

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.