



FARM COMMONS

Hiring a Farm Employee in Vermont: Tax and Paperwork Checklist

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Introduction

Hiring a farm employee is an exciting moment. It means the farm is getting large enough and stable enough to take on additional help. On the downside, the paperwork requirements of hiring feel much less exciting. Getting familiar with the process early is a tremendous help. Farm owners should start preparing well before the new employee begins the first day of work. This checklist will help farmers understand the basic paperwork process for hiring a farm employee.

Although it's a useful starting point, this checklist does not explore every single area of farm employment law. It does not address wage-related record keeping, workplace safety laws, in-kind wage rules, and many other employment law matters. It's simply a concise checklist of select legal issues at the time of hiring. Farmers should also consult Farm Commons' other employment law resources for more information.

Farm Commons aims to help farmers get started, but moving through the checklist can lead to more questions than answers. On the positive side, knowing the right questions to ask is half the battle. Unfortunately, easy answers are often hard to come by. Calling the relevant agency such as the Vermont Department of Labor, Vermont Department of Taxes, United States Department of Labor, or the Internal Revenue Service is an excellent next step when complications arise. Agency employees are trained experts and able to answer most questions. Some farmers will prefer to contact an attorney with experience in farm employment law, which is always a good choice as well.

This resource does not explore every single area of employment law.

Checklist Summary

The following is a summarized list of the steps addressed in this guide. Check each step off here once you have completed it.

- If you plan to offer less than the minimum wage, verify your eligibility.
- If you do not plan to provide overtime, verify your eligibility.
- Follow laws of payment, notice requirements, and working conditions.
- Secure a workers' compensation policy.
- Verify eligibility to work in the United State.
- Set up to withhold federal and state income taxes.
- Set up to withhold federal social security and Medicare contributions from employee's wages.
- Arrange to pay the farm's contribution to the employee's federal social security and Medicare account.
- Arrange to pay federal and state unemployment tax, if required.

Checklist with Explanations

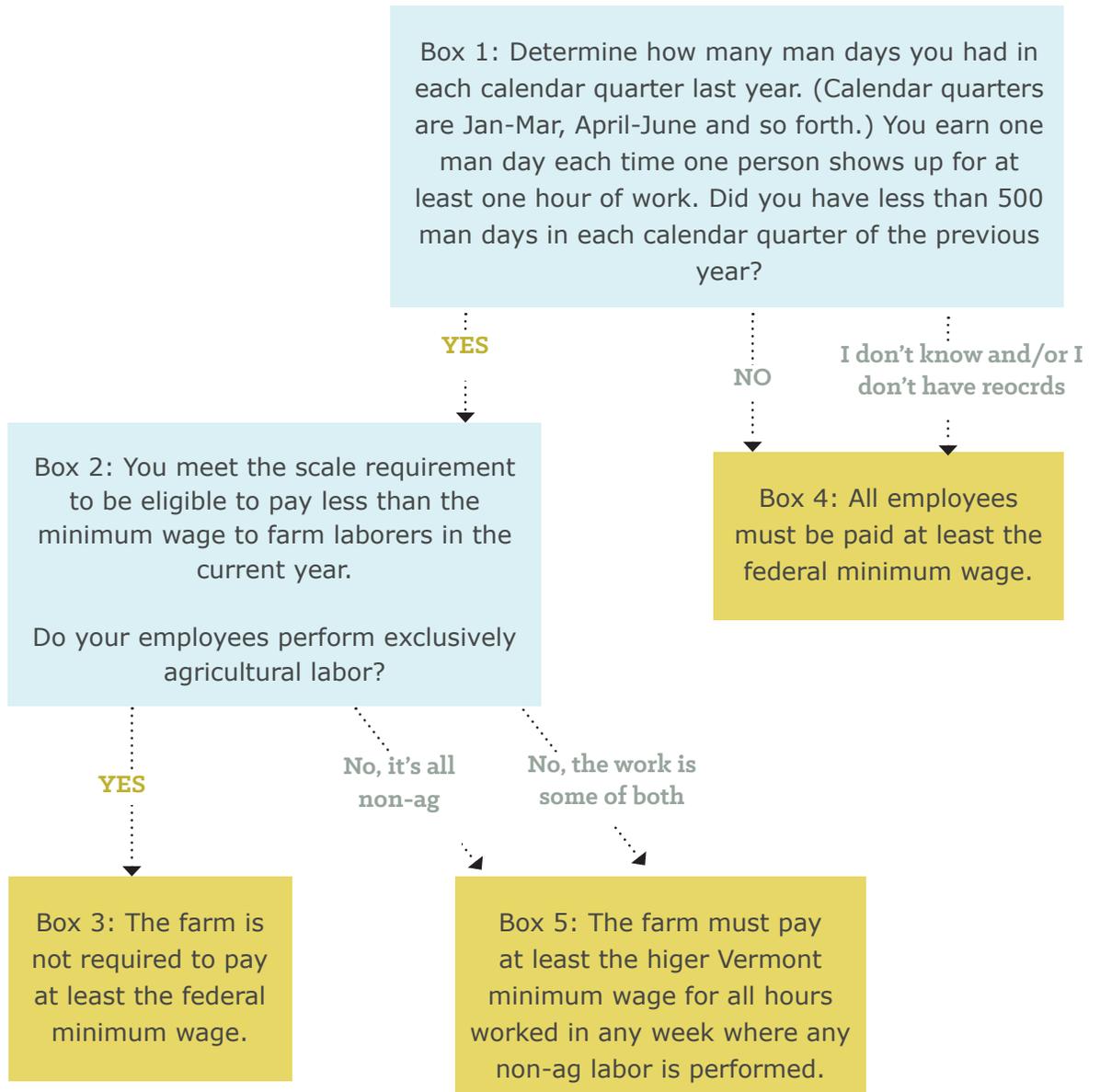
🗨️ If you plan to offer less than the minimum wage, verify your eligibility.

The Vermont minimum wage is higher than the federal minimum wage. Vermont's minimum wage is currently set at \$9.60 per hour while the federal minimum wage is currently set at \$7.25 per hour. The Vermont minimum wage generally increases each year; it will increase to \$10 on January 1, 2017.

While most businesses in Vermont must pay at least the Vermont minimum wage, both Vermont and federal law provide an agricultural labor exemption to minimum wage requirements. Vermont law exempts employees who perform farm labor from minimum wage entirely. Federal law only exempts employees who perform farm labor for farms under a certain size, which is based on a measure called "man-days." This means that, depending on their size, farm businesses may have to pay employees performing farm labor at least the federal minimum wage. Also, if a farm has employees who perform tasks that are not considered farm labor, the farm will need to pay these employees at least the Vermont minimum wage. Vermont farm businesses must pay close attention to the rules if they wish to avoid the risks of noncompliance.

Again, Vermont law entirely exempts employees who perform farm labor from the higher Vermont minimum wage. The federal minimum wage exemption is more limited. Federal law only exempts Vermont farms with 500 or fewer "man-days" of agricultural labor in each calendar quarter of the previous year. To put it another way, farms that used more than 500 man-days of agricultural labor in any calendar quarter of the last year are exempt from the higher Vermont minimum wage; however, they must pay employees at least the federal minimum wage of \$7.25. Farms that used 500 or fewer man-days in each calendar quarter of the previous year are exempt from having to pay both the Vermont and federal minimum wages.

The rule sounds complicated. What is a man-day? What is agricultural labor? These are important questions with detailed considerations. The flowchart on the following page will help farmers breakdown the rule and determine whether the federal minimum wage applies to their farms. (Please do not use the flowchart without also reading the text below as it is necessary to effectively use the flowchart.)



Box 1: Determine how many man days you had in each calendar quarter last year. (Calendar quarters are Jan-Mar, April-June and so forth.) You earn one man day each time one person shows up for at least one hour of work. Did you have less than 500 man days in each calendar quarter of the previous year?

The first step is for a farm to determine how many man-days the farm had in each calendar quarter last year. A man-day is any day on which a person does at least one hour of work. Each person who works is counted as a separate man-day. For example, if three individuals work for one hour each on the same day, the farm has three man-days. If three individuals work for eight hours each on the same day, the farm still has three man-days. As long as the person worked at least one hour in a day it is considered a man-day; it doesn't matter how long they worked.

The spouse, children, and other members of the employer's immediate family are not counted when calculating man-days. Roughly, 500 man-days equates to about five to six full-time employees, considering many farms employ workers six or seven days per week.

Now that we understand how a man-day is calculated, we need to count them. Divide the calendar January through March, April through June, July through September, and October to December. Now, determine the number of man-days in each calendar quarter. Do you have less than 500 man-days in each one? If the answer is yes, the farm is eligible for the minimum wage exemption (go to box 2). If the answer is no, the farm is not eligible for the exemption and must pay at least the minimum wage (go to box 4).

These calculations require careful record keeping. Remember that the 500-man-day rule applies to the previous year. To determine federal minimum wage obligations this year, we need to determine the farm's man-days last year. If records were not kept last year or are not detailed enough, we will have a hard time demonstrating compliance with the law. In that case, the safe choice is for the farm to act as if the federal minimum wage requirement applies (go to box 4).

Box 4: All employees must be paid at least the federal minimum wage.

Again, we arrive at Box 4 if the farm has 500 or more man-days. The farm is not eligible for the exception and must pay at least the minimum wage. In addition, if records were not kept or are not detailed enough, the safe choice is for the farm to act as if the minimum wage requirements apply.

Box 2: You meet the scale requirement to be eligible to pay less than the minimum wage to farm laborers in the current year.

Do your employees perform exclusively agricultural labor?

We arrive at box 2 because we know we are at the acceptable size—we are under the 500-man-day threshold. Thus, we know we are eligible to pay less than the federal minimum wage. Now, we have one more question to ask to determine if we can actually pay less than both the federal and Vermont minimum wages.

Both the Vermont and federal agricultural labor exemptions apply only to agricultural labor. If an employee spends any time working on something that is not deemed agricultural, neither the Vermont nor the federal minimum wage exemption applies. This means the farm must pay the employee the higher Vermont minimum wage. What's more, these exemptions do not apply with respect to all work—including agricultural labor—performed by that employee during that entire workweek. This means that if a farm employee spends even one hour of time on a non-agricultural task, the employee must be paid at least the higher Vermont minimum wage for all hours worked in that week.

Whether work is agricultural labor under the law is not always intuitive. That's because it's based on legal definitions. It is also because the definition of "agricultural" has not been litigated very much in either the courts of Vermont or

federal courts. Litigation helps clarify legal definitions. For now, we're left with a broad definition that does not account for the realities of modern and direct-to-consumer farms.

Diversified farms are sprouting up in Vermont and throughout the country. These farms typically engage in activities—such as selling at farmers' markets, making value-added products, organizing on-farm events, and so on—that fall outside the traditional scope of farming activities. Unfortunately, the legal definition of agricultural labor has not yet evolved to meet this new type of diversified farm. Without any statutes or case law for guidance, it can be challenging to draw the line between agricultural and non-agricultural labor.

Agricultural labor certainly includes growing and harvesting crops, raising livestock or poultry, and preparing unmanufactured farm products for market and delivery to market. Generally, agricultural labor includes work done on a farm in connection to farming operations. Conversely, most if not all work done off farm is likely not farm labor. For example, because sales at a farmers' market are conducted off the farm they are most likely not agricultural labor. Similarly, marketing activities such as pitching products to restaurants and grocery stores are likely not agricultural labor. In addition, some work done on a diversified farm is tangential to agricultural production, for example, making value-added products or planning and hosting agritourism or on-farm events such as dinners, weddings, and potlucks. These activities most likely do not fall within the agricultural labor definition. Aggregating and packing products from another farm, for example into a CSA box, is a gray area. Most likely, it would not be considered agricultural labor as it's really more akin to marketing and providing value to the customer, more so than agricultural production.

The safest route is to assume that off-farm and any activities that are tangential to farming, such as those just mentioned, are not agricultural labor. A farm can quickly resolve any legal risk by paying at least the minimum wage and paying overtime for any hours worked over 40 in a week to all employees. If the farm pays at least the minimum wage plus overtime, there is no need to determine if tasks are agricultural or not.

Box 5: The farm must pay at least the higher Vermont minimum wage for all hours worked in any week where any non-ag labor is performed.

If the work assigned to an employee is non-agricultural, then the higher Vermont minimum wage is owed—as neither the Vermont nor federal minimum wage exemption for agricultural labor applies.

Again, when an employee does non-agricultural labor, the employee is owed minimum wage for the entire workweek, not just for the non-agricultural hours worked. As a reminder, farms need to keep complete records to demonstrate compliance with minimum wage law. Timesheets recording the date, hours worked, and tasks performed are essential, even if no minimum wage is owed. The records are necessary to show that minimum wage is not owed.

Box 3: The farm is not required to pay at least the federal minimum wage.

If we arrive here, then the hours worked by the agricultural laborer do not fall under minimum wage laws. Where a farm is under the 500 man day threshold last year and assigns only ag labor, the farm is allowed to pay less than the minimum wage. Now, that doesn't mean no rules apply to the wage payment relationship. Of course, the farm is obligated to pay the employee whatever the farmer said the employee would be paid for the work. If a farmer promises to pay \$3 per hour and then pays the employee just \$2 per hour, the farm could certainly be sued by the employee for breaking that promise. The farmer couldn't be sued under minimum wage laws, but laws covering our mutual agreements and contracts still apply.

 *If you do not plan to provide overtime, verify your eligibility.*

Farms are exempt from paying overtime to farm employees under Vermont and federal laws, regardless of the size of the farm. However, just as with minimum wage, the exemption only applies to agricultural labor. If the employee performs non-agricultural labor, the farm must pay overtime for all hours worked over 40

in that week. If the employee performs exclusively agricultural labor in a week, no overtime is owed for hours over 40.

📄 Follow laws of payment, notice requirements, and working conditions.

Vermont's laws related to payment of wages and employment conditions apply regardless of whether a farm is exempt from minimum wage requirements. All employees must be paid weekly or twice weekly. The farm can pay employees biweekly or semimonthly only if prior written notice is given. If an employee is discharged, the farm must pay all wages owed within 72 hours. The farm must provide a wage statement each time the employee receives a paycheck, which must include gross pay, hours worked, the hourly rate, and all itemized deductions. Vermont farms must also display a poster notifying employees of the minimum wage requirements. This poster and other required posters can be found on the Vermont Department of Labor website: <http://labor.vermont.gov/>. The posters can also easily be found on the internet by searching for the agency name with the phrase "mandatory posters."

While Vermont does not require mandatory breaks, employees must be provided with reasonable opportunities to eat and use toilet facilities during the work periods.

📄 Secure a workers' compensation policy.

Vermont provides an exemption for workers' compensation for small farms. So long as the farm has less than a total of \$10,000 in payroll in a calendar year, they are not required to carry workers' compensation for employees engaged in agricultural labor. If the farm provides housing or meals to its employees as an in-kind wage, this amount must be included when calculating the gross payroll.

Like the minimum wage exemption, this exemption only applies to agricultural labor. This means that even if the farm falls below the \$10,000 payroll threshold, it must carry workers' compensation for any employee that engages in non-agricultural labor.

For farms with a payroll of \$10,000 or more, they must carry workers' compensation for all employees. This includes family members and part-time workers. Farm business owners do not have to cover themselves if the farm is a sole proprietorship or partnership. If the farm is organized as an LLC or

corporation, the LLC members or corporate officers may choose to be excluded; however, they first have to obtain approval from the Vermont Department of Labor.

Workers' compensation is purchased through private insurance companies. The cost of the policy is determined by a number of factors, including the classification of the labor performed, the frequency of injuries by workers performing that labor, and the total dollar value of the business' payroll, among other factors. For farm businesses that use only traditional employees and pay cash (not in-kind) wages, a quote is easy to come by. Farm businesses that pay wages in the form of food and lodging may have a harder time determining the value of their payroll and will need to work more closely with their insurance agents. Likewise, farms seeking coverage for interns, volunteers, and other non-traditional employees may need to work closely with their insurance agent to ensure coverage is secured for all individuals performing work for the farm. Insurance rates may vary, so farms may want to contact several different authorized carriers to compare rates.

Verify eligibility to work in the United States.

Farms may only hire individuals who are eligible to work in the United States. For employees not hired through a guest worker program, the employer satisfies the duty to verify eligibility by properly completing Form I-9. This form is available from the U.S. Citizenship and Immigration Services agency: <https://www.uscis.gov/>. It is available online and instructions are included. The form is not submitted to the agency. Rather, the employer copies the necessary documentation and keeps the form on file. The forms and documentation must be available if an enforcement agency inspects the farm.

Set up to withhold federal and state income taxes.

Farms are required to withhold a percentage of an employee's wages and remit the withheld portion to both the IRS and the Vermont Department of Taxes.

A farm must begin withholding federal and state income tax when either of the following happens: the farm pays a total of \$2,500 or more in wages to all employees OR any individual employee receives cash wages of \$150 or more per year. Most farms with an employee will have to withhold income tax. Note too that

this rule applies only for agricultural labor. Farms employing workers performing non-agriculture tasks typically must withhold state and federal income taxes once any wages are paid.

To begin the federal income tax withholding process, the farm needs a completed IRS Form W-4 from the employee. This form allows employees to choose the number of withholding exemptions. Form W-4 is not sent into an agency; it remains in the farm's files. The farm then uses the tax tables in IRS Publication 15 (Employer's Tax Guide) to determine withholding per paycheck based on the individual's pay, exemptions, and payment frequency. The Form W-4 and the Employer's Tax Guide can be downloaded from the IRS website: <https://www.irs.gov/>. The farm must record the amount withheld and remit it to the IRS. The due date is dependent on the total tax owed. For most farms, the tax must be deposited monthly. The IRS uses an online system, the Electronic Federal Tax Payment System (EFTPS). Deposits must be made electronically. Farms must register with the EFTPS system ahead of time as it can take a few days to receive the passwords. Registration can be completed at <https://www.eftps.gov/eftps/>.

To begin the Vermont income tax withholding process, the farm needs a completed Form W-4VT from the employee, which mirrors the IRS Form W-4. The farm then uses the tax tables available on the Vermont Department of Taxes' website: <http://tax.vermont.gov/>. The amount is computed in the same manner as the federal tax. The farm must record the amount withheld and remit it to the Vermont Department of Taxes. Farms must first register for a withholding account. This can be done online at <http://mytax.vermont.gov>, or by using Form BR-400. The department will determine the filing frequency based on the annual withholding totals. The returns may be filed and taxes remitted either online or using paper forms and sending in a check.

 Set up to withhold federal social security and Medicare contributions from employee's wages.

Most farms are required to withhold social security and Medicare taxes from workers' paychecks. The same rules apply as for withholding federal income tax: The obligation begins when the farm's total payroll for employees exceeds \$2,500 or an individual's wages exceed \$150 per year. Where the amount of income tax to withhold is determined by using the IRS's tables, social security and Medicare

taxes are calculated as percentages of the employee's wages for that pay period. The most recent percentages will be listed in IRS Publication 51 (Agricultural Employer's Tax Guide). Currently, 6.2% of wages are withheld for social security and 1.45% for Medicare. Each time the employee receives a paycheck, a portion of the social security and Medicare taxes are withheld. This is then remitted to the IRS through the same EFTPS process used for remitting withheld income taxes.

☞ *Arrange to pay the farm's contribution to the employee's federal social security and Medicare account.*

In the checklist item above, we explained that a portion of social security and Medicare taxes owed by the employee must be withheld from the employee's paycheck. In this checklist item, we are discussing the social security and Medicare taxes owed by the employer. These are two different taxes—the employee is taxed and the employer is taxed. The employee's tax is deducted from wages. The employer's tax is paid by the employer, and may not be deducted from wages. The taxes go to the same agency for the same ultimate purpose, but are separate.

The farm is taxed at the same threshold where the employee must be taxed. (See the \$2,500 or \$150 rule above.) Currently, the farm is taxed at the same rate as the employee, although this may change. Currently, 6.2% of wages are withheld for social security and 1.45% for Medicare. The most recent percentages will be listed in IRS Publication 51 (Agricultural Employer's Tax Guide).

Although the employee's and employer's shares of the social security and Medicare taxes are technically separate, they are deposited at the same time through the IRS's EFTPS process.

Farms who work with a payroll service provider can escape the details of withholding and remitting taxes. Payroll service providers help employers determine which taxes are owed and assist in coordinating payment of the taxes. Farmers who can afford a payroll service may find it well worth the money.

☞ *Arrange to pay federal and state unemployment tax, if required.*

Unemployment tax is paid by the farm and is not deducted from an employee's wages. This tax contributes to a compensation fund available to individuals who have become unemployed. Most employers are required to pay unemployment tax

immediately; however, farms are exempt until the operation reaches a certain size. Vermont and the federal government follow the same rules for farms. When a farm owes unemployment tax to the federal government, the farm will also owe it to the state.

The farm must begin paying federal and state unemployment taxes when either of the following happens: (1) the farm pays wages of \$20,000 or more to farmworkers during any calendar quarter of the previous two years; OR (2) the farm employed 10 or more workers for any part of a day (even if not at the same time during the day) during any 20 or more weeks in the last year, or in the year before that. After a farm crosses either threshold, the farm must begin paying into federal and state unemployment compensation funds.

The farm will pay federal unemployment tax on up to \$7,000 of each employee's wages. The tax is determined by percentage; the latest percentage is listed in IRS Publication 51. Federal unemployment tax is paid through the same EFTPS procedures as income withholding and social security/Medicare taxes.

Vermont unemployment tax is owed on up to \$16,800 of each employee's wages. Just as for the federal tax, the state unemployment tax rate is determined by percentage. The current state rate is available by contacting the Vermont Department of Labor office. Payments are made by filing Quarterly Wage and Contribution reports with the Vermont Department of Labor: <http://labor.vermont.gov/unemployment-insurance>.

Like the minimum wage, overtime, and workers' compensation exemptions, the rule above is for farm businesses assigning agricultural labor to their employees. For non-farm enterprises (which may include diversified farms engaging in separate, non-agricultural enterprises such as packing other farmers' produce, hosting on-farm events and agritourism, and so on as discussed in the minimum wage section), farmers may need to follow the regular unemployment tax rules.

For non-farm businesses in Vermont, both federal and state unemployment taxes are owed when either of the following happens: (1) the business has one or more employees during some portion of a day in 20 different calendar weeks in either the current or prior year (whether consecutive weeks or not); OR (2) the business paid out \$1,500 or more in gross wages during any calendar quarter of the current or previous year.

Conclusion

This checklist illustrates selected, immediate paperwork responsibilities of the farmer at the time of hiring. It also reveals that the farmer's responsibilities don't stop there—the law requires ongoing record keeping, withholding, remitting, and payment responsibilities. If a farm creates a clear, consistent system for hiring, tracking payroll, and calculating taxes, employment paperwork burdens can be minimized. For farmers who don't enjoy creating these procedures and can afford modest fees, accountants and payroll service providers will be happy to handle this aspect of hiring. To find a local service provider, ask other farmers if they have a recommendation.

This resource guides farmers in the initial steps necessary to hire an employee; it does not discuss many other tax aspects of hiring. For example, employers must keep certain records and must provide specific documentation to employees at the end of the year. Payroll service providers and Small Business Administration offices can help, and the IRS provides information in many publications. Farmers may want to read IRS Publication 51: Agricultural Employer's Tax Guide, Publication 15-B: Employer's Tax Guide to Fringe Benefits, and Publication 225: Farmer's Tax Guide.

This guide is part of a series of guides provided by Farm Commons on Vermont employment law:

[Hiring a Farm Employee in Vermont: Tax and Paperwork Checklist](#)

[Classifying Workers on Vermont Farms: Are they Independent Contractors, Interns, Volunteers, or Employees?](#)

[Managing Risks of Farm Interns and Volunteers in Vermont](#)

Be sure to check out these and many more resources on employment law and other legal issues that are relevant to sustainable farmers. All of Farm Commons' resources are available for free download at www.farmcommons.org.

The following are some additional recommended resources on employment law for Vermont farmers:

[Vermont Farm Worker Wage, Hour and Housing Fact Sheet](#)

Provided by the VT Agency of Agriculture Food and Markets

[FAQ: Labor Regulations for Farmers](#)

Provided by the Northeast Organic Farming Association of Vermont

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RACHEL
REPONDS

Was this resource not quite what you were looking for? Do you still have more questions? Send them to Farm Commons and we will do our best to feature an answer in our blog. Read the most recent questions and answers in our “Rachel Responds” column.