

CHAPTER 2

BUSINESS OPERATIONS



2.1 TAXES

2.2 INSURANCE

2.3 LIABILITY

**2.4 PERSONNEL
MANAGEMENT**

2.5 INTERNS & APPRENTICES

2.6 VOLUNTEERS

**2.7 FARM LABOR &
CONTRACTORS**

**2.8 EMPLOYER
RESPONSIBILITIES**

2.9 IN-KIND PAYMENTS





BUSINESS OPERATIONS TAXES

Your business will need to fulfill its tax obligations to the federal government, the State of Idaho, and local jurisdictions. The type of business you operate, whether you own your land, have employees, and where and how you sell your farm products all affect the taxes you are responsible for. Farms are subject to certain tax exemptions. This Fact Sheet is intended to help you navigate your tax responsibilities as an entrepreneur. The list below may not be comprehensive to your farm or ranch business and is not intended to be used as legal tax advice. To determine the taxes that apply to you, we recommend you contact the resources in the “Who Can Help?” section of this fact sheet and/or a certified accountant or bookkeeping service familiar with farm businesses in your area.

SELLER'S (SALES TAX) PERMIT

Every Idaho retailer needs a Seller's Permit, also known as a Sales Tax Permit, issued by the Idaho State Tax Commission. Applications for Seller's Permits are free and can be filed online. Once issued, permits must be displayed in a visible location at your business. Instructions on how to file your tax returns will be mailed to you along with your permit. Applications for a permit can take 10 days (if filed online) to 4 weeks (if mailed in) to be issued to you. Plan for this delay; selling before you have a seller's permit can result in fines. If you buy a permit from an existing business, the previous seller's permit will not transfer, and a new application will need to be submitted. If you sell at an Idaho farmers market, you are required to have a copy of Form ST-124 in your assigned space at all times. The Idaho State Tax Commission has the right to conduct unscheduled tax compliance inspections.

Temporary Sales Permit

If you plan to make sales at a farmer's market, flea

market, craft fair, or some similar event, you will likely need a temporary sales permit. (See *Fact Sheet 3.6 Farmers Markets for more information*).

IDAHO SALES & USE TAX

All retailers in the state of Idaho must collect sales tax, file a sales and use tax return, and forward the tax to the Tax Commission. The 2023 Idaho sales tax rate is six percent (6%). This applies to those selling goods, leases, rentals of tangible personal property, fees for admissions, recreations, hotel, motel, campground accommodations, intrastate charter flights, and some types of labor. Any tangible personal property stored, used, or consumed in Idaho is subject to a six percent use tax, including items purchased online or by mail order.

Exemptions

Goods for resale, or materials used directly in the production of items for resale, are exempt from sales tax. All irrigation equipment and supplies used directly and primarily for agriculture are also exempt. If exempt, you may use a Sales Tax Resale or Exemption Certificate (Form ST – 101) to make purchases. Visit the Idaho State Tax Commission to learn more.

SPECIAL EXCISE & OTHER TAXES

An excise tax is a tax imposed on the sale of specific goods or services, or on certain uses, and are imposed by both the federal government and the state of Idaho. The following list of excise taxes is modified from that published by the Idaho Department of Commerce and is not meant to be comprehensive. Many farms and ranches in Idaho produce a variety of goods and services for sale, including agritourism experiences. Contact the IRS and the Idaho State Tax Commission to determine which

taxes are applicable to your farm or ranch business.

FEDERAL EXCISE TAX

Telephone communications
and air transportation
Manufacturers tax on a variety of goods
Retail and use tax on motor fuels and
certain new heavy truck sales
Windfall profit tax on domestic
crude oil production
Environmental tax on receipt
of hazardous materials
Environmental tax on manufacturing
petroleum and chemicals
Tax on the use of highways by
heavy trucks and buses
Production, sales, or importation of
alcohol, tobacco, or firearms
Luxury tax

IDAHO STATE EXCISE & OTHER TAXES

Beer & wine tax – paid by distributors
Insurance tax – paid to the Department
of Insurance by insurers
Cigarette and tobacco tax – paid
by wholesalers or importers
Coin operated amusement device annual
decals – paid by owners or operators
International Fuel Tax Agreement
Licenses - paid by interstate truckers
Mine license tax – paid by miners
or royalty recipient
Motor fuels tax – paid by distributors
Electricity tax – paid by hydroelectric
power producers

Local Sales Taxes

In addition to state sales tax, some resort cities in Idaho have a city sales tax. Often referred to as local “option” taxes, these taxes are decided by the voters in the affected communities. These taxes may include everything subject to the state sales tax or be limited to certain types of businesses or individual products such as restaurant food, alcoholic

drinks, or lodging. Resort cities with local “option” taxes are listed on the Idaho State Tax Commission website. Contact cities directly to learn the specifics of their local sales tax and whether it applies to your farm or ranch products or services.

PROPERTY TAXES

Property taxes are collected by counties to support local services, cities, and schools. In addition to real property (land and buildings), personal property (desks, computers, and other business equipment) used in a business are also taxable. You are required to annually report and pay taxes on the assessed value of the property to the county assessor’s office. Visit the Idaho State Tax Commission for more details.

RELATED FACT SHEETS IN OTHER CHAPTERS:

3.6 Farmers Markets





BUSINESS OPERATIONS INSURANCE

Insurance can protect you and your business in case of personal injuries or damage that occur on your premises, physical damage to machinery or buildings, damage caused by or to your products, and other general protections against risk. In most cases, insurance is required as a condition for a bank loan.

Depending upon the type of business entity you choose for your farm or ranch, adequate insurance may be especially important because you can be personally liable for all business debts. (See *Fact Sheet 2.3 Liability for more information*). Having adequate insurance is one way to manage risk of being personally liable if your business defaults on loans or is subject to a loss or damage claim by a third party.

TYPES OF INSURANCE POLICIES

When deciding on an insurance policy, you must identify the risks involved with your business activities. Take inventory. Make a list of all the things that are essential to your business – from structures and equipment to customers and workers on the farm. Take time to consider what would happen if you, your farm partner, family member or another worker on your farm or ranch is injured. How would medical bills be paid and who would be responsible? If there was a natural disaster, such as drought or wildfire, would you be able to sustain a one year or multiple year crop loss?

Through careful planning, assessment, and due diligence, you will be able to implement daily strategies to minimize many risks to your farm or ranch business. The following insurance policies can mitigate the potential impact of the unavoidable risks. Remember, even with an insurance policy, your business is not exempt from receiving a liability claim. (See *Fact Sheet 2.3 Liability for more informa-*

tion). You'll want to take care to communicate fully with your insurer about all aspects of your farm or ranch business—you don't want to pay for a policy that is not actually covering the full range of your business practices. Whatever policy you choose, carefully read the details, and make sure you understand the extent of what is covered.

Two of the most important types of insurance for a business are property and liability insurance. Property insurance covers your buildings and other physical assets. Liability protects you against claims of injury or property loss resulting from negligence on your part. Health and life insurance coverage can be essential for you and your family's immediate and long-term care and are often part of employee benefit packages.

COMMERCIAL BUSINESS POLICY

This policy type is custom fit to your business activities and may be needed if what you are doing resembles a commercial venture, such as running an event venue or guided hunting service, rather than traditional farm or ranch food and fiber enterprises.

COMPREHENSIVE FARM LIABILITY POLICY

This type of policy is general liability coverage for accidents taking place on the farm, as long as any injuries occur in connection to farming. A policy of this type would cover you and your family, customers, and guests who visit the farm. If you have special events on the farm or off-farm activities, such as a farm stand not located on your property, CSA deliveries, or seasonal sales at your local farmers markets, discuss these activities with your insurance provider to determine if they are covered by your farm liability policy or require the purchase of additional insurance riders or endorsements.

CROP AND LIVESTOCK INSURANCE

You may want to add coverage for particular crops, livestock, or the whole farm in addition to your farm policy or general liability insurance. This coverage covers losses due to market fluctuations. The USDA Risk Management Agency offers information on a range of insurance programs for farm and ranch businesses. Of particular relevance to small, direct marketing farms and ranches is the Whole Farm Revenue Protection policy which provides revenue coverage for diversified crop and livestock operations. For more information visit: <https://www.rma.usda.gov>

EMPLOYMENT RELATED POLICIES

If your farm business has employees, you'll need unemployment insurance and worker's compensation. (See *Fact Sheet 2.8 Employer Responsibilities*).

HOMEOWNERS INSURANCE

For many small farms operating within their property boundaries, a homeowner's policy is a good place to start. You may be able to obtain coverage for additional activities, which include sales less than \$5,000 per year, provided that the business is a secondary income. However, don't assume your market garden, farm and ranch business activities, equipment and structures are covered by your homeowners policy! Schedule a time to sit down and meet with your insurance agent to discuss your homeowners policy and whether you need additional coverage for your market garden, farm or ranch business activities.

LIABILITY INSURANCE

In the event that someone suffers a bodily or property injury as a result of your business, a liability insurance policy is intended to cover the costs of damages you'd be required to pay. The cost is generally related to the risk of your industry. As an agricultural business, your cost may depend upon what you produce on your farm and how you produce it, and whether or not your operation is open

to the general public. You may want to include things like product liability, livestock liability, or a farm and ranch umbrella liability coverage policy.

Commercial General Liability

Sometimes required by intermediated market buyers (restaurants, retail grocers (including natural food cooperatives), and wholesalers), this type of insurance can extend farm or ranch liability insurance to include a broader set of coverage including product liability coverage and recall costs.

Product Liability Insurance

Protects you against injury or property loss from a product defect or design flaw, including any found in farm machinery, livestock products, or food products.

Livestock Liability Insurance

Covers you in the event that your animals injure someone or damage their property.

Farm and Ranch Liability Insurance

These vary by insurer, but are intended as another level of protection for your farm or ranch, and often bundle things like product and livestock liability policies.

PROFESSIONAL INSURANCE

This policy protects people whose business involves services or consulting, such as advising other farmers on business aspects like production planning. Find out from your insurance agent if consulting or other services expose you to any special liability issues and whether a professional insurance policy is needed. People who are self-employed often need professional liability insurance to protect both their personal and business interests.

VEHICLE INSURANCE

Insurance coverage for vehicles used for both personal and business purposes may require special disclosures or be limited by percent of use or miles.

If work trucks, delivery vans, utility trailers, ATVs (all-terrain vehicles) or other motor vehicles used in your farm business are owned by the business, your business will need to obtain vehicle insurance. Before talking with your insurance provider, make a list of vehicles, registered ownership, and operators (yourself, family, employees, etc.) and details about how each vehicle is used in your operation. Depending upon the provisions, and cost, of available policies, you may choose to limit use of vehicles to farm owners or specific farm employees.

GETTING INSURED

Before applying for insurance coverage, make a list of all the business activities planned or operational on your farm. Include things like equipment used, farm tours, internships, workshops, farm-to-table dinners, or farm stays. You'll want to keep these activities in mind while shopping for insurance and be transparent with your eventual insurance representative to ensure your farm activities are actually covered in the policy you're paying for. You must report any changes in the nature of your activities or property that affect your coverage. If you don't report changes, your new activities or property may not be covered by your existing policy. Below are some considerations when choosing insurance.

INDEPENDENT AGENT VS. DIRECT WRITERS

These terms refer to types of insurance agents. Independent agents don't work for any one company, and as a result can present plans from many different companies. Direct writers, or captive agents, are employed by one company and therefore can only present plans from that organization. Choosing between these styles of insurance providers depends on your preferences. Would you prefer to consult with the same person each time a question arises? Do you want to confer regularly on concerns like agritourism events, new vehicle drivers, building improvements – or the need to update your coverage? Do you want them to visit the farm? If you prefer the consistent and personal relationship

type, you probably would be more comfortable going with an agent. If you prefer the convenience of a single phone call or a 24-hour service line, a direct writer may be the better choice. Direct writers usually do not receive commissions, where general agents may.

AGENTS VS. BROKERS

Independent agents and direct writers, while they vary on the number of companies they work with, both represent insurance companies. An insurance broker, on the other hand, would represent you directly in the insurance marketplace. Using a broker may be preferable if you want someone who can source a broad range of coverage to put together the best package for your specific business circumstances. While both agents and brokers will work to respond to your needs, an agent also represents the insurance company they work for. A broker works independently.

SELECTING A REPRESENTATIVE

How do you pick the right agent or broker? It is essential to work with someone who is already familiar with the insurance needs of diversified and direct marketing farms and ranches – or is interested in learning! Check with your friends, neighbors, family, and other farmers with similar operations. If possible, talk with people who have had difficulty with claims or coverage. Knowing how an insurance provider, agent or representative reacts under difficult circumstances can help you get an idea about how they will respond if you need similar help. In general, consumers should investigate potential agents or brokers every way they can. For example, the Idaho Department of Insurance will tell Idaho consumers on request how many complaints have been filed against an agent or broker – and whether that licensee has faced disciplinary action in the past. You, as the insurance consumer, have a right to that information.

SAMPLE QUESTIONS TO ASK YOUR INSURANCE AGENT OR BROKER

- ✓ At what point does my homeowner's policy no longer cover my involvement with direct farm marketing?
- ✓ Can my homeowner's policy be extended to cover my farm or ranch activities (with additional premiums)?
- ✓ Is there a limit to the amount or type of direct or total farm sales I can make and still have them considered as incidental to my farm operation?
- ✓ If I have a farm policy, does my liability cover my direct farm marketing sales, such as at my roadside stand, U-pick operations, delivery to restaurants and farmer's markets? Are on-farm events (tours, meals, workshops, weddings, etc). covered by my policy? What activities are excluded as a "separate business" for which I need to buy a commercial policy?
- ✓ Are you willing to come out to my farm or ranch to walk the property and discuss in more detail my insurance needs?

COVERAGE LIMITS

All insurance policies will have limits in coverage. And, generally, the more coverage, the higher the cost of the policy. Completing a risk assessment for your farm/ranch and developing a comprehensive plan for mitigating those risks can help you determine which insurance products are essential to your business.



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.

BUSINESS OPERATIONS

PERSONNEL MANAGEMENT

FACT
SHEET
2.4



As businesses grow, so does the labor needed to operate them. Before bringing new employees or volunteers into your operation, there are a few things you'll want to do to make the process as smooth as possible.

JOB DESCRIPTION & EXPECTATIONS

Once you've established you need additional help to get everything done, you'll need to decide which tasks you can hand off to someone else. Write out a clear job description including expected job or volunteer duties. Think through the times of year you will need additional help, how many hours per week, and what the ideal weekly work schedule would be. Make a list of required and preferred qualifications for each job description. Specify if workers will need a valid driver's license and the physical requirements of the position. Think through what you can offer. If you are hiring someone, know before you advertise the position how much you can pay and any benefits you can provide including paid time off and sick leave. For both employees and staff, be clear about what training you will provide and what experience and skills you expect them to bring to the position.

ADVERTISING & INTERVIEWING

Once you've decided that you want to hire help, you've written out your job description and gotten clear about your internal policies, it is now time to post the job! The Small Business Development Center can help you create a standardized job description. You'll want to post the opportunity widely. The more applicants you get, the better chance you have of finding the best fit for your operation. Utilize your social media pages, local online job listings, and word of mouth. Consider also posting physical advertisements around town and listing

CONSIDERATIONS

What equipment will you be providing, and what should people bring themselves? Do you have a clear plan to communicate your policies and options in case someone forgets something, such as gloves?

What areas of your farm are open to employees and volunteers, and what areas are restricted? Where will people take breaks, eat lunch, or use the bathroom? If some of the facilities are within your personal residence, what entrance will people use? Do you have a shoes off policy? Be sure to provide an in-person orientation at the beginning of employment/volunteering and provide a copy of your policies in writing. Facilitate a conversation with new hires and volunteers to ensure your policies are understood.

Consider your employees' needs for time off, including sick leave and personal leave. How will this affect your business and the roles employees or volunteers have in your farm? Is there a time frame that is best for folks to take time away? If you provide paid time off to employees, what are your policies about staff taking additional unpaid leave?

If someone must drive for your operation, how will you manage that? Will you reimburse the mileage or provide a vehicle? Before hiring is the best time to inquire with your insurance agent about how changes may impact your plan.

with national agricultural job registries. With all postings, include a brief description of your operation for anyone unfamiliar with your farm or ranch.

Interviews are a good time to discuss the job description and your expectations. For hired labor, make sure to ask for references and to call them. Prior to interviewing, determine whether you want to run background checks on potential hires, or license checks if you are hiring a driver.

MANAGING & MAINTAINING OPEN COMMUNICATION

Having employees and volunteers on your farm will require some regular management tasks to keep everything running smoothly. It is also good practice to employ techniques to ensure your business is an enjoyable place for people to be, with the hopes of retaining them for as long as possible. Onboarding and training new help costs time and money, so keeping employees for the duration of your employment season is a financial benefit to your business. How will you communicate the daily, weekly, or monthly work plan? How will you communicate throughout the day if working apart? Walkie talkies, a centralized whiteboard, and phones are all viable options to consider. What check-ins do you want to build into the season to address problems as they arise? How will you recognize and appreciate the help, especially if they are volunteers? End of season gifts or celebrations go a long way, as well as verbal thanks and acknowledgment throughout the season.

BUSINESS OPERATIONS INTERNS & APPRENTICES

FACT
SHEET
2.5



Agricultural business owners are often bombarded with questions and enthusiasm from community members interested in the production process, especially as local food, homesteading, and self-sufficiency continue to gain popularity. Engaging someone eager to learn as an intern or apprentice can be a win-win—they gain valuable food production knowledge, and you gain from being their mentor. However, if you want to host an intern or apprentice, there are qualifications for these programs. Falling outside of them would make that worker legally an employee, and as such, you as the business owner would be responsible for compensating them to the minimum standards of employment set by the Fair Labor Standards Act, including minimum wage, overtime pay, and other benefits laid out in the law.

This Fact Sheet is intended to help navigate these designations and make plans best suited to you and your business.

INTERNSHIPS

The intern must be the primary beneficiary of the relationship, not the employer. Said another way, the intern must gain more from the experience in training and learning than the employer gains from labor.

The following questions, outlined by the U. S. Department of Labor, help identify if the person in question is operating in the scope of an internship or employment. The test, known as the “primary beneficiary test” is flexible; no one answer determines the result.

- ✓ Whether the intern clearly understands that they will receive no compensation. Any form of compensation or suggestion of compensation would make them an

employee. Providing food or lodging can muddy the waters here, as these are forms of In-Kind Payments. (*See Fact Sheet 2.9 In-Kind Payments for more information*).

- ✓ Whether ample training is provided, if that training is structured, and if that training is similar to what would be provided in a classroom setting.

The training needs to be transferable across the industry, not training on how your operation works. Think how you would train someone to open their own business, not how you train someone to work on yours.

- ✓ Whether the internship is tied to a formal education program by integrated coursework or receipt of academic credit.

Some colleges oversee internship experiences and offer academic credit for them. Contact your local colleges and universities to inquire about this option.

- ✓ Whether the employer is accommodating to the academic calendar and the intern’s academic commitments.

Many schools’ calendars conflict with the growing and producing season. Many internships are offered on a shorter term than a seasonal hire would work.

- ✓ Whether the internship is limited to the period in which the intern is provided beneficial learning.

This has been interpreted on a task-by-task basis as well as a seasonal one. It may take 20 supervised minutes to learn to correctly weed a pathway, not 40 hours.

- ✓ The extent that the intern's work complements, not replaces, the work of a paid employee.

Similar to the above, they should be doing a task only long enough to learn it, not necessarily the length it takes to complete it.

- ✓ The extent that the intern understands that the internship period does not guarantee a paid position.

An intern cannot be hired on as a "trial basis" for paid employment.

An intern should be learning new skills throughout their experience. Often this means it costs more to run an internship program than the interns themselves bring to it. It can be a full-time job to provide educational training. The Idaho Department of Labor can help answer any questions you have on these requirements and your specific operation.

Can't Meet Requirements or Unsure

Though this test is flexible, it is unclear how lenient a court would be on your operation if it was brought before them. If you cannot clearly meet all of these standards, the best risk management strategy would be to follow all employment laws for interns – including paying at least minimum wage. (See *Fact Sheet 2.8 Employer Responsibilities for more information*).

Requirements Met

If you think you do meet all the above requirements or would be willing to, you need a plan to keep thorough records throughout your internship program, have your interns sign an onboarding statement saying they understand they are an intern, and get workers' compensation insurance coverage for them.

APPRENTICESHIPS

Similar to internships, most positions with the informal title of "apprentices" are actually legally employees. The Idaho Department of Labor has

an apprenticeship program. These are registered with the state, usually paid, and a combined effort of an educational institution and the job training provider (i.e. your business). Contact your regional apprenticeship coordinator for more information.

A NOTE ON JOB TITLES

Some farmers and ranchers prefer to title their paid positions with terms like apprentice or intern to attract candidates invested in local food production and eager to learn, rather than those just looking for temporary employment. If you are following employment laws, that is fine. They will be legally employees in the eyes of the law, but how you internally refer to them is up to you.



BUSINESS OPERATIONS VOLUNTEERS

FACT
SHEET
2.6



Ag businesses have an unusual amount of community support and interest in participation or volunteering compared to other for-profit businesses (people don't often email banks asking if there are any volunteer hours available!). Whether you're interested in mitigating cash flow, community involvement, sharing skills, or creating a more social or communal feeling in your farm, hosting volunteers can be a tempting and rewarding enterprise. However, it can be tricky to do so legally according to the Fair Labor Standards Act.

For-profit businesses may not use volunteer labor for their own benefit. The Fair Labor Standards Act was put in place to protect people from exploitation. Though the neighbor who comes over and helps you weed beets in exchange for some produce or the neighbors who offer to help you put in a fence are unlikely to feel exploited, it is best to have a full understanding of the law in order to make informed choices about whether or how you will host volunteers.

PRIMARY BENEFICIARY

Let's take a closer look at the concept of primary beneficiary. Say you run an orchard. If you want to use volunteers to pick your apples which you then sell at the market, that is not allowed. You have used free labor in place of an employee's time and made a profit from the volunteer's contributions. Now, say you're that same orchard owner. You have gone through your trees and harvested what you need. There are still some valuable apples left, but you don't want or need to spend the time harvesting them. You can then advertise a gleaning opportunity for community members. They benefit from the apples they have harvested, since they are keeping them, and you benefit from the reduced waste, but not monetarily. In this case, hosting those volunteers is completely legal.

Similarly, if a task looks and feels like leisure or play, even if it is a task an employee would do, that is the legal use of volunteers. Harvesting, for example, is something that an employee would do but can also be a leisurely and enjoyable task for volunteers. Say you offer for your CSA members to pick their own raspberries or bouquet of flowers. Many would enjoy this task! Be careful about setting too many expectations on the task though—if it looks like employment, it probably is. In the case of picking, if you set expectations about how long the task should take, if they must pick beyond what they plan to consume, or if the picking is mandatory in order to pick up their share, that is no longer a volunteer task.

The same concept applies to ranches. If you have customers picking up a meat or milk order, eager children are welcome to brush or feed your animals. But making these tasks mandatory to collect their goods is not.

Agritourism

Circling back to that orchard owner with the apples—there is another option besides picking all the apples using employee time or giving away the apples for free if using community labor. Hosting a U-Pick operation allows for community involvement with profit and without exploitation. In this case, the pickers are community members who then keep the product at a reduced cost compared to what they would find at the markets, and you still make money from the product while saving on labor costs. (See *Fact Sheets 3.3 Agritourism and 3.10 U-Pick for more information*).

RISK MANAGEMENT

Many folks are willing to and interested in volunteering on farms and ranches for the direct benefit

of the farm or ranch. Since a farm directly benefiting from volunteer labor violates The Fair Labor Standards Act, it is important to understand the risks involved in accepting volunteers and how you can mitigate them. There are several risk management options you can put in place if you want volunteer involvement on your farm or ranch.

Follow All Employment Laws for Volunteers. This includes paying minimum wage unless an exemption applies—see below for more information. (See *Fact Sheet 2.8 Employer Responsibilities for more information*). This is the most risk adverse tactic.

Get Insurance to Cover Volunteers.

If a volunteer is seriously injured on your property while volunteering for you, their health insurance company might come after your business for payment (or your personal assets, depending upon your business structure - see *Fact Sheet 1.3 Business Structures for more information*) whether that volunteer wants them to or not. Your current policy might not cover volunteers if they are working in an employee capacity. Be very open with your insurer about your operation and seek written confirmation that your volunteers would be covered in the actual capacity that they work on your farm or ranch. If you want to be even more careful, get workers compensation to cover your volunteers. (See *Fact Sheet 2.2 Insurance for more information*).

Avoid Paying Anything.

If you cannot follow all employment laws for volunteers, be aware that any payments make it look more like an employment situation. This includes meals and lodging.

ONLINE VOLUNTEER MATCHING SERVICES

Many farmers look to volunteer and intern matching services for help on the farm. In most situations, the Fair Labor Standards Act would define these volunteers and interns as employees. Once again, participating in any kind of volunteer hosting is a

risk that is up to you to navigate.

NON-PROFITS

As mentioned above, the prohibition of volunteers is specific to for-profit businesses. Non-profit farms and ranches can host volunteers but are restricted by the following:

- ✓ You cannot ask an employee to volunteer. Either asking them to work extra time unpaid, or to participate in additional volunteer work outside of their employment. Doing so can imply their employment with you is contingent upon doing this extra unpaid labor and creates a power imbalance.
- ✓ You cannot provide everything that person needs to live (room, board, clothing, and meals) in exchange for the volunteer work. A court case found this to create either a coercive or employment relationship. (See *Fact Sheet 2.9 In-Kind Payments*).
- ✓ You cannot use volunteers to compete at an unfair advantage to other farmers or ranches. Essentially, you cannot subsidize the cost of your goods with the free labor.

BUSINESS OPERATIONS

EMPLOYEES & CONTRACTORS

FACT
SHEET
2.7



As your business grows, you may want to hire help. Paid employees are a more reliable, consistent, and legal work option than engaging volunteers. Below are a few classifications of paid laborers and how to distinguish between them.

EMPLOYEES

According to common law rules, anyone who performs services for you is your employee if you control what will be done and how it will be done, even if you give the employee freedom of action. If they are employed under your business, doing work in the regular scope of your business, and do not own their own business, they are likely to be your employees. (See Fact Sheet 3.8 *Employer Responsibilities for more information*).

INDEPENDENT CONTRACTORS

Another type of paid labor is an independent contractor. An independent contractor usually owns their own business which you contract with for a specific service or finished product. How they complete the project and what schedule they will work is up to the independent contractor. Many small farms and ranchers hire bookkeepers or payroll specialists as independent contractors if they are not able to employ them full time. Other examples could be hiring a construction company temporarily to install a building on your property, or other specialized labor.

Lesser Responsibilities

Independent contractors own their own business and have a responsibility to pay self-employment tax on their earnings. You, as the person who hired them, do not owe them the same benefits as a traditional employee, including paying workers compensation or minimum wage. Mislabeling an

employee to save on these costs carries legal consequences.

Determining if a Worker is an Employee or Independent Contractor

Below is a series of questions, known as the common law rules, to help you determine if you are engaging an employee or an independent contractor. These questions are sourced from the IRS.

COMMON LAW RULES

Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?

Financial: Are the business aspects of the worker's job controlled by the payer? (these include things like how a worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc).

Type of Relationship: Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc)? Will the relationship continue and is the work performed a key aspect of the business?

You must weigh all these factors when determining whether you are hiring an employee or an independent contractor. You must look at the entire relationship and decide which of the two classifications is more correct. Document what factors led to your conclusion before entering into an employment or contract situation.

Required Forms

If you pay an independent contractor more than \$600 in one calendar year, you are required to file Form 1099 with the IRS.

FARM CONTRACT LABOR

Farm Labor Contractors are agencies or individuals who work as an intermediary between farmers and laborers. Payment is made to the agencies or farm labor contractors, not the laborer(s) themselves. If you employ this way, you'll need to ensure the recruiter or farm labor contractor is licensed as such. If they are not, and they do not pay the wages of the workers, you as the farmer are held liable for those wages regardless of whether you've paid the recruiter. Visit the Department of Labor website for more information. <https://www.labor.idaho.gov/dnn/Businesses/Idaho-Labor-Laws/FLC-Registry>

BUSINESS OPERATIONS

EMPLOYER RESPONSIBILITIES

FACT SHEET
2.8



The first step to hiring help is to do financial projections to determine what you can pay an employee or employees and for how long. In addition to the cash flow, having employees will require additional bookkeeping, paperwork, and other recordkeeping. Before bringing on a new employee, reevaluate your bookkeeping and other administrative systems to make sure they are efficient and manageable. Below are some of the requirements of you as an employer!

UNDERSTAND THE LAWS

Before hiring, make sure you are aware of all federal and Idaho labor laws. This includes laws about hiring veterans, foreign workers, terminating or laying off workers, required benefits or breaks, and more. You'll also want to make notes of what records you are required to keep and for how long.

NEEDED PAPERWORK FOR NEW HIRES:

After hiring, you and your new employee need to fill out the following paperwork.

- ✓ 1-9 Employment Verification
You'll need to have your employee fill out an I-9, or Employment Verification Form. This form ensures the person hired is verified to work in the United States. You'll need to keep a copy of the completed form on file for three years after the termination of their employment.
- ✓ W-4 Employee Withholding Certificate
This form tells you how much income tax to withhold from employees' wages. Employers are federally required to withhold social security and Medicare taxes from employee's wages and to match these withholdings. You

should keep a copy of this form on file for each employee.

- ✓ W-2 Wage and Tax Statement (ANNUAL).
You'll need to submit W-2 forms to Social Security each year to report the wages and taxes of your employees for the previous calendar year. You'll also need to send a copy of the W-2 to each employee for their tax records.

REPORT EMPLOYEES

All Idaho employers are required to report new employees the Idaho Department of Labor within 20 days of the date of hire. This includes rehires if their previous employment was terminated 60 days or more prior to the new date of hire.

TAX REQUIREMENTS

As an employer, you will have tax obligations that you either pay as the employer, match with your employee, or withhold from an employee's pay. These can include social security taxes, federal unemployment insurance (FUTA), state unemployment tax (SUTA), federal withholding taxes (FWT), social security (SS), state withholding tax (SWT), and Medicare. We recommend working with a professional to set up your payroll and required reporting.

WORKERS' COMPENSATION

Employers with one or more full-time, part-time, seasonal, or occasional employees are required to maintain a workers' compensation policy, unless specifically exempt by law.

Contact your insurance agent or company representative for assistance.

Keeping Rates Low

There are some basic steps you can take to keep your workers' compensation rates low. First, as always, work to prevent injuries and keep a safe workplace. Be mindful of assigning dangerous tasks, which may increase your premiums. Having employees participate in dangerous tasks, such as running a tractor, may be unavoidable. Assigning higher risk tasks to senior employees only will lower your worker's comp cost for the other hires.

emptions, contact the Idaho Department of Labor for more information.

LIABILITY

You may need additional liability coverage for your employees from a private insurer even if you have worker's compensation in place. This is because circumstances could arise on your premises that involve damages for employees that the worker's compensation insurance will not cover. (See *Fact Sheet 2.2 Liability for more information*).

CONSIDER ADDITIONAL BENEFITS

Depending upon your business' financial situation, you may be able to offer additional benefits, such as healthcare, dental or eye plans, overtime pay, paid time off, or retirement plans to your employees benefit package. While these benefits are not required by law, they can help you attract and retain employees. Your accountant or tax professional can help you determine the cost of additional benefits and help you find insurance and investment providers.

AGRICULTURAL EXEMPTIONS

Agricultural employers are exempt from some of the above requirements. However, the criteria for your employees to be considered agricultural workers is very specific. An employee working in any task outside of the "agricultural worker" designation (sometimes including working at the farmers market or delivering produce) negates your exemption. Agricultural workers may fall outside of the minimum wage requirement if your farm or ranch is covered by the 500 Man Day Minimum Wage Exemption. If you want to pursue these ex-

BUSINESS OPERATIONS IN-KIND PAYMENTS

FACT
SHEET
2.9



In-kind payments are non-monetary forms of payment, such as housing or meals. How much and what kind of in-kind wages you can provide is limited by law. Providing in-kind payments either as a substitute for cash wages or as a benefit offered to encourage qualified applicants is a strategy many farmers use to mitigate cash flow issues and attract workers looking for a richer experience through shared meals or on-site living quarters. This is especially true in places that are isolated and rural. Using in-kind wages to meet minimum wage requirements is complicated. This Fact Sheet is designed to help you gain an understanding of the rules associated with in-kind payments.

WHAT QUALIFIES

Housing, meals, and transportation can all potentially be counted as in-kind wages. There are two qualifiers for in-kind wage payments: In-kind wage provisions must be for the primary benefit of the worker, not the employer, and they must not be mandatory for employment.

For example, you can provide housing to benefit workers who would otherwise be in a tough housing market. However, you cannot require that an employee move out of their house and onto your property to be available for evening care of animals or to be on call. Similarly, you can provide rides to workers but cannot require that they utilize that service.

Meals vs Groceries

Many farms and ranches are interested in paying workers in the form of their products. However, most interpretations have concluded that raw products or groceries cannot be counted as meals since they are not prepared. The best rule of thumb is to count these things as perks, not part of wages.

Trainings & Education

Training your employee cannot ever equal payment. These are considered to be to the benefit of the employer, not the employee. If you want to provide in-depth education, you can offer classes and charge tuition. You cannot make your employees take these classes or educational courses. (See Fact Sheet 2.5 Interns & Apprentices for more information).

CALCULATING VALUE

When calculating the value of the in-kind wages paid, you must use the lesser of either the fair market value of the product or service, or your actual incurred cost.

Loss of profit does not count as an incurred cost; this is your production cost or actual bills. For housing, utility bills like gas or electricity for the dwelling you are providing does count as actual incurred cost, as does the gas for transporting employees.

SECURING AGREEMENT

You'll need to check with any existing or potential employees about paying with in-kind wages. If you move forward with using in-kind wages to meet minimum wage, you must secure written agreement from your employee stating they are willing to accept that arrangement. If they do not agree, you must be willing to pay in cash instead.

PAYING & TRACKING

For accounting purposes, in-kind wages work as deductions from cash owed. You'll need to calculate what you owe each employee in cash, then subtract the value of the in-kind payments. These subtractions need to be itemized on every paystub, and you'll need to keep records showing how you calculated the incurred cost or market value of

each item, keeping records of things like grocery or utility bills. You then will pay cash for the amount remaining owed to the employee. We recommend working with a payroll specialist to set up your system for calculating in-kind payments, payroll, and tax purposes.

IN-KIND USED NOT AS WAGES

If you are not required to pay the minimum wage or are meeting that requirement using cash, then you do not need to track each item to the same degree as listed above. Many farmers and ranchers use these bonuses as incentives to attract better quality workers or to increase employee retention.

Providing Housing in Addition to Wages

Providing optional housing for employees is fairly common among farmers and ranchers, especially those attracting workers in rural areas or areas in high-cost housing markets. Many farmers and ranchers in this case assume a landlord tenant relationship, where the employee pays you rent for the dwelling, rather than using in-kind wage calculations. Talk to other producers with experience providing housing or your local extension office if you are interested in housing employees on your farm or ranch – they may have valuable insights and examples of rental agreements you can use or modify to fit your situation. Also, discuss the housing arrangements you plan to offer with your insurance provider and accountant to make sure you are following all required laws and recordkeeping. Make sure to check with your city or county clerk about applicable zoning laws before setting up lodging on your property!



IDAHO SPECIFIC RESOURCES

University of Idaho Extension <https://www.uidaho.edu/extension>

Idaho Cultivating Success

<https://www.cultivatingsuccess.org/idaho>

Small Acreages & Local Food

<https://www.uidaho.edu/extension/small-farms>

Entrepreneurship Law Clinic (ELC)

<https://www.uidaho.edu/law/academics/practical-skills/clinics/entrepreneurship-law-clinic>

Idaho State Department of Agriculture (ISDA) <https://agri.idaho.gov/main/>

Idaho Preferred

<https://idahopreferred.com/>

Idaho Farm and Ranch Center

<https://agri.idaho.gov/farmcenter/>

Idaho Department of Labor

<https://www.labor.idaho.gov/dnn>

Idaho Industrial Commission

<https://iic.idaho.gov/>

Idaho Small Business Development Center

<https://business.idaho.gov/taxes/>

Idaho State Tax Commission

<https://tax.idaho.gov/>

HELPFUL ORGANIZATIONS

Farm Commons

<https://farmcommons.org/>

Internal Revenue Service (IRS)

<https://www.irs.gov/>

Service Corps of Retired Executives (SCORE)

<https://www.score.org/>

United States Department of Agriculture (USDA)

<https://www.usda.gov/>

USDA Risk Management Agency

<https://www.rma.usda.gov/>

United States Department of Labor (DOL)

<https://www.dol.gov/>