



## BUSINESS OPERATIONS **LIABILITY**

Being liable means being responsible for something, especially by law. In the event that a person or someone's property is damaged by your business in some way, you may be liable to pay for those damages. Farming requires a lot more land, guests, and heavy or dangerous equipment than a typical residential property, which means more liability risk. As the farm or ranch owner, it is your responsibility to examine liability concerns for all property you own, lease, or perform work on as an independent contractor. This Fact Sheet focuses on claims of liability for personal injuries that occur on your property and legal duties a farmer or rancher has to protect visitors on properties under their management, as well as the steps you can take to reduce your liability.

### **LEGAL DUTY TO PROTECT THE PROPERTY VISITOR**

There is a legal "duty of care" that you are responsible for as a property or business owner to keep the premises of your business safe. If someone were to be injured on your farm or ranch, you may be held liable for those injuries if it is deemed that the dangerous condition, or the visitor's lack of awareness of it, was caused through your negligence. When dealing with children, it is expected that extra care is afforded to them to account for their smaller size, curious natures, and general lack of caution or awareness. A chemical storage room, for example, may be a curious play place for a child that would not be attractive for an adult. Take care to make sure these areas, and other similarly dangerous conditions, are inaccessible to children should they come to your farm or ranch.

### **STATUS OF THE PROPERTY VISITOR**

Folks coming onto your farm or ranch can be di-

vided into three types of property visitors, invitee, licensee, and trespasser. Your legal duty of care to these visitors varies depending on their status.

#### *Invitee*

Invitees are people you invite to the farm or ranch either explicitly or an implied invitation through your actions. Your expected duty of care is highest for these people. You must do your best to eliminate all dangers from your property, warn any visitors of any dangers that cannot be removed, and generally keep them from harm.

#### *Licensee*

Licensees are people on your farm or ranch for their own benefit. Though you did not invite them, they are present with your permission or agreement. Hunters on your property with your permission is an example of a licensee. You must warn licensees of dangerous conditions they may encounter and generally work to keep your property safe.

#### *Trespasser*

Trespassers are people on your farm or ranch without an invitation or express permission. There are two types of trespassers: known and unknown. For the unknown trespassers, you are legally responsible for warning them of dangerous conditions. If the trespasser(s) are known to you, you do have the legal duty to reduce dangerous conditions or warn them of remaining dangers. Known trespassers can include people regularly cutting across your fields or coming onto your property on the way to a popular walking path.

### **LIMITING LIABILITY**

There are many steps you can take to reduce the chance someone is injured on your farm or ranch,

and to reduce the chance you are found liable in the event of any injuries.

### *Inspect Your Property*

Whether your farm or ranch is in good and safe condition is the main factor for determining liability for injury. Regularly inspect your property for dangerous conditions! Make notes especially of conditions that would not be readily apparent to a property visitor even if they were being cautious (i.e. camouflaged animal traps).

### *Eliminate Dangerous Conditions*

Remove or remediate dangerous conditions whenever possible. This includes making sure your machinery is working properly, and that all protective devices are properly in place.

Properly store equipment and use signage to indicate who is allowed in equipment storage areas.

### *Provide Warnings*

Farming and ranching create a certain amount of unavoidable dangerous conditions. In cases like those, make sure to post a warning danger. These warnings can be signs, or by roping, fencing, or otherwise blocking access to a dangerous condition. Make sure all warnings are clear but avoid verbal warnings that cannot be documented. It's a good idea to keep a written record or copy of all warnings.

### *Educate & Train Employees.*

Ensure all your employees understand liability rules. Make sure they are aware of the dangers on the property and know to warn others of them. Train them to properly store chemicals, tools, or other potentially harmful substances. Also create an expectation that they will warn you of any conditions they notice or inadvertently create (damaged equipment, for example). You as the owner are responsible for the condition of your property, but employees can potentially also be held liable for creating a dangerous condition.

The Federal Worker Protection Standard (WPS) may also apply to your agricultural establishment. Employees who apply pesticides, assist with pesticide applications, or work in agricultural production areas where pesticides have been applied in the last 30 days, must receive pesticide safety training prior to their first day of work in these areas. To find out if WPS applies to your establishment, take the quiz.

### *Visitor Education & Agreements*

Educate parents, teachers, and other visitors of any dangerous conditions on your property. Prior to engaging in on farm activities, advise visitors verbally and in writing what your expectations are for their behavior on your farm or ranch. Have them sign a visitors log indicating they have been informed of and understand the rules. Visitor logs should include name, physical address, phone and email address of each visitor as well as the time they entered and the time they left the property.

Depending on the situation and your relationship with the visitor, it may be a good idea to have them sign waivers or release and hold harmless agreements, which would release you from liability for injuries that occur on your property. If you host vendors for events, consider asking vendors to sign a release and hold harmless agreements that release you from liability should a vendor-related accident happen on the property. When hosting minors for any events (such as on-farm school trips), have the students provide waivers signed by their parents or legal guardians. Keep in mind, neither a waiver nor a release and hold agreement completely absolve you of liability for injuries caused by your negligence.

### *Maintain Records*

It's a good idea to take photos or videos of your property. Keep a record of when you inspect your property for dangers, including notes on what you found and how you eliminated the danger or other actions you took to reduce the chance of injury. Keep a visitor log and a copy of the written rules shared with visitors.

## **LIABILITY FOR INJURIES BY ANIMALS**

The issues of liability change in the cases of injuries caused by animals on your property. Whether you as the keeper of an animal can be found liable, and the extent of the liability, changes depending upon the type of animal causing the injury, the foreseeability of the injury, and the activity that resulted in the harm. If you keep animals known to be vicious, wild animals, or dogs you are strictly liable for injuries caused by the animal regardless of whether you were negligent or not.

If the animal(s) you keep are outside the above classifications, you can be held liable for injuries caused by them if you are negligent in your keeping of the animal. Whether you are found to be at fault generally rests on whether you could have anticipated the dangerous condition but did not prevent it. If a visitor invades a space that the animal has the right to be, and the injury takes place there, you are not liable. For example, if someone enters an animals' stall or pen.

## **THE FARMER'S DEFENSES TO LIABILITY**

If you are accused of being liable for an injury, you have two potential defenses, outlined below.

### *Exceeding the Scope of Invitation*

If someone on your farm or ranch goes outside what you discussed or invited them to do, you are not liable for injury. An example of this would be giving someone permission to walk through your fields, but they decide to also enter your barn. You would not be liable for injuries that occurred in your barn.

### *Exceeding the Scope of Permission*

If a visitor or customer goes beyond posted warnings or barriers. For example, if you have a "Keep Out" or "Employees Only" sign posted, or have fenced or barricaded an area off, and a visitor or customer enters that area, you are not liable for injuries that occur in the restricted area.