employee's I-9 form.

Form I-9 should be retained for at least three years, or for one year after the employee leaves the job if he or she has worked for more than three years. An employer must be prepared to present the form for inspection to an INS or Department of Labor officer upon request. At least three days' notice must be given before such an inspection.

Employers need only complete Form I-9 for individuals hired after November 6, 1986. Copies of the form can be obtained by calling the nearest INS office. For most of New York State, the Buffalo office is the best to contact. The number is (716) 846-4731. In New York City, the number is (212) 206-6500.

Some of the acceptable documents for purposes of identity and eligibility to work are listed on Form I-9 itself, others are listed in the *Handbook for Employers* (Instructions for Completing Form I-9) available from INS at the address given at the end of this section.

If an employee you wish to hire does not have the right documents, he or she can give you a copy of the receipt showing that he or she has applied for the document. You must see the actual document within 21 days of hiring.

### **Unfair Immigration-related Employment Practice**

Employers with four or more employees may not discriminate against any individual (other than an unauthorized alien) based on citizenship or alien status if the person alleging discrimination is either a U.S. citizen or is a permanent resident alien, has been admitted as a refugee, has been granted asylum, or is a newly legalized alien and has filed a notice of intent to become a U.S. citizen.

Employers can be fined up to \$1,000 for unfairly discriminating against an individual based on national origin or citizenship status. Repeat offenders may face fines of up to \$2,000 back pay, and attorney's fees may also be awarded to a winning claimant under the act.

### **Sanctions**

Penalties for noncompliance are chilling. Failure to submit a completed Form I-9 could result in fines of \$100 to \$ 1,000 for each form. Hiring an illegal alien could result in a penalty of \$250 to \$2,000 for a first violation. Second or third violations can cost up to \$10,000 per illegal worker. Factors that INS will consider in determining the penalty amount to include the size of the employer's business, the employer's good faith, the seriousness of the violation, and the employer's history of previous violations.

The employer has an obligation not to continue to knowingly employ an alien once the alien loses legal status. This includes liability when a contractor hires an unauthorized alien with the employer's knowledge.

### **Temporary H-2A Workers**

The H-2A temporary agricultural worker program requires an affirmative search for available U.S. workers and a determination that the admission of alien workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.

The employer must apply to the Secretary of Labor for certification and then submit the petition to the U.S. Attorney General for final approval. Employers seeking alien workers cannot be required to apply for certification more than 60 days in advance of the estimated date of need, and the Secretary of Labor is required to approve or deny certification not later than 20 days before the date of need. In certain cases, expedited administrative appeal procedures are provided for denial of certification and for a new determination. Protections for alien workers include guaranteed housing, workers' compensation, and access to legal assistance for work-related matters.

For further information regarding the H-2A program, refer to the *H-2A Program Employee Information Booklet*, available from the U.S. Department of Labor.

### **Additional Sources of Information**

For more information, call the INS office nearest you at the following numbers: Buffalo (716) 849-6760; New York City (212) 206-6500.

The *Handbook for Employers* (instructions for completing Form I-9) can be obtained by contacting the U.S. Department of Justice, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536.

### **Taxes**

#### **Social Security**

The Social Security Act covers all farm employees, regardless of age, (including family members over the age of 18) unless the employer spends less than \$2,500 for payroll during a

calendar year. If this annual payroll requirement is not met, the law covers those agricultural employees who were paid \$150 or more in cash wages during a calendar year. Cash wages are defined as the total wages paid before payroll deductions but do not include the value of meals, lodging, or farm produce an employee receives. Children under the age of 18 are not considered employees if they work for their parents but will be employees if they work for anyone else, including a farm corporation.

With few exceptions, all employers must file year-end Social Security reports on hired help, Federal Form 943, by January 31. Exceptions include wages paid by a parent to a child for domestic service in the home are not covered until the child's twenty-first birthday. In addition, household employers can file Schedule H if their total cash wages are below \$1,200. If federal income taxes are withheld, they are reported on this form. If taxes are deposited with the Internal Revenue Service (IRS) before the end of the year, the deadline for filing the form is February 10. To complete Form 943 properly, the employer must have an identification number and the Social Security number of every farm employee. New employers apply for an identification number on Federal Form SS-4, which is available at any IRS or Social Security Administration office.

### **“Month-end-check” Guide**

Farm employers must either withhold employees' Social Security taxes and add the farm's share or pay both the employer and employees' share. If the employer pays the employees' share, it becomes subject to income taxes but is not considered cash wages. Farm employers who report \$50,000 or less of federal employment taxes during a year must make monthly deposits of the following year's employment taxes (excluding FUTA taxes) by the 15<sup>th</sup> of the following month. Employers who report more than \$50,000 of federal employment taxes annually must make semi-weekly deposits. A farm employer who accumulates less than \$2,500 of employment taxes during a year may make the entire payment at the end of the year using Form 943. The employer must deposit the total amount at a Federal Reserve Bank or authorized commercial bank by the 15<sup>th</sup> of the following month. In either case, Form 8109, Federal Tax Deposit Coupon, should be used. A Federal Tax Deposit Coupon book is automatically sent to new employers when they receive an identification number. It may take several weeks to receive the coupon book. You may use Form 8109B in the meantime.

### **Non-Farm Employees**

If you employ both farm and non-farm employees, you must treat them separately for tax purposes. See Circular E, IRS Employer's Tax Guide, for information about reporting for non-farm employees. Information is also available on-line at <<http://www.irs.treas.gov>>.

### **Tax Statement to Workers**

Employers are required to provide each employee with a statement by January 31 of each year indicating wages reported to the federal Internal Revenue Service and the New York State Tax Bureau and the amount of Social Security taxes that have been withheld. Copies of forms W-2 (federal) and IT-2102 (state) or SS-14 can be used for this purpose.

The *intent* of the law is for employees to pay their own share of the Social Security tax.



## **Additional Information**

Detailed descriptions of an agricultural employer's obligations under the federal tax laws can be found in IRS Circular A, *Agricultural Employer's Tax Guide* (IRS Publication 51). See also *Farmer's Tax Guide* (IRS Publication 225). Contact your area Social Security Administration office for additional information.

## **Federal Income Tax**

### **Reporting**

The Tax Reform Act of 1986 and subsequent laws made sweeping changes in the federal income tax law. Most of these changes do not radically affect the reporting requirements of farm employers. However, because different methods are now used to calculate individual tax liability, it is important that employers and employees use only up-to-date forms and instruction booklets in tax reporting.

### **Withholding**

Withholding is required on wages of farm workers. The W-4 is a simple form used to claim withholding exemptions. IRS Publication 505, *Tax Withholding and Estimated Tax*, and Circular E, *Employer's Tax Guide* are available for use in calculating the correct amount of withholding.

### **Information Returns**

Farm employers are responsible for providing each employee with an annual information return and for filing a statement with the government indicating payments of any amount (including the cash value of payments not made in cash, except for meals or lodging furnished as a condition of employment) made to farm employees during the year for salaries, fees, or other compensation for personal services. Federal Form W-2 is used for this purpose and must be distributed to employees by January 31.

### **Working Students (Subject to Withholdings)**

Under the tax law, individuals are not subject to withholding of federal income tax if they paid no tax in the previous year and they do not anticipate being liable for any federal income tax in the current year. Students who earn no more than their standard deduction amount and who have no interest or dividend income meet these criteria. Such students should fill out Form W-4E, Withholding Exemption Certificate, and give it to their employers. This form can be obtained from district offices of the IRS. Students who follow these procedures will not have to wait to receive refunds.

### **Dependent Children**

A single dependent child employed on a farm must file an income tax return if he or she had any unearned income and the total unearned and earned income was over \$750 in 2001. If the dependent child had no unearned income, a return must be filed if his or her earned income was over \$4,550 during the 2001 tax year. Unearned income includes interest, dividends, and trust income.

## **Employees' Tax Responsibility**

Every citizen or resident of the United States, whether an adult or a minor, who was paid \$7,450 or more in the 2001 taxable year must file a return. In the case of married couples filing joint returns, the amount is \$13,400 as of 2001. These numbers are likely to increase in the future. Farm employees are *required* to file and pay a declaration of estimated income tax (Form 1040-ES) if they have income from sources not subject to withholding and they expect their tax liability on these earnings to be over \$1,000, or 100% of the prior year's tax liability or 90% of the current year, if under \$1,500. The tax can be paid in four equal installments. Some employees have been penalized for not filing estimates. Once an employee has filed Form 1040-ES, the IRS will automatically send additional forms and information, including payment vouchers.

## **Additional Information**

Contact your area Internal Revenue Service, Federal Tax Office, for additional information. Call the toll-free number listed under "U.S. Government" in the telephone book to order federal tax forms. You will have to respond to a recorded message, so be sure you know exactly which forms you wish to order.

## **State Income Tax**

In general, New York State's income tax laws are the same as the federal laws. Tax rates are different and state forms are usually required, but the basic principles and many of the procedural requirements are the same.

## **New York State Single File**

The NYS Department of Taxation and Finance and Department of Labor jointly developed a Single File program to simplify reporting requirements for employers. It combines the Quarterly Unemployment Insurance report (Form IA-5) and the Quarterly Combined Withholding and Wage Return Reporting (Form NYS-4), enabling employers and their agents to report state withholding tax, wage reporting and unemployment information on a single form. The form is NYS-45 and NYS-45-ATT replaces IA-5, NYS-4 and NYS-4-ATT.

## **Withholding**

The New York State Tax Law requires farm employers to withhold income tax from farm employees. An employee should submit a completed Form IT-2104 to his employer. Withheld dollars for taxes should be sent to the New York State Income Tax Division with Form NYS-45.

Since 1992, anyone required to withhold New York tax from employees is required to make deposits and file reports at least quarterly. Filers with less than \$700 quarterly withholding liability reconcile and pay taxes withheld using Form WT-4-AEZ. They report employees' wages and withholding information using WT-4-B within one month of the end of each quarter, except for the last quarter when reporting is required by February 28.

In general, filers with \$700 or more in quarterly withholding liability will remit taxes using Form WT-1 within three business days of the payroll in which \$700 was accumulated. Any withholding balance under \$700 at the end of any quarter should be remitted using WT-1.

Filers withholding \$700 or more during a quarter are required to file WT-4-A and WT-4-B by the end of the month following the end of the quarter, except for the last quarter when reports are due by February 28. There are some additional rules with which employers should familiarize themselves if they fall into this category.

The rules and the withholding tables are included in WT-100, "New York State Withholding Tax Guide," available from the New York State Tax Department (1-800-462-8100).

### **Newly Hired Employees**

For employees hired on or after March 1, 1996, New York State requires an employer to report certain identifying information to the New York State Department of Taxation and Finance.

This reporting requirement is designed to help insure that employees with child support obligations honor that responsibility. To meet this reporting requirement, an employer should send a legible photocopy of the newly hired employee's IRS Form W-4, Employee's Withholding Allowance Certificate, to the following address:

New York State Department of Taxation and Finance

New Hire Notification

P.O. Box 15119

Albany, NY 12212-5119

The information can also be sent via facsimile to (518) 463-4514. Questions regarding this reporting requirement should be directed to the Business Tax Information Center at 1-800-972-1233 or 1-800-225-5829.

### **Additional Information**

Contact the New York State Department of Taxation and Finance (see the Appendix). To order forms and receive basic tax information, check the telephone book under "New York State" for the toll-free number.

### **Collection of Wages**

Agricultural workers must be paid "not later than seven calendar days after the end of the week in which the wages are earned." They may be paid every two weeks as long as this requirement is observed. Deductions from wages are illegal. The only deductions a farm employer can make are legal withholdings authorized by law such as income tax or Social Security, and deductions authorized in writing by the employee for his or her own benefit, such as health insurance premiums. Agricultural workers may be paid by check without special permission. Any questions or reports of violations pertaining to wages should be directed to the New York State Department of Labor (see the Appendix for a list of district offices).

### **The Federal Wage-Hour Law**

Hired farm workers were first covered by the Federal Wage-Hour Law (Fair Labor Standards Act) in 1967. Congress has amended the act several times, most recently on September 1, 1997, and the current federal minimum wage for all employees is \$5.15 per hour. Overtime pay is not required for agricultural employees under federal law.

The legislation also allows an employer to pay less than the minimum wage (but not less than \$4.25 per hour) to any employee under the age of 20 during the first 90 consecutive days of employment. This is called the “youth opportunity wage.” It may be used only once per employee. The 90-day window applies to calendar days, not just days worked. There is no requirement that training be provided to qualify for this wage rate.

## **Coverage**

### **Exceptions**

The activities of the employee, not the employer, determine whether he or she is exempt, and it is possible for both exempt and nonexempt employees to work for the same employer. The minimum wage provisions cover all employees working on farms that are covered by the Federal Wage-Hour Law except employees whose hours are not counted in calculating man-days and professional or administrative employees, who are exempt from all the provisions of the Fair Labor Standards Act.

**Small Farm Exemption**—The federal minimum wage provisions apply to all employers who used more than 500 man-days of agricultural labor in any calendar quarter of the preceding calendar year. A man-day is any day in which an employee performs any agricultural labor for one hour or more. If an employer owns more than one farm, the total number of man-days used on all farms will determine whether agricultural employees on each farm must be paid the federal minimum wage.

### **Allowances**

The law provides that wages may include board, lodging, and other benefits customarily provided as compensation to the employee. These noncash wage benefits may be included at reasonable cost or farm market value as determined by the Wage and Hour Division of the U.S. Department of Labor. The division does not have dollar maximums for the allowances; each case is judged individually. However, maximum allowances for noncash wage benefits have been established, under the New York State Minimum Wage Order for Farm Workers.

### **Full-Time Student Rate**

Workers who are full-time students, regardless of age, may be employed by retail and service employers, farmers, and colleges and universities at rates no less than 85 percent of the minimum wage otherwise applicable. They may work no more than 20 hours in any workweek, however, except during vacations, when they may work up to 40 hours. To hire a full-time student, an employer must obtain a Full-Time Student Certificate from the U.S. Department of Labor. A certificate will be issued after the Department of Labor has determined the following: full-time students are available for employment; granting the certificate is necessary to prevent curtailment of opportunities for their employment; granting the certificate to more than six students will not substantially reduce the probability of employment for persons other than those employed under the certificate; and granting the certificate will not result in other employees, including students, receiving reduced wages.

The federal certificate covers full-time students of any age, whereas the state certificate deals with youth under 18, regardless of their student status. Also, the state Youth Rate Certificate

permits an employer to hire an unlimited number of youth, whereas the federal Full-Time Student Certificate, as a rule, permits no more than six full-time students to be hired and their hours cannot account for more than 10 percent of the employer's total man-hours of labor. An employer covered by both laws must comply with both standards. See the section entitled "Youth Employment" for more details.

### **Farms Including Nonfarm Operations**

The inclusion of certain nonfarm operations such as roadside markets and various shipping and processing activities in laws pertaining to farms results in some confusing coverage provisions, particularly because federal and state requirements differ. All operations classified as farm are subject to the 500 man-day farm exemption.

If only the farmer's produce is processed, shipped, or sold, the operation is classified as farm. If produce from other farms is processed, shipped, or sold, the operation is classified as nonfarm, in which case a mixed enterprise coverage exemption is applied.

Standards for both minimum wage and overtime apply if the combined sales of the farm and nonfarm operations exceeded \$250,000 in the four most recently completed quarters. In contrast to farm coverage, the standards apply in the ensuing quarter if the sales test is met or exceeded.

If an employee's hours are split during the week between a covered and a noncovered operation, then his or her total hours are treated as covered. Coverage provisions and requirements are summarized in Table 1.

### **Greenhouses**

Greenhouse employers may be classified as farm, nonfarm, or a combination of the two. They are classified as farm employers if the enterprise includes growing plants rather than just holding plants for resale. If the enterprise is classified as a farm employer, then the farm exemption applies. If it is classified exclusively as a nonfarm employer and gross annual sales meet or exceed \$362,000, minimum wage and overtime requirements are in effect. Enterprises classified as both farm and nonfarm are covered under the provisions explained in the preceding section.

### **Piece Rate**

Employees may be paid on a piece rate basis; but under both federal and state law, covered employees must earn at least the minimum hourly wage. With a state Youth Rate Certificate for farms, minors under 18 years of age may be paid a piece rate lower than \$5.15 per hour.

### **Work Hours**

Work hours at farm jobs include time going from field to field and waiting for equipment, but do not include time lost because of bad weather unless the employer has asked the employee to wait for the weather to clear.

**TABLE 1. Federal Minimum Wage and Overtime Requirements for Enterprises Combining Processing, Shipping, and Selling with Farming**

		Processing, Shipping, and Selling	
		Own Products	Other's Products
Classification	Farm	Farm	Nonfarm
Over 500 man-days <sup>1</sup> Under \$500,000 sales <sup>2</sup>	Minimum Wage	Minimum Wage	Minimum Wage
Over 500 man-days Over \$500,000 sales	Minimum Wage	Minimum Wage	Minimum Wage and Overtime <sup>3</sup>
Under 500 man-days Over \$500,000 sales	None	None	Minimum Wage and Overtime

1. The 500 man-day test is applied only to the part of the enterprise that is classified as farm. If the selling, shipping, or processing involves only the farmer's own produce, these operations are classified as farm and the employees are included in the 500 man-day test.

2. The \$500,000 sales test is applied to the total enterprise — farm sales plus sales from the part of the enterprise classified as nonfarm. If the total enterprise is classified as farm, the sales test does not apply.

3. The overtime requirement is 1½ times the regular rate of pay for hours exceeding 40 hours of work per week.

### Statement of Wages

Federal law does not require employers to issue statements of wages to any employees except migrant and seasonal workers. State law, however, requires that all employees be issued such statements. The employer's identification number must appear on these statements.

### Record Keeping

The law specifies that every employer must keep true and accurate records of the hours each employee works and the wages he or she is paid, as well as each employee's Social Security number, address, and any other information required by the Federal Wage-Hour Law. These records must be kept for three years and be available for review at any time. Copies of wage statements provide the basic information needed. Inadequate records are a major complaint of minimum wage inspectors. Employers should establish a basic record system, especially if migrant or seasonal agricultural workers are employed.

An official "Notice to Employees" furnished by the U.S. Department of Labor Wage and Hour Division must be posted where employees can readily see it.

### Additional Information

See the Department of Labor offices listed in the Appendix.

## **New York State Minimum Wage Standards for Farm Workers**

The New York State Minimum Wage Standards for Farm Workers, which became effective in 1969, has been amended several times. The farm minimum wage rate is \$5.15 per hour as of March 31, 2000. The Minimum Wage Order for Farm Workers provides that all workers, with certain exceptions, must be paid at least \$5.15 per hour. This does not include members of the employer's immediate family and minors under 17 years of age employed as hand harvest workers on the same farm as their parents or guardians and who are paid on a piece rate basis at the same rate as employees over 17.

An employer who is covered by the Federal Wage-Hour Law is also covered by the New York State Minimum Wage Standards for Farm Workers and must comply with both laws. Employers covered by the Federal Wage-Hour Law should confirm that they are in compliance with other provisions of the federal law pertaining to rates, allowances, Youth Rate Certificates, and the minimum wage rate for youth.

### **Posting**

The Minimum Wage Order for Farm Workers requires that a summary of Article 19-A of the Labor Law and the minimum wage order pertaining to farm workers be posted at the work site. These posters may be obtained by contacting the Division of Labor Standards at the offices listed in the Appendix.

### **Coverage**

The New York State Minimum Wage Standards for Farm Workers applies to any employer of farm workers whose aggregate cash payroll was \$3,000 or more during the previous calendar year. Workers supplied by a farm labor contractor are included, and the farmer who uses the services of a contractor is responsible for complying with the law.

### **Exceptions**

The law covers all persons performing farm work except members of the employer's immediate family and persons under 17 years of age who are employed as hand-harvest workers on the same farms as their parents and who are paid on the same piece rate basis as workers older than 17.

### **Allowances**

The law states that wages may include allowances for meals, lodging, services, and facilities furnished by the employer to the employee. The values allowed are listed in Table 2. These values represent minimum requirements and are not intended to represent the actual value of the item furnished. No lodging allowances are permitted as part of the minimum wage for migrant employees, nor are lodging allowances permitted unless the employer pays for utilities. Payment in kind (milk, meat, and the like) acceptable to the employee may be considered at farm cost or at the current farm market value. For a discussion of housing for migrant employees, see the section titled Migrant Workers.

**TABLE 2. Minimum Wage Requirements and Allowances for New York State Farms  
(Rate per Hour unless Otherwise Indicated)**

Farm Minimum Wage <sup>1</sup>	\$5.15
Youth aged 16 and 17 (certificate needed)	
Harvesting	
First Harvest Season	3.60
Second Harvest Season	3.80
Third Harvest Season	4.25
Nonharvesting	
First 300 Hours	3.60
Second 300 Hours	3.80
More than 600 Hours	5.15
Youth under 16 (farm work permit required)	3.20
Allowances	
Meals <sup>2</sup>	1.70
Lodging (dormitory style) and utilities <sup>3</sup>	
Single occupancy (per week)	18.95
Multiple occupancy (per employee per week)	12.65
House or apartment and utilities <sup>4</sup>	
Individual employee (per day)	5.00
Employee whose family resides with employee (per employee per day)	8.00
Payment in kind (milk, eggs, meat, etc.) acceptable to the employee	Cost or farm market value

1. The state general minimum wage for nonagricultural workers is the same.

2. No allowance for meals may be considered part of the minimum wage if a seasonal migrant employee earns less than \$254 in a two-week period other than by reason of a voluntary absence.

3. This allowance cannot be used for migrant workers. See the section on migrant workers for a discussion of housing for these employees.

4. This allowance cannot be used for migrant workers. See the section on migrant workers for a discussion of housing for these employees. When a house or apartment and utilities are provided by the employer (no lodging allowance is permitted if utilities are not provided), a fair and reasonable amount may be allowed for such facilities. This amount is not to exceed the lesser of either the reasonable value of comparable facilities in the area or the rates listed.



### **Youth Rate**

The minimum wage rate for youth under 18 years of age is lower than for adults (see Table 2). The state youth rate exists only for workers covered under the Minimum Wage Order for Farm Workers. To pay at this lower rate, the employer must obtain a Youth Rate Certificate from the commissioner of labor and keep it on file for six years after employment is terminated. These certificates can be obtained by calling the Division of Labor Standards district offices. A Youth Rate Certificate permits the employer to hire any number of young workers. Youth under 16 must also have farm work permits. These permits can be obtained by the employee from the local school office. Employers are responsible for checking to see that each young person has a work permit. An employer covered under the Federal Wage-Hour Law needs to obtain a federal Full-Time Student Certificate as well as the state certificate. Under federal law, full-time students may work no more than 10 percent of their employers' total man-hours of labor. For additional information, contact Employment Standards Administration, U.S. Department of Labor, 1515 Broadway, New York, NY 10036. See the Youth Employment Section for more details regarding the limitations on employing young people.

### **Piece Rate**

Employees may be paid on a piece rate basis and, as under the federal law, must earn at least the minimum wage or the minimum wage for youths.

### **Work Hours**

Work hours include all hours on the job, including time going from field to field and waiting for equipment, but do not include time lost because of inclement weather.

### **New York State Meal Period Requirement Guideline**

New York State Labor Law provides every person employed in or in connection with a mercantile or other establishment or occupation be allowed at least thirty minutes for the noontime meal. The noontime meal period is recognized as extending from eleven o'clock in the morning to two o'clock in the afternoon. An employee who works a shift for more than six hours, which extends over the noontime meal period is entitled to at least thirty minutes off within that period.

### **New York State Farms Including Nonfarm Operations**

Processing, shipping, and selling operations that are part of the farm operation are not necessarily treated as they are under federal law. All selling operations, such as roadside stands, florist shops, and greenhouse sales outlets, are classified as nonfarm and are covered under the Minimum Wage Order for Miscellaneous Industries and Occupations, even if the farmers sell their own products. A roadside stand will be covered under the Minimum Wage Order for Farm Workers if at least 95% of gross sales were of goods produced on the employer's farm(s). Under this wage order, all employers, not just those with cash payrolls in excess of \$3,000 per year, are required to pay minimum wage. If an employee's work is governed by two different minimum wage orders because, for example, he or she both harvests and sells produce at a roadside stand, New York law provides that the employee should be paid in direct proportion to the actual hours of work performed under each work order during a payroll week. In this case, the farmer may credit all farm allowances against the gross wage regardless of the proportion of coverage under various wage orders.

Processing and shipping operations may be classified as either farm or nonfarm. If the farmer processes and ships only his or her own products, then the operations are classified as farm and coverage provisions for farms apply to the *entire* enterprise. If the farmer processes and ships others' products, then the operations are covered by the Minimum Wage Order for Miscellaneous Industries. Under this wage order, the farmer is required to pay overtime rates of 1 ½ times the employee's basic wage for work exceeding 40 hours per week.

An employer may or may not be required to meet nonfarm requirements for a worker whose hours are split between farm and nonfarm operations. If the nonfarm operation is covered under the Minimum Wage Order for Miscellaneous Industries, the employer may follow farm requirements for those hours the worker spent in the farm operation and follow the nonfarm requirements for the remaining hours if he or she has accurate records of the hours worked in each operation by each employee. Rough estimates are not acceptable. See Table 3.

### **Advisory Council**

The law establishes a State Advisory Council on minimum wage standards for farm workers which shall consult with the Commissioner of Labor and provide recommendations before regulations are issued. The Council is appointed by the Commissioner of Labor and is composed of five members representing the interests of farmers, five representing the interests of employees and the public, and one who acts as an impartial chair. Public hearings with due notice are required before issuing regulations.

### **Notice to Employees**

Upon hiring, employers must notify an employee in writing of the conditions of employment in a "work agreement." A copy of a generally applicable work agreement must be posted at the work site. A work agreement must include the following: name, address, and telephone number of employer; location and type of work; housing arrangements, including cost, number of rooms, and cooking facilities; allowances, if any, for meals and lodging to be deducted from wages, wages to be paid and time of payment; period of employment; all other planned payroll deductions; noneconomic terms and conditions of employment; and overtime provisions.

Both the employer and employee must sign the work agreement and each must keep a signed copy.

### **Statement of Wages**

On each payday, employees must be furnished with a statement showing hours worked, rates paid (including wages based on piece rate, the size or weight of the piece rate unit, and the number of units produced during the pay period), gross wages, allowances, deductions, and net wages.

**Table 3**  
**State Wage Order Coverage for Enterprises Combining Processing, Shipping, and Selling with Farming**

	Farm	Processing, Shipping and Selling		
		Own Products	Nonfarm	Others Products
Classification	Farm	Farm	Nonfarm	Nonfarm*
Wage orders	Farm	Farm	Miscell. Industries	Miscell. industries
Requirements				
Minimum wage	Yes	Yes	Yes	Yes
Overtime	No	No	Yes	Yes
Call-in pay	No	No	No	No
Weekly minimum wage	No	No	No	No
Split shift and spread of hours pay	No	No	No	No

\*Up to 5% of products not produced on the farm.

The Cornell publication *Farm Employee Wage Record* (121CU-FMWAREC) provides an excellent record form for employee wages and benefits. It can be purchased from Distribution Center, 7 Cornell Business and Technology Park, Ithaca, NY 14850.

Workers must be given a written summary of their wages at the time employment is terminated. It must include gross and net earnings and a listing of deductions taken. The summary must be given or mailed to the employee not later than the regular payday for the payroll period in which the termination occurred.

### Records of Employees

The law specifies that employers must keep signed copies of work agreements and accurate records of daily and weekly hours worked by each employee; wages paid, including piece rate information; allowances and deductions; cash advances made; and information about employees under the age of 18, including evidence that appropriate permits, certificates, parental permission, and any other information needed to comply with the Minimum Wage Law have been obtained. These records must be kept for three years and be available for review at any time. Copies of wage statements provide the basic information needed. Inadequate records are a major complaint of minimum wage inspectors. It is a crime to fail to maintain proper records or to hinder the inspection process in any way. Employers have been cited for such failure, and heavy fines may be levied. Every employer should establish a basic record-keeping system.

### Penalties for Noncompliance

The N.Y. Department of Labor assists minors and others in the collection of their unpaid wages. The Department's Labor Standard's Division investigates claims for unpaid wages and attempts to adjust fairly the differences between the employer and employee. The Commissioner of

Labor is in a position to institute criminal proceedings for failure to pay wages. The Commissioner of Labor may also require an employer to pay interest and civil penalties on unpaid wages. The Commissioner also may take an assignment of the employee's wage claim and may institute a civil suit to recover the wages due. In situations where civil action is brought to recover unpaid wages and the failure to pay wages is found to be willful, the employer may be required to pay an additional amount of 25 percent of the claim in liquidated damages. It is a misdemeanor to pay an employee less than minimum wage, even if the employee agrees to the rate of compensation. It is also a crime to fire an employee, or otherwise discriminate against him or her, because he or she has complained that the employer has not paid minimum wage. Civil penalties for noncompliance can include fines of up to \$3,000.

### **Additional Information**

Additional information on the New York State Minimum Wage Standards for Farm Workers can be obtained from district offices of the New York State Department of Labor. See the Appendix for details.

### **Eviction When Housing Is Provided by Employer**

It is a common practice for farmers to provide a house as part of the farm employee's compensation package. Problems arise when the employee is fired or quits but does not move out. The farmer wants the house vacated to make it available to a new employee. Many people mistakenly believe that time-consuming notice provisions and procedures are required under New York law before a tenant can be evicted. However, the New York Real Property Actions and Proceedings Law establishes special rules if housing is provided as a condition of employment, and it may be possible for a farmer to regain possession of a house within two weeks through a court proceeding.

To minimize later problems when providing housing as a condition of employment, a farmer should be sure that the housing arrangement is in writing and signed by the employer and the employee. There should be a clear paragraph in the work agreement that sets forth the parties' understanding, including the time that the house will be vacated if employment terminates. The farmer should require a reasonable security deposit in advance if the employee has pets or children or if the employer is concerned about the possibility of damage to the property.

If a housed employee is terminated from his or her job, a farm employer should be prepared to give the employee written notice of the termination of employment and of the housing arrangement immediately. It may be necessary to contact an attorney who can prepare summary eviction papers if the tenant does not vacate voluntarily. Under no circumstances should a farmer attempt to remove a tenant, either by changing locks or by the use of force. Should it become necessary to seek a lawyer's help, the eviction process will be more efficient if certain information is available. A lawyer should have copies of the work agreement, the notice to quit (vacate the premises), and any other relevant documents. In addition, the farm employer should keep the lawyer informed of any other actions he or she has taken.

To start a summary eviction proceeding, a notice of the proceeding and the petition bringing the action should be served on the tenant employee at least five and not more than twelve days before the hearing. These papers can be served as early as one day after termination of em-

ployment. The court may not adjourn the hearing for more than ten days unless all parties consent.

After a judgment for the farm employer, the court will issue a warrant to remove the tenant. The enforcing officer must give 72 hours' notice before removal. A farmer realistically can expect to get his or her house back within two weeks, but the process could possibly take as long as one month to complete.

Even if the parties agree, under state law it is not proper for the farm employer to withhold wages to cover damage done to the property. The summary eviction proceeding does not include a process for deciding claims for money due, so a separate court action is required. For this reason, arranging a security deposit in advance is wise.

### **New York State's Wage Reporting System**

Under New York tax law, employers are required to submit Form NYS-45 Department of Taxation and Finance. This form is used to verify eligibility for public assistance and benefits under the Social Services Law, to locate absent parents and establish child-support obligations, and to verify eligibility for insurance benefits administered by the Department of Labor.

#### **Coverage**

Most employers are required to file a quarterly wage report. Employers who are not required to and do not withhold federal income taxes from the wages of their employees are exempted from this regulation.

#### **Information Required**

The name, Social Security number, and gross wages of every employee who resides or is employed in New York State must be reported, regardless of whether his or her wages are subject to withholding of taxes or tax payments under the Personal Income Tax Law. Information is required on *all* employees. Some additional data on the employer are also required.

#### **Penalties for Noncompliance**

Failure to provide the required information can result in financial penalties. Employers who fail to comply will be informed by certified mail that they are delinquent. An employer who does not comply within 15 days of this mailing will be fined based on the number of employees for whom wages were not reported or the number who received late or inaccurate reports. The fines range from \$1 to \$25 per employee, depending on the number of offenses the employer has had within the past eight reporting periods.

#### **Records to Be Kept**

All records and information pertinent to the wage reporting system must be available for inspection by the tax commission for four years after wage reports are filed.

#### **Additional Information**

Most employers who are required to report are sent the necessary Form NYS-45 by the Department of Taxation and Finance. The form contains instructions and sources of additional

information. Forms and additional information can also be obtained from any local office of the Department of Taxation and Finance. See the Appendix for details. To request Form NYS-50, “*Employers Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax,*” call 1-800-972-1233.

## **Insurance**

### **Workers’ Compensation Insurance**

Workers’ Compensation laws are intended to ensure that employees who are injured or disabled on the job are provided with fixed monetary awards, eliminating the need for litigation. These laws also provide benefits for dependents of those workers who are killed because of work-related accidents or illnesses.

### **Coverage**

The New York State Workers’ Compensation Law covers most employees. Some special coverage provisions and exemptions apply to farm laborers, volunteers, domestics, chauffeurs, and teenagers. Rules that apply to young workers are explained in the section on Youth Employment.

Farmers in New York State must purchase workers’ compensation insurance if their cash wage payments to farm employees totaled \$1,200 or more in the previous calendar year. Insurance must be purchased from a private carrier or the State Insurance Fund for 12 months beginning April 1. Larger employers find it profitable, and may be permitted by the Workers’ Compensation Board, to self-insure. Contact the Workers’ Compensation Board for more information.

The \$1,200 annual payroll rule applies to only four farm classifications: general farms (0006); fruit farms (0007); vegetable or berry farms (0031); and poultry farms (0034). Other businesses classified as nursery (0005), florist, cultivating, and gardening (0035), landscape gardening (0042), custom tree pruning and spraying (0106), and stores (8001) are not subject to the \$1,200 payroll rule. These businesses must provide workers’ compensation coverage regardless of their annual payrolls. The percentage a wage worker will receive while on disability (temporary or permanent) is 66 2/3% of their salary at the time the disability occurred.

Farmers not required to provide workers’ compensation coverage to their employees may voluntarily elect to do so. If employees will be expected to contribute to premium payments, they must be given 30 days notice that a voluntary plan is to be undertaken and one-half of the employees to be covered must consent to the contribution requirements. If a farm employer who has elected voluntary participation chooses to end the coverage, the affected employees must be given 90 days’ notice before coverage ends. In addition, before terminating, the employer must have made sufficient contributions to provide for payments of benefits for at least one year.

An employer who is not required to provide worker’s compensation coverage may choose not to do so voluntarily, relying on coverage being provided to injured workers under other liability policies carried by the employer or the farm business. Be sure to check with the insurance company to determine whether the liability policy specifically excludes employee injuries or work-related claims. This is often the case.

## **Farm Family Workers**

An employer's spouse employed on a farm is considered an employee for purposes of determining worker's compensation coverage. An employer's child under the age of 18 is considered an employee only if his or her services are provided under an express contract for hire. An express contract for hire is a legal term used to distinguish a situation in which a person is a hired worker from a situation in which a person does an occasional chore or odd job for pay. The farmer's 16-year-old son who works as an employee, whether full time during school vacations or part time during the school year, is considered an employee, for example; whereas children who help out occasionally in the barn or perform tasks for which they are paid by the job are usually considered casual laborers.

To determine which situation applies to your child, ask yourself the following three questions:

Am I paying a regular wage for the work being done?

Is my child performing tasks I would hire an outsider to do?

Do I have an understanding, or an agreement, with this child (even an oral one) that tasks will be performed for compensation?

If the answers to all three questions are yes, the services are clearly being performed under an express contract for hire and workers' compensation laws apply. If you are still not sure of the nature of the relationship and your legal obligations, contact the Workers' Compensation Board. Children 18 and over who work on the family farm are automatically considered employees, even if they are students, and their wages are included in determining whether workers' compensation coverage is necessary. If the farm meets or exceeds the \$1,200 cash wage test, then all farm employees over the age of 18 are covered, including family workers. Note that once an insurance policy is in effect on a farm, the insurance company assumes financial responsibility for work-related injuries to any covered employee, regardless of whether premiums were collected for his or her wages. Determination of the existence of an express contract for hire and coverage under the law are made by the New York State Workers' Compensation Board, not by the insurance company. Most insurance companies will therefore want to collect premiums on all workers.

The family worker exemption applies only to those individuals in the classifications above to which the \$1,200 cash wage test applies. In other businesses, family workers are considered employees even if no express contract for hire exists and thus Workers' Compensation insurance must be provided.

## **Farm Labor Contractors**

Farm workers who are recruited, supplied, or supervised by a farm labor contractor are considered employees of the farm owner or leasee for purposes of workers' compensation coverage.

## **Custom Work**

A person doing custom work for a farmer is considered his or her employee unless it can be demonstrated that the individual is an independent contractor who does custom work for others as a normal part of his or her business. The criteria for distinguishing between employee-employer and independent contractor-owner relationships seem well established in New York

case law, but problems may arise in applying criteria in an individual case. See the Preface section, “Employee or Independent Contractor?”, for a discussion of the criteria used to establish whether someone is an independent contractor or an employee.

To protect him- or herself, a farmer must eliminate any confusion as to the nature of the relationship with the independent contractor. The farmer should leave the method of work to the independent contractor’s discretion and specify only the desired result. In addition, the farmer should pay for the job as a whole and not on an hourly basis, refrain from furnishing the independent contractor with any equipment, and tailor the work contract to the relative nature of the work test. Courts in New York have concluded that the Workers’ Compensation Law is remedial in nature and therefore requires a liberal interpretation. Ambiguity in a relationship thus works to the farmer’s detriment: the injured person making a claim will be considered an employee.

One area in which problems have arisen is trucking. A truck driver who picks up produce and delivers it to a processing plant is considered the farm owner’s employee, even though the evidence indicates that the driver is an independent contractor. The farmer can avoid responsibility for workers’ compensation only by obtaining a certificate of insurance from the driver. The Workers’ Compensation Board may be willing to issue a nonbinding opinion on a given set of facts, but it will not issue a binding opinion. This particular issue has not yet been tested in a New York court. The area of custom work is a problem in both agricultural and nonagricultural enterprises. Questions about specific situations should be directed to the Workers’ Compensation Board.

### **Employer’s Responsibilities**

- Ensure that benefits will be paid by purchasing insurance or, if applicable, self-insuring.
- Post a Notice of Compliance (Form C-105), including the name of the insurance company.
- Keep records of all injuries.
- Notify the nearest office of the Workers’ Compensation Board whenever on an on-the-job injury results in loss of time.

### **Penalties**

An employer who refuses or neglects to report an injury may be guilty of a misdemeanor, which is punishable by a fine of up to \$500 or imprisonment for not more than one year, or both. In the event of an injury, an uninsured employer is personally liable for the worker’s compensation and medical benefits, as well as for an assessment of \$150 and 15 percent of any award made. The assessment may not exceed \$1,500 for any one claim. In addition, an uninsured employer loses his or her common-law defenses and may be subject to a suit by the injured worker. He or she may also be subject to criminal prosecution for failing to insure and to an additional \$50 assessment if he or she remains uninsured for 10 or more days.

### **Employment of a Minor**

Additional liability can be incurred if the worker is under 18 years of age and employed in violation of the Labor Law. If the employee is injured on the job, he or she receives two times the Workers’ Compensation award, all of which the employer must pay. If the employer is uninsured for workers’ compensation, he or she is also liable for all medical awards, as well as



the penalties listed above levied on uninsured employers. Rules that apply to young workers are explained in the Youth Employment section.

### **Additional Information**

If you have questions about insurance premiums or payroll reports, contact your insurance agent or on an office of the State Insurance Fund. If you have questions about on an accident or claim, contact one of the district offices of the Workers' Compensation Board (see the Appendix).

### **Disability Benefits**

The Disability Benefits Law complements the Workers' Compensation Law which provides benefits to workers injured on the job, whereas the Disability Benefits Law provides benefits for workers disabled off the job.

#### **Coverage**

An individual who employs one or more persons on each of 30 days, or on any part of 30 days, in any calendar year becomes covered four weeks after the 30<sup>th</sup> day of such employment. The law excludes certain categories of employees, such as the spouse or minor child of the employer, and certain types of employment, such as: farm labor, casual employment (which has a very broad definition), service as a golf caddy, and the part-time service of elementary and secondary school students.

An employer may exclude his or her spouse from coverage, but only if the proper form is filed with the insurance carrier requesting the exclusion.

Note that laborers are the only farm employees excluded from the law. Other farm employees, such as corporate officers and office workers, are covered. Note also that if a farm is incorporated, there are no family workers because the employer is the corporation. All persons working in the business, including the corporate owners, are employed by the corporation, unless they are nominal officers and receive no wages or other payment for services. If two people own all the corporate stock and hold all the corporate offices, however, they are exempt from these provisions.

A covered employer is required to post a Notice of Compliance in a conspicuous place in and about the place of business. An employer must supply a worker who has been disabled more than seven days with a Statement of Rights under the Disability Benefits Law (Form DB-271), within five days of realizing that the worker is disabled.

#### **Cost of Disability Benefits**

The disability benefits program is financed in one of two ways: either entirely by the employer or jointly by the employer and employee. If the employer is providing statutory disability benefits, the employee may be required to contribute one-half of 1 percent of his or her weekly wages, not to exceed \$.60 per week. Unlike rates for workers' compensation insurance, the rates for disability benefits insurance are not uniform; the cost of the coverage varies among insurance companies. Shop around!

## **Benefits**

An employee may receive one-half of his or her weekly wage, up to \$170, starting one week after he or she becomes ill or injured, for a maximum of 26 weeks during a 52-week period or during one period of disability. If the employee's average weekly wage for the eight weeks preceding the injury is less than \$20, he or she receives the average weekly wage. These benefits are provided by statute. Some insurance companies include additional benefits in their policies.

## **Reporting and Filing Requirements**

Reporting and filing requirements vary among insurance companies. Some require physical audits of the payroll, whereas others use a self-audit. The insurance companies provide forms and explain procedures.

## **Additional Information**

Contact an office of the Workers' Compensation Board, your insurance agent, or the State Insurance Fund for additional information about these and special coverage provisions of the

## **Unemployment Insurance**

In 1978, mandatory coverage for unemployment insurance (U.I.) was extended to include agriculture under both state and federal law. Before then, coverage was voluntary.

## **Coverage**

Agricultural workers are covered if their employer is covered. Employers of agricultural labor are liable for payment of contributions if: (1) as of the beginning of any calendar year in which they employ 10 or more persons for some portion of any day in each of 20 different weeks or (2) as of the beginning of any calendar quarter in which cash labor payments of \$20,000 or more are paid. 3) employers are liable for the tax imposed under the federal unemployment tax act (FN 1) as an employer of agricultural labor and the liability shall in such event commence on the first day of the calendar quarter in such calendar year when he first paid remuneration for agricultural labor in this state.

Employment not considered agricultural labor usually comes under the general-coverage provision. Under this provision, an employer is liable for U.I. taxes if his or her cash payroll is \$1,500 or more in any calendar quarter, usually the case if the farm has any employees. An employer is also liable for U.I. taxes as of the beginning of any calendar quarter in which at least one person is employed for some portion of any day in each of 20 weeks.

If neither the general minimum requirements nor the farm minimum requirements apply, it is necessary to determine whether a given employee is properly categorized as an agricultural laborer and therefore excluded from U.I. coverage required for nonfarm employees.

Agricultural labor includes all services performed in the following:

- on a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity (including livestock);
- in the employ of the owner or tenant or other operator of a farm in connection with the operation of the farm;

- in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market any agricultural or horticultural commodity, but only if such service is performed in the employ of an operator of a farm, or a group of operators (as a cooperative), and if such operator(s) produced more than half the commodity associated with such service.

The term farm refers to stock, dairy, poultry, fur-bearing animal, and fruit farms, as well as truck farms, plantations, nurseries, greenhouses, and other similar operations engaged primarily in raising agricultural or horticultural commodities and orchards. If there is a retail component to the business it will be required to pay U.I.

If you have any questions about whether a particular position is classified as agricultural labor, do not guess. Seek an interpretation from the Unemployment Division of the New York State Department of Labor. Employers have unwittingly failed to provide coverage for employees only to find that the state concluded that coverage was required. A wine maker who was responsible for overseeing the processing of grapes into wine at a vineyard was considered an employee of a commercial, not an agricultural, operation even though a vineyard is clearly a farm under New York law. Apparently it did not matter that the processing occurred on the vineyard premises; nor was processing considered “incident to the preparation” of grapes for market.

### **Farm Owners**

If the farm is a sole proprietorship or partnership, the owner or owners cannot be considered employees, even though wages may be drawn. If the firm is a corporation, however, the owners are considered employees if they draw wages or perform services. If the farm meets the coverage provisions, the owner has to pay U. I. taxes on his or her wages and those taxes must be included in the test for coverage.

### **Family Workers**

The unemployment insurance provisions do not apply to an employer’s spouse and children under 21 unless the business is a partnership or a corporation. In this case, family workers are treated no differently than other employees in determining whether the business is covered by U.I.

### **Independent Contractor Status**

Independent contractors are excluded from coverage under the Unemployment Insurance Law. The law, however, does not define an independent contractor, and the same problems can arise here as in other areas where it is not clear whether a person is an employee or an independent contractor. The section “Employee or Independent Contractor?” at the beginning of this publication discusses the distinctions between the two.

### **Crew Leaders**

Under certain very restricted conditions, a crew leader, rather than the farm owner or operator, is considered the employer. The crew leader must not be an employee of the farm operator and must not have entered into a written employment agreement with the farm operator. He or she must also hold a valid Certificate of Registration under the Migrant and Seasonal Agricultural

Worker Protection Act, or the majority of crewmembers must operate or maintain mechanized equipment provided by the crew leader. If all these conditions are met, the crew leader may be considered the employer, in which case his or her liability is based on the coverage provisions listed above. A farm operator should receive a written opinion from the Unemployment Insurance Division before assuming that the crew leader is the employer.

### Federal Unemployment Tax

Under the Federal Unemployment Tax Act (FUTA), unemployment tax is imposed on the employer, and it must not be collected or deducted from the wages of employees. The tax rate is 6.2 percent on the first \$7,000 of wages paid to each employee during 2001. While there is a credit of as much as 5.4 percent for state unemployment tax payments as discussed below, an employer remains liable for federal unemployment tax even though he or she may be exempt from state tax or if employees are ineligible to receive state unemployment benefits.

Form 940 or Form 940 EZ, Employer's Annual Federal Unemployment Tax Return, must be filed by January 31 following the close of the calendar year for which tax is due. The rules for depositing FUTA tax are different from those discussed earlier for depositing Social Security and withheld income taxes. Generally, FUTA taxes are deposited quarterly. See IRS Publication 51, Circular A for rules.

If an employer is liable for U.I. contributions, a notice furnished by the state Department of Labor must be posted at the workplace.

IRS Publication 51, Circular A contains information useful in determining how the federal unemployment tax will apply to an individual farm employer.

### **State U.I. Tax Rates**

In 2000, an employer who became liable for unemployment taxes for the first time was assigned a rate of no more than 3.4 percent on the first \$8,500 of each employee's taxed wages. Wages include both cash and perquisites at a "reasonable money value," as stated in minimum wage orders. Although taxed wages include both cash and perquisites, the coverage test is applied only to cash wages. Since the initial tax rate has changed several times in the past, it is possible that it will change again in later years.

Experience rating can change the tax rate. To qualify for experience rating, the employer

- must have been in the system during the five calendar quarters ending on the computation date—December 31 -- of any year;
- must have filed all contribution reports due for all periods of his or her liability in the three payroll years preceding the computation date (a payroll year encompasses the four consecutive calendar quarters ending on September 30); and
- must have paid some remuneration to employees in the payroll year ending September 30 preceding the computation date.

Employers are notified of their tax rates in March of each year, well before the April 30 due date for the first quarter report. Tax rates also appear on the reporting forms sent to employers quarterly.

## **Appeal**

Employers who are not satisfied with a determination affecting their tax liability have 20 days from the date of the determination to request a hearing before a referee, and 20 days from the date the referee's decision is sent to the employer to appeal to the Appeal Board. Employers are not charged for these proceedings (see "Additional Information" for the office to contact).

## **Reconciling State and Federal Reporting**

The annual total taxable New York State wages reportable for FUTA purposes on Form 940 should be reconciled to the taxable wages reported to the state on the quarterly Employer's Report of Contributions (New York State Form 45). Employers should take time to review these figures and resolve any discrepancies before submitting the reports that are due January 31 of each year. This will assure receiving proper credit toward FUTA tax due and may forestall future questions resulting from any apparent discrepancy between the amounts of taxable wages reported to each agency for the year.

An employer subject to FUTA will obtain a 5.4 percent credit against the federal tax if the state tax is paid in full by January 31 following the close of the taxable year, and a reduced credit if the state tax payment is made later.

## **Penalties for Noncompliance**

Failure to register or pay the required taxes on time can result in substantial penalties. Late tax payments are not credited to the employer's account and can thus result in a higher than usual tax rate. An interest rate of 12 percent is charged on all delinquent payments. Refusal to submit taxes, or excessive delay in doing so, may result in a warrant, which, when filed, becomes a lien upon the employer's title and interest in real property.

## **Record Keeping**

For each person they employ, all employers must maintain records that show the employee's name and Social Security number as well as the dates that the employee worked and the earnings, including bonuses, noncash payments, and similar forms of compensation. The records must be retained for the current year and at least three preceding years and be available for inspection.

## **Additional Information**

The Unemployment Insurance Division of the New York State Department of Labor publishes useful materials regularly. Two publications are particularly valuable: *Employer's Guide to Unemployment Insurance* (updated periodically and sent to insured employers) and *Agricultural Employment*.

Questions regarding coverage and an employer's liability for unemployment insurance taxes should be directed to Liability and Determination Section, Unemployment Insurance Division, New York State Department of Labor, State Campus, Albany, NY 12240-0322.

Questions regarding claims should be directed to your local New York State Department of Labor Unemployment Insurance Office, listed in the phone directory.

## Safety and Health

### Occupational Safety and Health Act

The Williams-Steiger Occupational Safety and Health Act established the Occupational Safety and Health Administration (OSHA), which is administered by the Department of Labor, to ensure that working conditions for every man and woman in the nation are as safe and healthful as possible.

The act allows each state to implement a safety and health program, but many states, including New York, have decided not to have such programs. In these states, OSHA regulations apply to any employer who is in a business that *affects* interstate commerce. Generally, all the employees of these businesses are covered. OSHA regulations do not apply to a farm owner's or renter's immediate family members, however, or in labor exchange situations. Thus farmers involved in informal neighborhood labor exchanges are not normally covered.

The following OSHA regulations apply to farming operations: record-keeping requirements; general duty clause; and standards pertaining to the following specific topics:

- temporary labor camps;
- logging operations;
- storage and handling of anhydrous ammonia;
- rollover protective structures on agricultural tractors; and
- guarding of farm, field, and farmstead equipment.

### Record-keeping Requirements

Employers must display the OSHA poster, which describes the protection and obligations provided by the act and specific safety and health standards, in a prominent place where employees normally report to work. Any employer who violates this requirement shall be assessed a civil penalty of up to \$7,000 for the violation.

OSHA regulations require that any work-related fatality involving an employee and any accident or occurrence involving three or more hospitalizations be reported to the OSHA area director within eight hours. The report must include the circumstances of the accident, the number of fatalities, and the extent of injuries.

Employers who had fewer than 11 full- or part-time employees at any one time during the previous calendar year are required to do the following:

- Report on-the-job fatalities or accidents involving multiple hospitalizations.
- Keep a log of occupational injuries and illnesses.
- Participate in a statistical survey upon written notification of selection by the Bureau of Labor Statistics

Employers who had 11 or more employees at any time during the calendar year must report job-related illnesses or injuries to the OSHA area director as soon as possible, but no later than six working days after being notified of the injury or illness. Forms are provided (OSHA 200) to prepare these reports. Forms and posters can be obtained from one of the Region II OSHA offices, listed in the Appendix.

## **General Duty Clause**

The general duty clause in the OSHA regulations applies to agriculture, except for small farming operations. A farming operation is exempt from all OSHA regulations if it presently has or has had at any time during the previous 12 months, ten or fewer employees; and has not had an active temporary labor camp during the preceding 12 months. Family members are not counted when determining the number of employees. The regulation states that employers must furnish every employee with a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm and comply with occupational safety and health standards promulgated under the act.

A recognized hazard is defined as one commonly known or generally recognized in the industry in which it occurs, detectable by the senses or of such wide, general recognition as a hazard that there are generally known and accepted tests for its detection.

## **Temporary Labor Camps**

This standard contains specifications regarding the camp site, camp construction, water supply, toilet facilities, sewage disposal, laundry, hand washing and bathing facilities, lighting, refuse disposal, construction and operation of the kitchen, dining hall, and feeding facilities, insect and rodent control, first aid, and procedures for reporting outbreaks of communicable diseases. New York State law requires employers to have permits for public housing, and inspections are made to determine whether the terms are being followed. The right to inspect housing has been challenged in court and upheld.

The New York State Department of Health has been issuing permits based on a code that has been used for several years. New York State officials may become more rigid in requiring that camps be in full compliance with the law before occupancy. The New York State regulations are contained in Title 10 of the state Sanitary Code.

## **Storage and Handling of Anhydrous Ammonia**

This standard specifies construction details for the equipment used to store and transport anhydrous ammonia. Personnel required to handle ammonia should be trained in safe operating practices and in actions to take in an emergency. All stationary storage installations should have readily accessible at least two suitable gas masks and a shower or 50-gallon drum of water. Gas masks must be approved by the National Institute for Occupational Safety and Health (NIOSH). A self-contained breathing apparatus is required in areas containing concentrated ammonia. Any vehicle transporting ammonia in bulk, except farm applicators, must carry a container of at least five gallons of water and be equipped with a full-face mask. Farm vehicles must carry a can containing five or more gallons of water.

Goggles are to be used when handling anhydrous ammonia. It is essential that the vehicle carry water so that, in the event of an accidental leak, an employee can flush the parts of the body that are hit. Continued flushing of the eyes is critically important.

## **Logging Operations and Requirements**

This standard establishes safety practices, means, methods and operations for all types of logging, regardless of the end use of the wood. These types of logging include, but are not

limited to, pulpwood and timber harvesting and the logging of sawlogs, veneer bolts, poles, pilings and other forest products. The standard contains specifications relating to personal protective equipment, first aid, environmental conditions, work areas, explosives, and the operation of chain saws, hand tools, and other equipment.

### **Roll-over Protective Structures on Agricultural Tractors**

Agricultural tractors manufactured after October 25, 1976 must meet the following requirements: Every tractor operated by an employee must have a rollover protective structure (ROPS). Where ROPS are required,

- the employer shall ensure that each tractor has a seat belt that meets requirements specified in the standard;
- each employee uses the seat belt properly while the tractor is moving;
- batteries, fuel tanks, oil reservoirs, and coolant systems are constructed and located or sealed so that the operator does not come in contact with spillage in the event of an upset; and
- there is as little risk of injury as possible from sharp edges and corners in the event of an upset at the operator's station.

The requirements of this standard do not apply to the following:

- "low-profile" tractors while they are used in orchards, vineyards, or hop yards where the vertical clearance requirements would substantially interfere with normal operations and while their use is incidental to the work being performed;
- "low-profile" tractors while they are used inside a farm building or greenhouse in which the vertical clearance is insufficient to allow the operation of a ROPS-equipped tractor;
- tractors while they are used with mounted equipment that is incompatible with ROPS (e.g., corn pickers, cotton strippers, vegetable pickers, and fruit harvesters).

### **Definitions**

An "agricultural tractor" is a two- or four-wheel drive-type vehicle, or track vehicle, of more than 20-engine horsepower designed to furnish the power to pull, carry, propel, or drive agricultural implements. All self propelled implements are excluded.

A "low-profile" tractor is a wheeled tractor with the following characteristics:

- The spacing between the front wheels is equal to the spacing between the rear wheels, as measured from the center line of each right wheel to the center line of the corresponding left wheel.
- The clearance from the bottom of the chassis to the ground does not exceed 18 inches.
- The highest point of the hood is no more than 60 inches from the ground.
- The operator straddles the transmission when seated.

"Tractor weight" includes the protective frame or enclosure, all fuels, and other components required for normal use of the tractor. Ballast shall be added as necessary to achieve a minimum total weight of 110 lb. (50.0 kg.) per maximum power take-off horsepower at the rated engine speed or the maximum gross vehicle weight specified by the manufacturer, whichever is the greatest.



## Remounting

If Rollover Protective Structures (ROPS) are removed for any reason, they must be remounted so that they meet the requirements of the standard.

## Labeling

Each ROPS shall have a label that is permanently affixed to the structure stating the following:

- manufacturer's or fabricator's name and address;
- ROPS model number, if any;
- tractor makes, models, or series that the structure is designed to fit; and
- that the ROPS model was tested in accordance with the requirements of the standard.

## Operating Instructions

Every employee who operates an agricultural tractor must be informed of the operating practices listed below and of any other practices dictated by the work environment. This information should be provided at the time of initial assignment and at least annually thereafter.

### Fasten your seat belt securely.

- When possible, avoid operating the tractor near ditches, embankments, and holes.
- Reduce speed while turning, crossing slopes, and on rough, slick, or muddy surfaces.
- Stay off slopes too steep for safe operation.
- Watch where you are going, especially at the end of rows, on roads, and around trees.

### Do not permit others to ride.

- Operate the tractor smoothly—do not make jerky turns, starts, or stops.
- Hitch only to the drawbar and hitch points recommended by tractor manufacturers.
- When the tractor is stopped, set the brakes securely and use a lock if available.

## PTO Guarding

All agricultural equipment, regardless of age, must have a completely guarded power take-off (PTO) driveline. The master shield on the rear PTO shaft must be kept in place. The master shield should have sufficient strength to prevent permanent deformation of the shield when a 250-pound operator mounts or dismounts the tractor using the shield as a step. The master shield can be removed when necessary to operate PTO-driven equipment if the guards on this equipment cover the PTO shaft. The equipment should also include protection from that portion of the tractor PTO shaft that protrudes from the tractor.

## Operating Instructions

At the time of initial assignment and at least annually thereafter, employees must be given instructions, including at least the following, in the safe operation and servicing of all equipment with which they will be involved:

- Keep all guards in place when the machine is operating.
- Do not permit anyone to ride on farm field equipment except if he or she is receiving instruction or assistance in its operation.
- Stop the engine, disconnect the power source, and stop all machine parts before servicing, adjusting, cleaning, or unclogging the equipment unless the machine must be running to be

serviced or maintained properly. In this case, the employer will instruct employees in all steps and procedures necessary to service or maintain the equipment properly.

- Make sure everyone is clear of the machine before starting the engine, engaging the power, or operating.
- Lock out electrical power before performing maintenance or service on farmstead equipment.

### **Safety Signs**

The wording of any sign should be read without difficulty and be concise. The sign should contain sufficient information to be easily comprehensible to the layperson. The wording should make a positive, rather than negative, suggestion and should be accurate in fact. Danger signs should be red, black, and white in color. The Standard color of “Caution signs” shall be a yellow background; and the panel, black with yellow letters. Any letters used against the yellow background shall be black. Safety instruction signs shall be of a white background; and the panel, green with white letters. Any letters used against the white background shall be black. Signs should be placed at prominent locations on tractors and power takeoff equipment stating that safety shields must be kept in place.

If removing a guard or access door will expose an employee to any component that continues to rotate after power is disengaged, a readily visible or audible warning of rotation should be placed in the immediate area, along with a safety sign warning employees to look and listen for evidence of rotation and not to remove the guard or access door until all components have stopped.

### **Other OSHA Requirements**

In addition to signs and PTO guarding, all farm equipment manufactured after June 7, 1976, must meet the following specifications:

- The mesh or nip points of all power-driven gears, belts, chains, sheaves, pulleys, sprockets, and idlers must be guarded.
- All revolving shafts, including projections such as bolts, keys, or set screws, must be guarded, with the exception of the following: smooth shafts and shaft ends (without any projecting bolts, keys, or set screws), revolving at less than 10 rpms, on feed-handling equipment used on the top surface of materials in bulk storage facilities; and smooth shaft ends protruding less than one-half the outside diameter of the shaft and its means of locking.
- Components such as snapping or husky rolls, straw spreaders and choppers, cutterbars, flail rotors, rotary beaters, mixing augers, feed rolls, conveying augers, rotary fillers, and similar units that must be exposed for proper function must be guarded to the fullest extent possible that will not substantially interfere with normal functioning.
- Sweep-arm material-gathering mechanisms used on the top surface of materials within silo structures must be guarded. The lower or leading edge should be located no more than 12 inches over the material surface and no less than 6 inches in from the leading edge of the rotating member in the gathering mechanism. The guard should be parallel to the material-gathering mechanism and extend the fullest practical length.
- Exposed flighting on portable grain augers should be guarded with either grating-type guards or solid baffle-style covers as follows:
  - Openings in grating-type guards through which materials are required to flow should be no more than 4  $\frac{3}{4}$  inches. The areas of each opening must be located less than 2  $\frac{1}{2}$  inches from the rotating flighting.

Slotted openings in solid baffle-style covers should be no wider than 1 ½ inches or closer than 3 ½ inches to the exposed lighting.

Guards, shields, and access doors must be in place when the equipment is in operation. When removal of a guard or access door will expose an employee to any component that continues to rotate after the power is disengaged, the employer must provide a readily visible or audible warning in the immediate area.

### **Additional Information**

For further details, write to the OSHA Region II offices (see the Appendix).

#### Hazardous Substances

In the past several years, the state and federal governments have passed laws and enacted regulations requiring businesses that use toxic chemicals to inform employees and community members of the possible dangers inherent in such substances, how to handle them, and how to react in an emergency.

Farmers may have legal obligations under Title III of the Superfund Amendment and Reauthorization Act (SARA), which is administered by the federal Environmental Protection Agency (EPA) and requires that state and local governments plan to respond to chemical spills or other emergencies related to hazardous substances. A detailed discussion of all the legal requirements of SARA is beyond the scope of this publication, but more information can be obtained by contacting the New York State Departments of Health and Environmental Conservation, the federal EPA, or the nearest OSHA office. EPA has a toll-free hotline to answer questions concerning the Chemical Emergency Preparedness Program created by SARA. The number is 1-800-535-0202; call weekdays between 8:30 A.M. and 4:30 P.M.

Separate laws and regulations deal with employers' obligations to employees with respect to hazardous substances used in a business. Since 1980, farmers in New York have been covered by the state Right-to-Know Law. In addition, a federal law—the OSHA Hazard Communication Standard (see below)—applies, but it is not currently being enforced on farms. If the federal regulations are enforced on farms, the state Department of Labor will not apply the state law. If farm employers are in compliance with the state law requirements described below, they will probably be in compliance with the federal Hazard Communication Standard as well.

#### New York Right-to-Know Law

Under the Right-to-Know Law, employers in New York State must tell workers about the health effects of any toxic substances at their work sites and maintain records to reflect compliance with the law. The law applies to all employees except domestic workers or casual laborers employed at the employer's residence.

To conform to the law, an employer must first know what, if any, toxic substances are present at the workplace. A "toxic substance" is any substance that is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) *Registry of Toxic Effects of Chemical Substances* or that has yielded evidence of acute or chronic health hazards in biological testing. Employers should conduct an inventory and gather information about components of the substances present. Manufacturers are now required to provide health hazard information on each toxic substance they produce. This information is furnished on a Material Safety Data

Sheet (MSDS), which can be obtained from manufacturers and, in most instances, from the state Department of Health as well.

You may receive a MSDS that does not have the identity of the product on it because the product is registered as a trade secret. If a request is made for information concerning a substance that is registered as a trade secret, the specific identity of the substance does not have to be revealed, but all information concerning the health hazards and toxic effects of the substance must be disclosed. You can check the registration and the accuracy of information on registered products with the state Department of Health.

### **Employer Responsibilities**

Employers have four major responsibilities under the Right-to-Know Law.

#### ***Notification***

Employers must display a sign or poster in every workplace to inform workers that they have a right to information concerning the hazards of toxic substances. In addition, employers are required to make this information available in writing to each employee who may be exposed to these substances and to new employees at the time they are hired. This information must be written in a language that the employee understands. The employer, however, is not required to disseminate written information concerning toxic substances.

Posters are available free of charge from the state Department of Health. The employer should include on the poster the name, location, and telephone number of the representative the employer has designated to receive and respond to information requests. The health department poster is a model; employers are not required to use it as long as format and content are substantially similar.

#### ***Information***

Employees or their representatives may request information about the toxic substances to which they are exposed. These requests may be oral, but written requests are preferable and should be encouraged because they document the nature and the time of the request. (Upon receiving the request, the employer must supply the information in writing within 72 hours, excluding weekends and holidays. If the employer fails to provide the information within 72 hours, the employee may refuse to work with the toxic substance until he or she has received the information. The employee cannot be discriminated against or fired for exercising these rights.

#### ***Employee Education and Training***

Employers must set up an education and training program for employees regularly exposed to toxic substances. Employees must be educated and trained in both the possible health effects and the symptoms of exposure to these substances and in how to handle them safely. The education and training program must take place before their first assignment, at least once a year after that, and any time the exposure to toxic substances is changed. The program must also include information on the employee's rights under the Right-to-Know Law.

#### ***Record Keeping***

Employers must keep a record of the name, address, and Social Security number of every employee who handles or uses substances included in part 1910 of OSHA's General Industry

Standards, subpart Z. In addition, for each subpart Z substance, whether used in pure form or as a component in a mixture, the employer must record the chemical name, the CAS number, the name of the product containing the chemical, and the name of the manufacturer of the product. Employers should consult Title 29 of the Code of Federal Regulations to determine if their workers are exposed to any subpart Z substances and to learn about any specific requirements that may exist for these substances. For further information, see *Record-Keeping for Subpart Z Substances under the Right-to-Know Law*, a pamphlet provided by the New York State Department of Health (address provided in the Appendix).

These records are to be made available to each affected employee and former employee, the employee's physician or representative, and the New York State Commissioner of Health upon request for examination and copying. The records must be kept for 40 years, and if the employer's establishment ceases to operate in New York, the records must be sent to the Department of Health.

Employers are required to keep records of training activities, including dates, names of attendees, program content, and names of those conducting the program.

### **Penalties**

An employee cannot be required to give up any rights under the law as a condition of employment. An employee who is discriminated against in violation of the Right-to-Know Law may file a complaint with the state Department of Labor. Any employer who fails to comply with the Right-to-Know Law may be liable for a civil penalty of up to \$10,000. In addition, any person who intentionally violates any part of the law can be convicted of a misdemeanor and fined up to \$500, imprisoned for up to thirty days, or both.

### **Additional Information**

Detailed information may be obtained by contacting the New York State Department of Health. In addition, a very helpful publication, *Farm Guide to the Right-to-Know Law* published by the Cornell Chemicals-Pesticides Program, can be purchased by contacting the Distribution Center, 7 Cornell Business and Technology Park, Ithaca, NY 14850, (607) 255-2080.

### OSHA Hazard Communication Standard

This occupational safety and health standard is intended to address comprehensively the issue of evaluating the potential hazards of chemicals, and communicating information concerning hazards and appropriate protective measures to employees, and to preempt any legal requirements of a state, or political subdivision of a state, pertaining to this subject. Evaluating the potential hazards of chemicals, and communicating information concerning hazards and appropriate protective measures to employees, may include, for example, but is not limited to, provisions for: developing and maintaining a written hazard communication program for the workplace, including lists of hazardous chemicals present; labeling of containers of chemicals in the workplace, as well as of containers of chemicals being shipped to other workplaces; preparation and distribution of material safety data sheets to employees and downstream employers; and development and implementation of employee training programs regarding hazards of chemicals and protective measures. The federal Hazard Communication Standard (HCS) ensures that employers and employees have information available to them regarding the hazards associated with chemicals in the workplace. Implemented for some industries in 1986,

the HCS was expanded in July 1988 to encompass all businesses regulated by OSHA, including farms. It requires that all chemical manufacturers and importers assess the hazards of the chemicals they make available and that all employers inform their employees about the hazardous chemicals to which they are exposed in the workplace. The information is transmitted in two steps; first from chemical manufacturer to employer and then from employer to employee. Employers, therefore, have rights under the HCS as well as obligations.

### **Manufacturers' Obligations**

To comply with the HCS, chemical manufacturers must determine if their product is hazardous; if so, they must appropriately label the product and provide a MSDS for that product.

#### ***Hazard Determination***

Chemical manufacturers and importers must use rigorous standards to evaluate all chemicals and determine if they present a physical hazard (for example, if they are flammable) or a health hazard (if they are toxic). An employer may rely on these evaluations and need not conduct a separate evaluation. If chemicals are mixed at the workplace in a way that has not been tested or evaluated, it can be assumed the mixture presents the same health hazards as do its components.

#### ***Labeling***

Once a chemical is evaluated as hazardous, the manufacturer must label each container with the identity of the substance, appropriate hazard warnings, and the name and address of the manufacturer or importer. If a chemical container label lists no hazards, an employer can assume that he or she has no duties under the HCS when that particular substance is used. The labeling requirements of the HCS do not apply if chemicals are subject to labeling requirements under another federal law, such as the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) administered by the EPA.

#### ***Employers' Rights to Material Safety Data Sheets***

Chemical manufacturers and importers must provide a MSDS for each hazardous chemical they make available. The MSDS must contain detailed information about the identity and makeup of the hazardous substance; its physical and chemical characteristics; specific hazards associated with the substance; how to use it safely; and how to react in case of a leak, spill, or other emergency. Data sheets are to be included in shipments to distributors and businesses, and the manufacturer is responsible for ensuring that they are kept up to date. Retailers of hazardous chemicals need not give a MSDS to customers with every sale but must make them available upon request. Because employers are required to make data sheets available to employees, it is important that farmers obtain one for each hazardous chemical used on the farm.

### **Employers' Obligations**

The HCS requires that all employers have a comprehensive hazard communication program. The plan itself must be written and must list the hazardous chemicals present at the workplace. The plan also must describe how the employer keeps employees informed of the presence and use of those chemicals.

To comply with the HCS, a farm employer must provide labels and other warnings regarding hazardous chemicals, MSDS'S, and employee information and training.

***Labeling***

All employers subject to the HCS must be sure that containers of hazardous chemicals present anywhere on their property are labeled legibly in English with the name of the chemical and at least summary hazard warnings. On the farm, this is readily accomplished by protecting the original label on the container and by not repackaging chemicals into other containers unless absolutely necessary. If chemicals must be stored in containers other than those in which they were shipped or purchased, the new containers should be properly labeled. The label must clearly identify the chemical, its hazard, and the damage it can cause to the user. If there are employees on the farm who speak and read a language other than English, an employer may label containers of hazardous chemicals in that language. This is appropriate as long as there are labels in English as well.

Chemical manufacturers, importers, distributors, or employers who become newly aware of any significant information concerning the hazards of a chemical shall revise the labels for the chemical within three months of becoming aware of the new information. Labels on containers of hazardous chemicals shipped after that time shall contain the new information. It is not necessary to label portable containers, such as hand sprayers, when they are for immediate use by the employee who fills them. Labeling is required on stationary process equipment involving hazardous chemicals. An employer can communicate hazard information in several ways, such as including the information in operating procedures, as long as the hazard information is accurate and readily accessible in the work area.

***Employee Access to Material Safety Data Sheets***

Employers are required to keep a MSDS on file for every hazardous chemical present or used in the workplace. These must be readily accessible to all affected employees during their work shift. The HCS defines an affected employee as a worker who can be exposed to hazardous chemicals under normal operating conditions or in foreseeable emergencies, such as equipment failure or rupture of a container.

A special exemption applies to consumer products that contain hazardous substances. If an employee uses a substance on the job in the same way a consumer would at home, the HCS does not apply. For example, if a worker occasionally uses a cleanser containing a chlorine compound to clean a sink at work, just as one would clean a sink at home, this would be considered “normal consumer use” and not a health hazard. By contrast, an employee who cleans sinks all day with the same cleanser should be informed of the potential hazard and receive training pertinent to the job and the chemical involved. OSHA intends to treat this exemption narrowly, so an employer who is not sure whether an employee’s exposure is from a “normal consumer use” should treat the chemical as hazardous and have a MSDS on file. Although MSDSs need not be given routinely to every employee, a copy must be provided within a reasonable time if an employee requests one.

***Employee Information and Training***

Employers must train employees before they use hazardous chemicals or are exposed to them on the farm. The HCS does not specify how the training and dissemination of information must take place, as long as employers “adequately address the hazards posed by chemicals in the workplace.” The HCS gives guidelines as to what information must be included in a training program.

All farm employees must be told about the fundamental requirements of the HCS, including the employer's written hazard communication program plan. In addition, employees must be told about activities in their work area on the farm that involve hazardous chemicals as well as where to find the list of hazardous chemicals used and the MSDSs that pertain to those substances. Employees must be trained to work with hazardous substances. They must be taught how to detect the presence or release of a hazardous chemical in the work area. They also must be informed about the physical and health hazards presented by the chemicals and what protective measures should be taken both to prevent a problem and in an emergency.

Training can be specific for the hazards of each chemical or, if preferable, can focus on the hazards of categories of chemicals (for example, flammable liquids or carcinogens). If the program deals with categories of chemicals, employees can be referred to the specific information found on labels and data sheets, as long as they are trained how to interpret this information.

The HCS does not require that employees sign a document saying they received training, but it is advisable to have them do so. Employers should keep these statements with their written hazard communication program plan in case of an OSHA compliance inspection.

### **Record Keeping**

It is essential that a farm employer have a written hazard communication program plan. In addition, MSDSs must be kept on file for every hazardous chemical used or present on the farm. The data sheets can be discarded if use of a hazardous material is discontinued; but an employer must keep a list of chemicals used and the dates they were used for thirty years. Records must be kept for this period because the harmful effects of some hazardous substances do not always appear immediately.

The employees who participated in training programs and the dates of training should be recorded. These records must be available for inspection by OSHA upon request.

### **Pesticide Use Regulations**

In January 1995, the 1992 revisions to the EPA Worker Protection Standard (WPS) took full effect, creating a comprehensive set of standards designed to protect workers using pesticides on farms and in forests, greenhouses, and nurseries. These standards replaced the limited EPA standards that had been in place since 1974 and mesh with the OSHA Hazard Communication Standard to provide a comprehensive program of protection for agricultural employees who use or are exposed to pesticides and other chemicals at work. This publication offers only a brief summary of the current regulations, but a booklet containing a detailed explanation of the current WPS can be obtained by calling your regional EPA office.

The WPS covers the use of pesticides for production of agricultural plants on farms, forests, greenhouses, and nurseries. There is no exclusion for small-sized operations or for those with only a few employees. All agricultural and pesticide handling activities that expose workers to pesticide hazards are subject to the regulations with such exceptions as the use of pesticides on animals and on pastures or rangelands and the application of pesticides on harvested portions of agricultural plants. Even family members are included as covered employees with respect to



some of the requirements of the WPS, such as restricted-entry intervals (REIs) and personal protective equipment (PPE), and all the specific requirements listed in the pesticide labeling.

### **Labeling**

The EPA regulatory system is based on a system of registration and labeling. The regulations require manufacturers to test pesticides and provide label information to assist those who will apply the pesticides. Owners and applicators of the pesticide must follow all directions and conform to the worker protection standards contained on the label. If the pesticide product labeling contains specific instructions or requirements that conflict with the requirements of WPS, the instructions or requirements on the label should be followed.

### **Employer Responsibilities**

The responsibility of ensuring that pesticide use is in accordance with both pesticide labeling and the WPS falls upon the employer. An employer, for purposes of the WPS, may be either a worker employer or a handler employer. A worker employer is one who employs or contracts for the services of workers to perform tasks related to the production of agricultural plants or one who owns or operates an establishment that uses such workers. A handler employer is either one who employs pesticide handlers or is self-employed as a pesticide handler. WPS requirements apply only to employers who meet these definitions.

Although some WPS protections that employers must provide are the same for all employees, additional protections apply depending on whether an employee is a worker or a handler. A worker is anyone who performs tasks related to the cultivation and harvesting of agricultural plants on farms, or in greenhouses, forests, or nurseries. A handler is anyone who mixes, loads, transfers, or applies pesticides, handles opened containers of pesticides, acts as a flagger, cleans, handles, adjusts or repairs equipment that may contain pesticide residue, or assists in the application of pesticides.

### **Protections for All Employees**

Employers must provide five main elements of protection for all employees. First, a central location must be established for displaying a poster containing WPS-specified information, listing the nearest emergency medical facility, and posting the product name, EPA registration number, and active ingredients for each pesticide used along with the time, date and location of each application. All information regarding applications must remain posted for at least 30 days after the REI expires.

Second, the employer is required to furnish emergency assistance in the case of a suspected pesticide poisoning by making available prompt transportation to an appropriate medical facility. Also, the worker, handler, or treating medical personnel must be provided with information from the pesticide labeling and an explanation of how the suspected exposure occurred.

Third, employers must provide a decontamination site for workers who are performing permitted activities in a treated area between time of application and 30 days following the expiration of the REI and handlers who are carrying on handling activities. Supplies for washing pesticides from the skin and eyes must be provided within one-fourth mile of all workers and handlers. This includes enough clean water for washing, soap and single-use towels, clean coveralls, and eyeflush water if employees are required to wear protective eyewear.

Fourth, a commercial handler employer must inform the operator of the farm, forest, nursery, or greenhouse when and where a pesticide is to be applied along with the REI of the pesticide and any requirements on the labeling. Operators of agricultural establishments are required to provide commercial pesticide handlers in their employ with the location and description of any areas on the establishment that the commercial handler may be in (or within one-fourth mile of) which may be treated with a pesticide or be under an REI while the commercial handler is on the establishment.

Finally, employers hold the responsibility of ensuring that each employee is properly trained. All pesticide handlers and early entry workers (workers who perform permitted tasks in a treated area which remains under an REI) must be trained with written or audiovisual materials presented in an understandable manner, using nontechnical terms. Handlers must be trained before they commence any handling activities and workers are required to be trained before their 6<sup>th</sup> day of entry into treated areas on an establishment where, within the past 30 days, a pesticide has been applied or a REI has been in effect. The trainer must be a certified applicator, a trainer of certified applicators, or someone who has completed an approved train-the-trainer course. Workers and handlers must undergo training at least once every five years. The appropriate WPS training materials are developed by the EPA.

### **Protections for Workers**

Employers must keep workers out of areas undergoing pesticide treatment. Workers can not enter treated areas until the REI is over except for the purpose of carrying on non-hand labor tasks up to one hour/worker/day, and tasks necessary due to a declared agricultural emergency. For early-entry workers, employers must make sure of the following: entry to treated areas can not be gained for 4 hours following the end of application and until any specified inhalation exposure level specified on the pesticide labeling or the WPS ventilation criteria have been met; the workers are informed about health effects and safety information from the pesticide labeling; Personal Protection Equipment (PPE) is provided, cleaned and properly maintained; the workers wear and use the PPE correctly; the workers are instructed on how to put on, use, and remove the PPE and about the importance of washing thoroughly after removing the PPE; the workers are provided with a clean place to put on and remove the PPE and to store personal clothing; soap, towels, and water are provided for when the PPE is removed; and no contaminated PPE is worn home or taken home.

All workers who might enter a treated area or walk within one-fourth mile of a treated area during application or an REI must be given notice either orally or by posting visible warning signs at all usual entrances to the treated area. Some pesticides have labeling which requires employers to both warn workers orally and post signs. A posted warning sign must include the words "Pesticides - Danger - Keep Out" in both English and Spanish, contain the WPS warning symbol, and meet color and size requirements. An oral warning must give location and description of the treated area, state the time during which entry is restricted, and instruct workers not to enter the treated area until the REI is over.

### **Protections for Handlers**

Employers are required to make sure that no pesticide is applied so as to contact, either directly or by drift, any person other than a trained and protected handler. Any handler who is handling a

pesticide with a skull and crossbones symbol on the label must be monitored visually or by voice contact at least every two hours.

When Personal Protective Equipment is required by the pesticide labeling for the handling activity, employers must provide clean and properly maintained PPE to the handler. Employers must provide all handlers a clean place to change into and out of the PPE and to store personal clothing. Soap, towels, and water need to be furnished to each handler following a handling activity when the PPE is removed. No handler may be allowed to wear home or take home PPE worn for handling activities. Employers must make sure that anyone cleaning PPE is informed that the PPE might have pesticides on it, that pesticides have potentially harmful effects (and what those effects might be), and of the correct ways to handle and clean PPE. PPE must be inspected, repaired and cleaned according to manufacturers' instructions or in detergent and hot water before each use. PPE that can not be cleaned and clothing drenched with concentrates of Danger or Warning pesticide must be disposed of. Employers must also make sure that PPE is kept, washed, and stored separately from personal clothing and dried appropriately after cleaning. Respirator filters, cartridges, and canisters should be replaced when needed.

It is the employer's responsibility to make the pesticide product labeling accessible to the handler during the handling activity and to ensure that each handler has either read the information on the labeling or been informed of the information on the labeling. Each handler must be instructed in the safe operation of handling equipment and the handling equipment must be inspected and in good operating condition before each use.

### **Penalties for Noncompliance with the WPS**

The penalty for noncompliance with the WPS is equivalent to the penalty for using a pesticide in a manner inconsistent with its labeling. Fines can be as high as \$1,000 per offense for owners or operators of agricultural establishments and up to \$5,000 per offense for commercial handling establishments. A knowing violation may result in a criminal penalty of up to \$1,000 and 30 days in jail for owners or operators of agricultural establishments and as high as \$25,000 and one year in jail for commercial handling employers. State and local governments may impose their own pesticide-related ordinances and may impose their own penalties.

### **Additional Information**

The New York State Department of Environmental Conservation (DEC) is the regulatory arm of the EPA in New York State. Additional information can be obtained from your county Cornell Cooperative Extension association or from DEC district offices (see the Appendix for a list of offices).

### **Certification of Pesticide Applicators**

Environmental Protection Agency standards for certification of both commercial and private applicators of restricted pesticides are presented in Title 40 of the Code of Federal Regulations.

#### **Who Must Be Certified?**

All persons using restricted-use pesticides must be certified or supervised by a certified applicator. Applicators are divided into two classifications: private and commercial.

Commercial applicators are certified applicators (whether or not they are private applicators with respect to some users) who apply restricted-use pesticides for purposes other than those provided in the definition of a private applicator.

Private applicators are certified applicators who use or supervise the use of restricted-use pesticides in producing an agricultural commodity on their own property or on property they or their employer rents or, if applied without compensation other than to trade personal services, on the property of another person with whom they trade services.

An “agricultural commodity” is defined as any plant or part of a plant, or animal or animal product, produced by farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons primarily for sale, consumption, propagation, or other use by humans or animals.

Unrestricted pesticides that can be used properly and safely by the general public are generally available to homeowners.

### **Categorization of Commercial Pesticide Applicators**

To meet federal requirements, commercial applicators must be certified in one or more of nine categories. States must certify according to these categories but may subcategorize, subject to EPA approval, to meet requirements peculiar to the state. In New York, all commercial applicators must be certified whether they use restricted-use or general-use pesticides. An additional category for certification of aerial applicators has also been established. The nine federal categories are listed below.

#### 1. Agricultural Pest Control

**Plants.** Includes but is not limited to applicators using pesticides on the following: tobacco, peanuts, cotton, feed grains, vegetables, soybeans and forage; small fruits; tree fruits and nuts, including grasslands and noncrop agricultural lands.

**Animals.** Includes but is not limited to applicators who apply pesticides on beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock and areas where they are confined. Veterinarians engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.

#### 2. Forest Pest Control

Applicators who apply pesticides on forests, in forest nurseries, and in forest seed-producing areas.

#### 3. Ornamental and Turf Pest Control

Applicators who apply pesticides on ornamental trees, shrubs, flowers, and turf.

#### 4. Seed Treatment

Applicators who apply pesticides on seeds.

#### 5. Aquatic Pest Control

Applicators who apply pesticides on standing or running water. Applicators engaged in public health-related activities are included in category 8 below.

#### 6. Right-of-Way Pest Control

Applicators who apply pesticides on public road and railway rights-of-way, electric power lines, pipelines, and other similar areas.

### 7. Industrial, Institutional, Structural, and Health-related Pest Control

Applicators who apply pesticides in, on, or around food-handling establishments, human dwellings, institutions such as schools and hospitals, industrial areas such as warehouses and grain elevators, and areas adjacent to these establishments. Also included are applicators who apply pesticides to stored, processed, or manufactured products.

### 8. Public Health Pest Control

Applicators who apply pesticides in public health programs to manage and control pests having medical and public health importance (this category includes state, federal, or other government employees).

### 9. Regulatory Pest Control

Applicators who apply pesticides to control regulated pests (this category includes state, federal, or other government employees).

### **Demonstration Pest Control**

This category includes people who demonstrate to the public the proper use and application of restricted-use pesticides or supervise such demonstrations. Examples include Cornell Cooperative Extension specialists, county agents, representatives of commercial companies, and individuals demonstrating methods used in public programs.

### **Field Research Pest Control**

This category includes people who use or supervise the use of restricted pesticides in field research. Examples include state, federal, commercial, and other people who do field research on or using restricted pesticides.

### **The Certification Process**

A one-step process is required for certification of private applicators and a two-step process for commercial applicators. The first step is the same for both. Cornell Cooperative Extension associations in each county provide general training followed by a written examination given by the New York State Department of Environmental Conservation (DEC), the regulatory arm of the EPA in New York State. An individual is certified as a private applicator after successfully completing the study program and test. Competence is determined on the basis of written examinations and, as appropriate, performance testing based on standards approved by the EPA. Examinations and testing cover the general standards applicable to all categories and additional standards (if any) specifically identified for each category or subcategory in which the applicator is to be classified. For more detailed information about the certification process contact the EPA/OPP Certification and Worker Protection Branch at 703-305-7666.

#### **Standards Pertaining to Supervision of Non-certified Applicators**

A certified applicator may or may not be required to be present during the application of pesticides, depending on the hazard of the situation. In many situations, a certified applicator must provide only direct supervision of the applicator, that is, verifiable instructions, including detailed guidance for proper application of the pesticide and provisions for contacting the applicator quickly if he or she is needed.

Certified applicators are required to be present in highly hazardous situations and according to some pesticide labels.

Certified applicators who have a supervisory role must demonstrate a practical knowledge of federal and state supervisory requirements, including labeling, regarding the application of restricted-use pesticides by non-certified applicators.

### **General EPA Guidelines**

The EPA does not expect the commercial applicator to depend on memory or rote. Rather, the applicator should have a storehouse of general information about potential problems.

- Reciprocity between states is encouraged in honoring private and commercial applicators who have a single certification but must work in more than one state.
- Pesticides are classified on the basis of use rather than the nature of the chemical. Some chemicals have both restricted and general uses.
- Products available to homeowners are defined as those that can be used properly and safely by the general public.
- Both civil and criminal penalties may result from violation of pesticide related law.

### **Additional Information**

Contact your county Cornell Cooperative Extension association or DEC district offices (see the Appendix for a list of offices).

### **Respirators and Gas Masks Approved for Pesticides**

Respirators used for pesticides at one time were tested by the U.S. Department of Agriculture and more recently were approved by the Bureau of Mines. In 1973, responsibility for testing was transferred to the National Institute for Occupational Safety and Health (NIOSH). Respirators must meet standard regulations and tests for approval, which are issued jointly by the Mine Safety and Health Administration (MSHA) and NIOSH.

There are two basic types of respirators:

- Air-supply respirators which supply you with clean, uncontaminated air from an independent source, and
- Air-purifying respirators, which remove contaminants from the air around you.

Standard Chemical Cartridge Respirators may contain either dust/mist-filtering material or vapor-removing material. A canister contains both dust/mist filtering and vapor-removing material. Canisters contain more air-purifying material than cartridges. They last much longer and may protect you better in situations where the concentration of gas or vapor in the air is high. They are also much heavier and more uncomfortable to wear.

Canister-type respirators are called “gas masks”. They usually have the canister connected directly to the face piece or worn on a belt and connected to the face piece by a flexible hose. Approval is indicated by an approval number, which must appear on the boxes in which the respirator and replacement filters and cartridges are packed. This number is preceded by the letters TC. The National Institute of Occupational Safety and Health (NIOSH) changed the approval codes for various respirators in 1998. Pesticide handlers requiring dust/mist filtering masks or cartridges were using the old NIOSH approval code of TC-21C; the new NIOSH approval code is TC-84A.

When selecting and using vapor-removing devices pesticide handlers must use either:

- A cartridge approved for organic vapor removal plus a prefilter approved for pesticides (the old NIOSH approval code for both was TC 23C; the new NIOSH code is TC-84A)
- A canister approved for pesticides (NIOSH approval code, old and new, is TC14G).

Bureau of Mines-approved pesticide respirators (indicated by BM and a number) that were purchased before June 30, 1975, are no longer approved unless they have been upgraded to meet current requirements through use of appropriate cartridges and filters. Civil and criminal penalties may be imposed for allowing workers to use unapproved respirators or gas masks.

### **Use and Care of Respirators**

Most respirators are half-face masks that cover the nose and mouth but not the eyes. They are recommended for protection from dusts or mists during the field handling of pesticides. They are not a substitute for essential precautions. They do not provide adequate protection during fumigation or greenhouse applications of highly toxic pesticides or while mixing highly toxic pesticides in closed or inadequately ventilated spaces.

#### **Follow these practices when using respirators:**

Make sure valves, filters, and cartridges are properly positioned and sealed.

Fit the respirator on the face with headbands that are snug enough to ensure a tight but comfortable seal.

Test for leakage by placing the hand over the outside housing of the exhaust valve. Exhale so that there is slight pressure inside the face piece. If no air escapes, the respirator is properly fitted. If air escapes, readjust the headbands and test again.

Change filters when breathing becomes difficult-usually twice a day, or more often during heavy use.

Replace cartridges every eight hours while in use and more often if the pesticide can be detected by taste or smell or if extremely toxic pesticides are being used.

Remove filters and cartridges and wash the face piece with soap and warm water after use.

After washing, rinse it thoroughly to remove all traces of soap, Dry the face piece with a clean cloth that is not contaminated with pesticide. Place the face piece in a well-ventilated area to dry.

Store the respirator, filters, and cartridges in a clean, dry place -preferably in a tightly closed paper or plastic bag. Replace worn or faulty parts as needed. Do not store them in the same room as pesticides.

Remember that many pesticides can be absorbed through the skin. When it is necessary to use a respirator, it is also necessary to wear the other protective clothing as recommended on the label.

### **Additional Information**

Contact your county Cornell Cooperative Extension association.

## **Migrant Workers**

### **Registration of Farm Labor Contractors**

#### **New York State Registration**

A farmer or processor who uses the services of a farm labor contractor or crew leader must ascertain that he or she has a Farm Labor Contractor Certificate of Registration issued by the New York State Department of Labor. A farm labor contractor is defined as anyone who so-

licits, hires, recruits, or transports agricultural workers for a fee (cash or other valuable consideration). This does not include growers or processors who recruit or hire workers for work on their farms, or plants that must comply with different rules as described below. A Certificate of Registration is issued after the contractor submits an application that bears the farmer's or processor's countersignature and is approved by the New York State Department of Labor. When the contractor receives a Certificate of Registration, the grower or processor receives a certificate authorizing him or her to employ the farm labor contractor.

The registration is employer-specific. A contractor who chooses to work for another employer must obtain another certificate within the specified grace period. A grower or processor may hire any certified farm labor contractor for five days or less, provided that, within 24 hours after the contractor begins work, he or she prepares a supplemental application, has it countersigned by the grower or processor, submits it to the Department of Labor, and posts a copy at the job location.

Growers and processors who bring five or more out-of-state migrant workers into New York State and do not use the services of a farm labor contractor must furnish the Department of Labor with information on wages, housing, and working conditions and obtain a Migrant Labor Registration Certificate before bringing the workers into the state.

Wage and job information must be posted in each labor camp in which migrants are housed, along with the contractor's registration. If the contractor fails to post information or keep the required payroll records, the grower or processor will be primarily responsible for compliance with the law.

### **Federal Registration**

The Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA) repeals the federal Farm Labor Contractor Registration Act. The MSAWPA has five titles; the first covers farm labor contractors. A farm labor contractor is defined under MSAWPA as it is under New York law. Under federal law, a farm labor contractor is required to obtain a Certificate of Registration from the U.S. Department of Labor as well as the New York State Department of Labor. In addition to registering, farm labor contractors must comply with all other applicable provisions of the MSAWPA when they solicit, hire, transport, or house farm laborers (unless they are members of the contractor's immediate family).

Besides members of a contractor's immediate family, MSAWPA normally does not apply to a family farm business in which the owner or a member of the owner's immediate family engages in farm labor contracting on behalf of the business. Small businesses are also excluded from MSAWPA, as are agricultural employers who used fewer than 500 man-days of agricultural labor during any calendar quarter of the preceding calendar year. The act also does not apply to a farm labor contractor who operates solely within a 25-mile intrastate radius of his or her permanent residence and for no more than 13 weeks each year. An employer's use of independent third-party crew leaders, however, or tacit approval of farm labor contracting activities on his or her behalf may disqualify such employers from the family business exemption under MSAWPA. Courts are likely to construe the exemptions narrowly to be sure that as many workers as possible are covered by the law.



No person (employer or grower) may engage the services of any farm labor contractor to supply farm laborers unless he or she first determines that the contractor has obtained a registration certificate. It is important to confirm that the contractor is authorized to transport or house workers. Employers using farm labor contractors have a duty to determine whether the contractor has a valid certificate covering each activity for which the contractor is engaged, including recruiting, transporting, or housing laborers, or they risk legal liability for dealing with an unregistered contractor.

In addition, if a contractor transports workers, the contractor and agricultural employer must ensure that the vehicle conforms to safety regulations, that the driver is properly licensed, and that an appropriate bond or insurance policy is in effect.

### **Working Crew Leader**

If a farm labor contractor does work for a farmer, such as picking apples, while supervising other workers, he or she should not be considered an independent contractor. A farmer should withhold Social Security and state and local income taxes on all earnings and count the working crew leader as an employee for purposes of whether workers' compensation or unemployment rules apply.

### **Migrant and Seasonal Agricultural Worker Protections**

The second and third titles of MSAWPA provide various protections for migrant and seasonal agricultural workers. The act requires that these workers be given written notice of the following terms of employment at the time of recruitment: place of employment; wages to be paid; nature of the work to be done; period of employment; transportation, housing, and any other employee benefits to be provided and any costs to be charged for them; whether there is a strike or work stoppage; and whether the contractor or employer receives a commission from sales-to-me workers.

In addition, MSAWPA requires that a poster provided by the Secretary of Labor setting forth workers' rights and protections be posted in a conspicuous place.

Anyone who employs migrant or seasonal workers is required to record and provide each worker with the following information for each pay period: basis on which wages are paid; number of piecework units earned if paid on a piecework basis; number of hours worked; total earnings for the pay period; amounts withheld and reasons for withholding; and net pay.

These records must be kept for three years and supplied to anyone who employs the worker. If the worker is not literate in English, the information must be furnished to the worker in his or her native language. Forms are available from the U.S. Department of Labor to assist in meeting this requirement.

### **Penalties For Non-Compliance With MSAWPA**

Criminal penalties exist for the violation MSAWPA. Any person who deliberately or knowingly violates the act may be fined no more than \$1,000, sentenced to a prison term not to exceed one year, or both. Upon successive convictions, the defendant can be fined up to \$10,000, sentenced to a prison term of three years, or both.

**Additional Information**

Application forms and additional information can be obtained from local New York State Employment Service offices.

**Migrant Camps and Commissaries**

Migrant labor camps must meet both New York State and federal requirements.

New York State Requirements

Labor camps occupied by five or more persons, one or more of whom are employed, as laborers in farm activities must meet the requirements of the state Sanitary Code. The requirements cover housing and sanitary standards, cooking and eating facilities, and laundry, washing, and bathing facilities. Application must be made each year at least 30 days before the first day of proposed camp operation. The health commissioner or health officer will issue a permit to operate if he or she finds that the migrant labor camp conforms to state requirements. The camp must remain in compliance during the period of occupancy.

**Federal Requirements**

Federal regulations covering temporary housing for migrant and seasonal workers have been issued under the authority of the MSAWPA and by OSHA. The regulations contain safety and health standards for housing, including fire protection, water supplies, plumbing maintenance, construction and maintenance of buildings, heating, and protection from insects and rodents. The federal standards are similar to the New York State regulations for migrant labor camps, but they are more detailed than those of the state Sanitary Code and may require more careful attention to ensure compliance. Compliance with both state and federal standards is required. All housing must be inspected by a state or local or federal agency, and a certificate of occupancy must be posted before occupation unless a request for inspection has been made at least 45 days prior to expected occupation and no inspection has been conducted by that date. Note that farm labor contractors who provide housing must have a valid certificate authorizing the housing of migrant agricultural workers.

**Labor Camp Commissaries**

Commissaries in New York must be operated in compliance with three laws: the state Labor Law, the state Sanitary Code, and federal law. Under the State Labor Law, operators must obtain a permit from the state Department of Labor each year before operating and post it in a conspicuous place in the commissary. Prices of all goods offered for sale or lease to workers must also be posted, and higher prices cannot be charged. Commissary records should be maintained and made available for inspection on request for a period of at least three years. Applications for permits are mailed to commissary operators who have previously held permits or can be obtained from offices of the Division of Labor Standards, New York State Department of Labor (see the Appendix for a list of offices).

Workers cannot be required to purchase goods or services from the camp commissary. Additionally, all food handling facilities must meet both federal and state health and sanitation requirements.

### **Field Sanitation Standards**

Under federal law, all agricultural operations employing 11 or more hand laborers on any given day must comply with field sanitation requirements without cost to the employee. Potable drinking water must be provided and placed in locations readily available to all employees. Separate toilet and hand washing facilities must be provided for employees who perform fieldwork for more than three hours per day. At least one facility per 20 employees must be located within ¼ mile of the work site. Drinking water, toilet, and hand washing facilities must be kept sanitary and thoroughly cleaned regularly in accordance with public health sanitation practices.

Employers must notify each worker of the location of the sanitary facilities and must allow each worker reasonable opportunities during the workday to use them. Employers must also inform each worker that good hygiene practices minimize exposure to health hazards in the field.

### **Additional Information**

Contact OSHA Region II district offices (see the Appendix for a list of offices).

### **Migrant Minimum Wage**

Migrant workers come under the provisions of the New York State Minimum Wage Order for Farm Workers, which requires employers to include a written wage statement with each payment of wages. This statement must include both gross and net earnings and a listing of all deductions. All farm workers recruited by a labor contractor to work on a farm are deemed to be employees of the owner, lessee, or operator of the farm with reference to this order. Lodging allowances are not permitted in calculating the minimum wage for migrant labor (see the section “New York State Minimum Wage Standards for Farm Workers” for details). If covered, the employer must also comply with the Federal Wage-Hour Law (see the section on this law for details).

### **Employer Liability**

Questions will often arise as to whether individuals employed by a farm labor contractor are also jointly employed by another person engaged in agriculture (including any person defined in the act as an agricultural employer or an agricultural association). Such joint employment relationships are common and have been addressed by the federal courts. If a worker is injured or a dispute arises over the terms of employment, an employer may be liable for damages if a “joint employment” relationship exists. To determine whether such a relationship exists, the courts have cited the broad definition of “employ” in the Fair Labor Standards Act, which includes “to suffer or permit to work.” Factors considered include but are not limited to the following: the nature and degree of control of the workers; the degree of supervision, direct or indirect, of the work; the power to determine the pay rates or the methods of payment of the workers; the right, direct or indirect, to hire, fire, or modify the employment conditions of the workers; and preparation of payroll and the payment of wages.

### **Youth Employment**

Both the State of New York and the federal government heavily regulate employment of persons less than 18 years of age. Note that an employer could be subject to fines of as much as \$10,000 for each person employed in violation of federal child labor provisions.

## **Minimum Age for Employment**

### Nonfarm Employment

Children less than 14 years old may not be employed at any time either after school or during vacations. Children 14 and 15 years old may work after school and during vacations but not as factory workers. They may do delivery and clerical work in an enclosed office of a factory and in dry cleaning, tailor, shoe repair, and similar service stores. Children 16 years of age and older who are not attending school may work full time throughout the year. Children more than 16 years of age may work in factories but are restricted by the state Labor Law in the number of hours they may work.

Note that working in a packing shed that either is off the farm property or handles products grown on other farms is considered factory work, and these rules rather than the farm work rules apply.

### Farm Employment

As detailed below, an exception from these rules is made for farm employment in the harvest of berries, fruits, and vegetables and for children working on the home farm.

#### **10- and 11-Year-Olds**

Federal law allows an employer to hire 10- and 11-year-olds to hand-harvest selected short-season agricultural crops, but state law does not. Children this age may not legally work on farms in New York State.

#### **12- and 13-Year-Olds**

Children in this age bracket may work on the home farm without working papers, and they may work on other farms if they present a farm work permit. Permits (AT-25, white paper) are issued to minors 12 and 13 years of age employed in the hand harvest of berries, fruits, and vegetables. Such minors must be accompanied by a parent or must provide the employer with the parent's written consent to work. Children in this age bracket may now also assist their parents, grandparents, aunt, uncle, or guardian in selling produce grown on their farm at a farm stand or at a farmer's market stand if accompanied by a parent or guardian or with written consent from a parent or guardian. On farms other than the home farm, they may assist *only* in the hand-harvest of berries, fruits, and vegetables and may work no more than four hours a day, between the hours of 7 A.M. and 7 P.M., and when school is not in session between June 21 to Labor Day. From the day after Labor Day to June 20 students of this age bracket may work for no more than four hours a day between the hours of 9 A.M. and 4 P.M., and only when school is not in session. (days off). They must be accompanied by a parent or present written consent from a parent or guardian.

#### **14- and 15-Year-Olds**

Children in this age bracket may work on their family's farm without working papers but are required to have a farm work permit to work on other farms. Farm Work Permits (AT-24, yellow paper) are issued to minors 14 and 15 years of age for farm work during vacation, before or after school hours, and on days when attendance at school is not required. Such a permit must be signed by each employer, and is not valid for work in or in connection with a factory or cannery. A minor may change his/her farm job without obtaining a new permit. For jobs other than farming, working papers are required. Children in this age bracket may also assist their parents, grandparents, aunt, uncle, or guardian in selling produce grown on their farm at a farm stand or

at a farmer's market stand if accompanied by a parent or guardian or with written consent from a parent or guardian.

### **16- and 17-Year-Olds**

Children in this age bracket may work on a farm without a permit or working papers. Children under the age of 18 generally should not be hired for nonfarm work on or around automobiles or trucks, in construction, to repair buildings, or in jobs requiring the use of power tools.

### **Proof of Age**

Farm employers may not rely on a minor's statement that he or she is over 16. Proof of age must be obtained and retained. Proof of age consists of the following documents, listed in the order of preference: a state age or employment certificate, also called working papers or work permit (which can be obtained at the minor's school); an original birth certificate or a certified copy. The following documents may be used when a state employment certificate or birth certificate is not available: a baptismal record or record of the baptism attested to by the church official; a school record or school census record, together with a parent's sworn statement and a physician's certificate of the minor's age.

To protect themselves from unwitting violation of the law, employers should obtain a birth or state employment certificate from any employee if there is reason to believe that the person is under the applicable minimum age. The employer should sign it, make a copy for his or her records, and return the permit to the youth to keep. The certificate should be kept on file for as long as the person is employed (and retained for six years after termination) and made available to state or federal officials should it be requested. Note that the civil penalty under state law for violating these provisions is \$1,000 for a first-time offense.

### **Prohibited Occupations**

Persons under 18 years of age are prohibited from engaging in certain occupations. In the nonagricultural industries, there are 17 hazardous occupations orders promulgated under the Fair Labor Standards Act and a list of occupations that minors may not perform under the New York State Labor Law. These occupations are not listed here but are summarized in the booklet, *Laws Governing the Employment of Minors*, published by the New York State Department of Labor. In agriculture, a hazardous occupations order, promulgated under the Fair Labor Standards Act, regulates employment of children under the age of 16, whether or not the minimum wage laws apply to the employer. The provisions of this order are presented below. This same list of prohibited agricultural jobs for minors is now included under the New York State Labor Law as well.

### **Federal Hazardous Occupations Order for Youth under 16**

The agricultural jobs listed below have been declared hazardous under both the Fair Labor Standards Act and New York law for persons under the age of 16. Violations subject the employer to fines or imprisonment. Insurance companies do not have to cover injuries to youths working in violation of the act. The act does not apply, however, to a child working on his or her parent's or guardian's farm.

1. Operating a tractor of more than 20 PTO horsepower or connecting or disconnecting an implement or any or its parts to and from such a tractor.
2. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any

of the following machines: corn picker, cotton picker, grain combine, hay baler, potato digger or pea viner; feed grinder, crop dryer, forage blower, auger conveyer, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or power post hole digger, power post driver, or nonwalking-type rotary tiller.

3. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines: trencher or earthmoving equipment, forklift, potato combine, or power-driven circular, band, or chain saw.
4. Working in a yard, pen, or stall occupied by a bull, boar, or stud horse maintained for breeding purposes; a sow with suckling pigs; or a cow with a newborn calf (with umbilical cord attached).
5. Felling, bucking, skidding, loading, or unloading timber with a butt diameter of more than six inches.
6. Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, and the like) at higher than 20 feet.
7. Driving a bus, truck, or automobile transporting passengers or riding on a tractor as a passenger or helper.
8. Working inside any fruit, forage, or grain storage facility designed to retain an oxygen-deficient or toxic atmosphere; inside an upright silo within two weeks after silage has been added; inside a silo when a top unloading device is in the operating position; inside a manure pit; or operating a tractor for packing purposes on a horizontal silo.
9. Performing work involving handling or applying any agricultural chemical classified under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) as Category I of toxicity, the label of which bears the word "danger" and the "skull and crossbones" poison symbol; or Category II of toxicity, the label of which bears the word "warning"; decontaminating or cleaning equipment used in connection with any of the chemicals specified in this paragraph; serving as a flagperson for an aircraft applying any of the chemicals specified; handling or using a blasting agent, including but not limited to dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or transporting, or applying anhydrous ammonia.

### **Exclusions from the Provisions**

A vocational agricultural student may be exempted from requirements in paragraphs 1 through 6 above if he or she meets all of the following requirements:

He or she is enrolled in a course in a cooperative vocational education-training program in agriculture under recognized state or local educational authority or in a similar program conducted by a private school.

He or she is employed under a written agreement that provides that the work is incidental to the training; that the work shall be intermittent, for short periods of time, and under the direction and close supervision of a qualified and experienced person; that safety instructions shall be given by the school and complemented by the employer with on-the-job training; and that a schedule of organized and progressive work processes to be performed on the job has been prepared.

The written agreement contains the name of the student and is signed by the employer and by a person authorized to represent the school.

Copies of the agreement are kept on file by both the school and the employer.

Under an exemption accorded Cornell Cooperative Extension (4-H) and vocational agricultural (Vo-Ag) programs, a youth may be employed in jobs included in paragraph 1 of the Hazardous Occupations in Agriculture Order if he or she meets the following requirements:

He or she has been instructed by the employer on the safe and proper operation of the specific equipment to be used; he or she is continuously and closely supervised by the employer when feasible, or when not feasible, his or her safety is checked at least at midmorning, noon, and midafternoon.

**He or she is 14 years of age or older.**

- He or she is familiar with the normal working hazards in the occupation.
- He or she has successfully completed a 10-hour training program that includes the required units from the manual of the 4-H tractor program conducted by, or in accordance with, the requirements of Cornell Cooperative Extension or a vocational agriculture program.
- He or she has passed a written and practical examination on tractor safety and has demonstrated on one of the 4-H tractor operator's contest courses the ability to operate safely a tractor with a two-wheeled implement.
- His or her employer has on file a copy of a certificate signed by the leader who conducted the youth's training program and by the county Cornell Cooperative Extension agent to the effect that the youth has completed all the requirements specified above.
- A youth may be employed to do jobs included in paragraph 2 of the Hazardous Occupations Order if he or she meets the following requirements of Cornell Cooperative Extension or vocational agriculture programs in addition to those stated above:
  - He or she has completed an additional 10-hour training program on farm machinery safety, including Unit 1, "Safe Use of Farm Machinery", of the 4-H fourth-year manual. The programs are designed to meet N.Y.S. county needs and emphasize the most common types of equipment used in the area.
- He or she has passed a written and practical examination on safe operation of machinery.

The employer has a certificate on file stating that all of these requirements have been met and completed.

Certificates are available on request from the Department of Agricultural Engineering, Riley-Robb Hall, Cornell University, Ithaca, NY 14853.

The name, age, and address of each qualified applicant must be submitted with requests. The certifying agency should keep on file its list of applicants for that year.

**Additional Information**

Questions concerning specific aspects of these programs should be directed to the U.S. Department of Labor, Division of Wages, Hours, and Public Contracts (see the Appendix for a list of offices).

## **Workers' Compensation Insurance**

Farms covered by the Workers' Compensation Law must provide insurance for all workers, including minors. Minors who are employed in violation of the Labor Law are entitled to two workers' compensation awards if they are injured while working on a farm that is covered. The employer has to pay one award, and the employer's insurance carrier has to pay the other. Employers who are uninsured for workers' compensation are liable for both awards plus all medical awards, as well as for the normal penalties levied on uninsured employers. An employer cannot escape liability by arguing that he or she did not know the employee was a minor or that he or she acted in good faith in hiring the employee. See the section on workers' compensation insurance for a more detailed description.

### **Lawn and Garden Work**

Workers' compensation insurance and employment certificates (working papers) contain special provisions for children 14 years of age and older doing yard work and household chores in and about a one-family owner-occupied residence or the premises of a nonprofit, noncommercial organization. The provisions have to do with whether the work is casual and whether power-driven machinery is used. The term casual means without regulation, occasional, and without foresight, plan, or method. A lawn mower is an example of power-driven machinery.

### **Working Papers**

Children under the age of 18, including high school graduates, children who work for their parents, and children who do industrial work at home, are required to have employment certificates (working papers) to work. Farm work is one of the few exceptions. People 16 years old and older who work on a farm are not required to have farm work permits, but 14- and 15-year-olds are. As indicated above, children 12 to 14 who are employed to hand-harvest berries, fruits, and vegetables also are required to have permits. Get working papers from the local school.

### **Wages**

See the section on state and federal minimum wage laws for a discussion of the minimum wage levels and certificates required for youths and students.

### **Additional Information**

Additional information can be obtained from a booklet titled *Youth Employment*, published by the New York State Department of Wages, Hours and Public Contracts or from district offices of the New York State Department of Labor, Division of Labor Standards (see the Appendix for a list of offices).

### Employment Discrimination

There is a substantial body of federal statutory law, which forbids employers from engaging in discrimination in the workplace. In addition to federal law, New York State also has enacted human rights laws prohibiting discrimination on the basis of race, color, religion, sex, national origin, age or handicap. Under both federal and state law, there is a broad range of remedies available to employees who are successful in employment discrimination lawsuits.



## **Covered Employers**

Federal anti-discrimination laws cover all employers with 20 or more employees. Employers with less than 15 employees are not subject to federal legislation banning ethnic, sex or disability discrimination. Smaller employers may be covered under state anti-discrimination law.

## **Sex Discrimination**

The law requires an employer to treat both male and female workers fairly. Equal treatment applies not only to hiring and promotion, but also placement, working conditions, wages and benefits, layoffs, discharge and any other condition of employment. For example, the following practices are illegal: refusing to hire women with young children but hiring men with young children, including spouses of male employees in benefits packages while denying coverage to the spouses of female employees, restricting certain jobs to men without offering a reasonable opportunity for women to demonstrate their ability to perform the same job adequately, refusing to hire, train or promote pregnant or married women or women of childbearing age merely on the basis of their sex or marital status, denying benefits to a pregnant woman or to a woman who has just given birth, irrespective of whether those benefits are granted for illness

## **Sexual harassment**

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment. Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

## **Race Discrimination**

It is unlawful to discriminate against any employee or applicant for employment because of his/her race or color in regard to hiring, termination, promotion, compensation, job training, or any other condition of employment. The law also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain

racial groups. Federal and state law prohibits both intentional discrimination and neutral job policies that disproportionately exclude minorities and that are not job related.

Harassment on the basis of race and/or color is illegal. Ethnic slurs, racial “jokes,” offensive or derogatory comments, or other verbal or physical conduct based on an individual’s race/color constitutes unlawful harassment if the conduct creates an intimidating, hostile, or offensive working environment, or interferes with the individual’s work performance.

### **Disability Discrimination**

The Federal Americans with Disabilities Act (ADA) prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment. An individual with a disability is a person who: Has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; is regarded as having such impairment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to making existing facilities used by employees readily accessible to and usable by persons with disabilities, job restructuring, modifying work schedules, reassignment to a vacant position, acquiring or modifying equipment or devices, adjusting modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to make an accommodation to the known disability of a qualified applicant or employee if it would not impose an “undue hardship” on the operation of the employer’s business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer’s size, financial resources and the nature and structure of its operation.

### **Medical Examinations and Inquiries**

Employers may not ask job applicants about the existence, nature or severity of a disability. Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer’s business needs.

It is unlawful to ask an applicant whether she is disabled or about the nature or severity of a disability, or to require the applicant to take a medical examination before making a job offer. You can ask an applicant questions about ability to perform job-related functions, as long as the questions are not phrased in terms of a disability. You can also ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will perform job-related functions.

After a job offer is made and prior to the commencement of employment duties, you may require that an applicant take a medical examination if everyone who will be working in the job category

must also take the examination. You may condition the job offer on the results of the medical examination. However, if an individual is not hired because a medical examination reveals the existence of a disability, you must be able to show that the reasons for exclusion are job related and necessary for conduct of your business. You also must be able to show that there was no reasonable accommodation that would have made it possible for the individual to perform the essential job functions.

Once you have hired an applicant, you cannot require a medical examination or ask an employee questions about disability unless you can show that these requirements are job related and necessary for the conduct of your business. You may conduct voluntary medical examinations that are part of an employee health program.

The results of all medical examinations or information from inquiries about a disability must be kept confidential, and maintained in separate medical files. You may provide medical information required by State workers' compensation laws to the agencies that administer such laws.

Anyone who is currently using drugs illegally is not protected by the ADA and may be denied employment or fired on the basis of such use. The ADA does not prevent employers from testing applicants or employees for current illegal drug use, or from making employment decisions based on verifiable results. A test for the illegal use of drugs is not considered a medical examination under the ADA; therefore, it is not a prohibited pre-employment medical examination and you will not have to show that the administration of the test is job related and consistent with business necessity. The ADA does not encourage, authorize or prohibit drug tests.

### **Age Discrimination**

The Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are 40 years of age or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment—including, but not limited to, hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADEA.

The ADEA applies to employers with 20 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

The ADEA makes it unlawful to include age preferences, limitations, or specifications in job notices or advertisements. As a narrow exception to that general rule, a job notice or advertisement may specify an age limit in the rare circumstances where age is shown to be a "bona fide occupational qualification" (BFOQ) reasonably necessary to the essence of the business.

The ADEA does not specifically prohibit an employer from asking an applicant's age or date of birth. However, because such inquiries may deter older workers from applying for employment or may otherwise indicate possible intent to discriminate based on age, requests for age information will be closely scrutinized to make sure that the inquiry was made for a lawful purpose, rather than for a purpose prohibited by the ADEA.

The Older Workers Benefit Protection Act of 1990 (OWBPA) amended the ADEA to specifically prohibit employers from denying benefits to older employees. An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

### **Recommended Guidelines for Employers**

Establish a "no tolerance policy" declaring that as the employer you will not tolerate sexual harassment, discrimination or retaliation in the work place. The policy should state that all complaints will be investigated and any violations will result in termination of employment. Make it easy for employees to complain.

Have accessible grievance policies in place for employees to utilize.

It is important that employees be able to file a complaint with someone other than their immediate supervisor. This is important because often the subject of the complaint is the supervisor.

Investigate complaints quickly and objectively.

Take appropriate remedial action to prevent a reoccurrence.

### **Additional Information**

Additional information can be obtained by referring to New York State's *Human Rights Law*, "Executive Law 15," or by going to the Equal Employment Opportunity's Commissions web site at <http://www.eeoc.gov/>.

# APPENDIX

## Regulatory Agencies

### U.S. DEPARTMENT OF LABOR

[www.dol.gov](http://www.dol.gov)

Federal DOL wage and hours NY offices:

[www.dol.gov/esa/contacts/whd/america2.htm#NewYork](http://www.dol.gov/esa/contacts/whd/america2.htm#NewYork)

### NEW YORK STATE WORKERS= COMPENSATION BOARD

[www.wcb.state.ny.us](http://www.wcb.state.ny.us)

New York State District Office Locations

<http://www.wcb.state.ny.us/design/framework/districtoffices.htm>

#### [Albany District \(Eastern New York\)](#)

**Counties Served:** Albany, Clinton, Columbia, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Warren, Washington  
518 474-6674  
FAX - 518 473-9166  
100 Broadway-Menands  
Albany, NY 12241

#### [Binghamton District \(Southern Tier\)](#)

**Counties Served:** Broome, Chemung, Chenango, Cortland, Delaware, Otsego, Schuyler, Sullivan, Tioga, Tompkins  
607 721-8356  
FAX - 607 721-8324  
State Office Building  
44 Hawley Street  
Binghamton, NY 13901

#### [Brooklyn District \(New York City\)](#)

**Counties Served:** Kings, Richmond  
1 800-877-1373  
FAX - 718 802-6642  
111 Livingston Street  
Brooklyn, NY 11201

#### [Buffalo District \(Western New York\)](#)

**Counties Served:** Cattaraugus, Chautauqua, Erie, Niagara  
716 842-2166  
FAX - 716 842-2171  
Statler Towers, Third Floor  
107 Delaware Avenue  
Buffalo, NY 14202-2898

#### [Hauppauge District](#)

**Counties Served:** Suffolk  
631 952-6000  
631 952-6300  
FAX - 631 952-7966  
220 Rabro Drive, Suite 100  
Hauppauge, NY 11788-4230

#### [Hempstead District \(Long Island\)](#)

**Counties Served:** Nassau  
516 560-7700  
FAX - 516 560-7807  
175 Fulton Avenue  
Hempstead, NY 11550

#### [Manhattan District](#)

**Counties Served:** Bronx, New York  
1 800-877-1373  
215 W. 125th Street  
New York, NY 10027

### **Peekskill District**

**Counties Serviced:** Orange, Putnam, Rockland,  
Westchester

914 788-5775

FAX - 914 788-5793

41 North Division Street

Peekskill, NY 10566

### **Queens District**

**Counties Serviced:** Queens

1 800-877-1373

FAX - 718 291-7248

168-46 91st Avenue

Jamaica, NY 11432

### **Rochester District**

**Counties Serviced:** Allegany, Genesee, Livingston,  
Monroe, Ontario, Orleans, Seneca, Steuben, Wayne,  
Wyoming, Yates

585 238-8300

FAX - 585 238-8351

130 Main Street West

Rochester, NY 14614

### **Syracuse District (Central New York)**

**Counties Serviced:** Cayuga, Herkimer, Jefferson,  
Lewis, Madison, Oneida, Onondaga, Oswego, St.  
Lawrence

315 423-2932

FAX - 315 423-5211

935 James Street

Syracuse, NY 13203

## **NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

<http://www.dec.state.ny.us/>

DEC Regional Offices

<http://www.dec.state.ny.us/website/about/abrull3.html>

[Region 1](#) Suffolk and Nassau counties (631) 444-0354

[Region 2](#) Manhattan, Bronx, Queens, Brooklyn and Staten Island (718) 482-4900

[Region 3](#) Sullivan, Ulster, Orange, Dutchess, Putnam, Rockland and Westchester counties (845) 256-3000

[Region 4](#) Montgomery, Otsego, Delaware, Schoharie, Schenectady, Albany, Greene, Rensselaer and Columbia counties (518) 357-2234

[Region 5](#) Franklin, Clinton, Essex, Hamilton, Warren, Fulton, Saratoga and Washington counties (518) 897-1200

[Region 6](#) Jefferson, St. Lawrence, Lewis, Oneida and Herkimer counties (315) 785-2239

[Region 7](#) Oswego, Cayuga, Onondaga, Madison, Tompkins, Cortland, Chenango, Tioga and Broome counties (315) 426-7400

[Region 8](#) Orleans, Monroe, Wayne, Genesee, Livingston, Ontario, Yates, Seneca, Steuben, Schuyler and Chemung counties (585) 226-2466

[Region 9](#) Niagara, Erie, Wyoming, Chautauqua, Cattaraugus and Allegany counties (716) 851-7000

## **NEW YORK STATE DEPARTMENT OF HEALTH**

<http://www.health.state.ny.us/home.html>

New York State, County Office Directory

<http://www.nysacho.org/Directory/directory.html>

## **NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE**

<http://www.tax.state.ny.us/>

New York State Dept. of Taxation and Finance, District Offices

<http://www.tax.state.ny.us/nyshome/doloc.htm>

### **Binghamton District Office**

44 Hawley Street  
Binghamton, New York 13901

### **Buffalo District Office**

77 Broadway Buffalo,  
New York 14203

### **Capital Region District Office One**

Broadway Center  
Schenectady, New York 12305

### **Manhattan Taxpayer Assistance Center**

86 Chambers Street, 2nd Floor  
New York, NY 10007-1826

### **Metropolitan District Office**

55 Hanson Place  
Brooklyn, New York 11217

### **Nassau District Office**

175 Fulton Avenue  
Hempstead, New York 11550-3797

### **Queens District Office**

80-02 Kew Gardens Road  
Kew Gardens, New York 11415

### **Rochester District Office**

340 East Main Street  
Rochester, New York 14604

### **Suffolk District Office**

State Office Building  
Veterans Memorial Highway  
Hauppauge, New York 11788

### **Syracuse District Office**

333 East Washington Street  
Syracuse, New York 13202

### **Utica District Office**

207 Genesee Street  
Utica, New York 13501

### **Westchester District Office**

90 South Ridge Road  
Rye Brook, New York 10573

### **Midwestern Regional Office**

1011 E Touhy Avenue  
Suite 475  
Des Plaines, Illinois 60018

## **OSHA REGION II DISTRICT OFFICES**

<http://www.osha.gov/oshdir/region.html>

**NEW YORK STATE DEPARTMENT OF LABOR, DIVISION OF STANDARDS**

[http://www.labor.state.ny.us/business\\_ny/employer\\_responsibilities/workprot/lstdists.htm](http://www.labor.state.ny.us/business_ny/employer_responsibilities/workprot/lstdists.htm)

<b>Albany District</b> State Office Campus Bldg. 12, Room 185A Albany, NY 12240	Tel. (518) 457-2730 Fax. (518) 457-8452	Albany, Clinton, Columbia, Dutchess, Essex, Franklin, Fulton, Green, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Warren, Washington
<b>Binghamton District</b> State Office Bldg. 44 Hawley St. Room 909 Binghamton, NY 13901	Tel. (607) 721-8014 Fax. (607) 721-8013	Allegany, Broome, Chemung, Chenango, Cortland, Delaware, Otsego, Schuyler, Steuben, Sullivan, Tioga, Tompkins, Yates
<b>Buffalo District</b> 65 Court Street Room 202 Buffalo, NY 14202	Tel. (716) 847-7141 Fax (716) 847-7140	Cattaraugus, Chautauqua, Erie, Niagara
<b>Hempstead District</b> Suite 101400 Oak Street Garden City, NY 11530-6551	Tel. (516) 794-8195 Fax (516) 485-0322	Nassau, Suffolk
<b>New York City District</b> 345 Hudson Street New York, NY 10014	Tel. (212) 352-6700 Fax. (212) 352-6593	Bronx, Kings, New York, Queens, Richmond
<b>Rochester Sub-District</b> 109 S. Union St. Room 318 Rochester, NY 14607	Tel. (716) 258-4550 Fax (716) 258-4556	Genesee, Livingston, Monroe, Ontario, Orleans, Wayne, Wyoming
<b>Syracuse District</b> 333 E Washington Room 121 Syracuse, NY 13202	Tel. (315) 428-4057 Fax (315) 428-4001	Cayuga, Herkimer, Lewis, Madison, Oneida, Jefferson, Onondaga, Oswego, St. Lawrence, Seneca
<b>White Plains District</b> 120 Bloomingdale Rd White Plains, NY 10605	Tel. (914) 997-9521 Fax (914) 997-8780	Orange, Putnam, Rockland, Westchester



**OTHER A.E.M. EXTENSION BULLETINS**

<b>EB No</b>	<b>Title</b>	<b>Fee (if applicable)</b>	<b>Author(s)</b>
2002-09	DFBS: Western and Central Plain Region 2001	(\$10.00)	Knoblauch, W. A., L. D. Putnam, J. Karszes, S. Richards, J. Hanchar, J. Barry, K. English, T. Terry, and G. Allhusen
2002-08	New York Large Herd Farms, 300 Cows or Larger 2001	(\$15.00)	Karszes, J., W. A. Knoblauch, and L. D. Putnam
2002-07	Writing a Business Plan: An Example for a Small Premium Winery		Pisoni, M. E. and G. B. White
2002-06	Writing a Business Plan: A Guide for Small Premium Wineries		Pisoni, M. E. and G. B. White
2002-05	Estate and Succession Planning for Small Business Owners		Tauer, L. W. and D. A. Grossman
2002-04	Projecting Cash Flows on Dairy Farms		LaDue, E. L.
2002-03	New York Greenhouse Business Summary and Financial Analysis - 2000	(\$7.00)	Uva, W. and S. Richards
2002-02	The Organic Decision: Transitioning to Organic Dairy Production	(\$12.00)	Richards, S., S. Bulkley, C. Alexander, J. Degni, W. Knoblauch and D. Demaine
2002-01	Cost of Establishment and Production of Vinifera Grapes in the Finger Lakes Region of New York-2001	(\$10.00)	White, G.B. and M.E. Pisoni
2001-20	Why Conduct Research and Extension Programs for Small Farms		LaDue, E., and R. D. Smith
2001-19	Market Enhancement Programs Operated in New York's Key Competitor States and Provinces		Bills, N. L. and J. M. Scherer
2001-18	Agriculture-based Economic Development: Trends and Prospects for New York		Bills, N. L.
2001-17	A Compilation of <i>Smart Marketing</i> Articles, November 1999 – September 2001	(\$5.00)	Uva, W.

Paper copies are being replaced by electronic Portable Document Files (PDFs). To request PDFs of AEM publications, write to (be sure to include your e-mail address): Publications, Department of Applied Economics and Management, Warren Hall, Cornell University, Ithaca, NY 14853-7801. If a fee is indicated, please include a check or money order made payable to Cornell University for the amount of your purchase. Visit our Web site (<http://aem.cornell.edu/outreach/materials.htm>) for a more complete list of recent bulletins.