

Vermont Farm Worker Wage, Hour and Housing Fact Sheet



Information provided through the collaborative effort of these organizations:

**Green Mountain Dairy Farmers
Migrant Justice
Northeast Organic Farmers Association- Vermont
Vermont Agency of Agriculture, Food & Markets
Vermont Department of Labor
Vermont Department of Health
Vermont Department of Housing and Community Development
Vermont Division of Fire Safety
University of Vermont Extension Service**

Farm Worker Housing – What is required?

If you are providing housing on your farm to your workers (interns, domestic or migrant), housing must meet the Rental Housing Health Code.

The Rental Housing Health Code defines a “dwelling” as “a rented building or structure which is wholly or partly used or intended to be used as a primary residence for living or sleeping by human inhabitants. This includes rented mobile homes and ‘housing provided as a benefit of farm employment’ as defined in 9 VSA § 4469 (a)(3).” Below is an excerpt from this code to provide general knowledge. The full Rental Housing Health Code and the inspection form can be found at <http://healthvermont.gov/local/tho/tho.aspx>. For detailed life safety code requirements or special assistance in code enforcement, the Division of Fire Safety can be contacted. <http://firesafety.vermont.gov>

1. Life Safety

- At least 200 ft² of habitable space per person
- No more than 2 people per bedroom if unit is on a septic system
- Working smoke alarms (photoelectric type) on every floor and carbon monoxide detectors
- At least two different exits from the building that are not blocked
- Each bedroom has a working window with a bottom sash opening & height to allow for rescue & ventilation. A minimum of 5 square feet is needed.
- A working fire extinguisher must be provided

2. Kitchen Space

- Kitchen sink and space to store and prepare food
- Counters and floors made of nonabsorbent material (tile, concrete, sealed wood, etc.)

3. Bathrooms

- At least 1 bathroom that has a working sink, toilet, and shower or bathtub per every 10 people
- Bathroom is separate from other habitable space in the unit and affords privacy
- Counters and floors made of nonabsorbent material (tile, concrete, sealed wood, etc.)

4. Water

- Clean, potable water supplied at all times
- Private well water must meet Vermont Department of Health’s Drinking Water Guidance
- Water at sinks, showers, & bathtubs must be able to reach 100° F (37° C) but no more than 120°F (48°C) at the faucet
- Wastewater system (septic system) functions properly

5. Garbage Removal

- Watertight, outdoor garbage container with fitted lid
- Garbage removed from inside unit at least once a week
- Arrangements made for removal of garbage (trash pick-up, or taken to local dump site)

6. Pests (Insects & Rodents)

- Free from infestation of insects (cockroaches, ants, moths, spiders, bedbugs, etc.)
- Free from infestation of rodents (rats, mice) and other vermin/pests (bats, pigeons, squirrels, etc.)

7. Heating

- Heat provided when outside temperature is less than 55° F (13° C)
- Heating system able to maintain temperature in all habitable space at minimum of 65° F (18°) without overheating portions of the unit
- All fuel-fired heating systems properly vented to the outside of the building
- Heating system must be serviced at least every two years by a qualified technician

8. Ventilation

- All habitable rooms have at least 1 functioning window with screens – 20 X 24 inches in size minimum & not more than 44 inches above the floor.
- Bathrooms have either mechanical vent or functioning window with screen
- Clothes dryers (when provided) properly vented to the outside of the building

9. Lighting & Electricity

- Each habitable room has at least 2 electrical outlets OR 1 electrical outlet & 1 permanent light fixture
- All electrical systems are working
- Unit entrance has adequate and safe lighting
- Electrical outlets in kitchens and bathrooms are Ground Fault Circuit Interrupter (GFCI) protected

10. Structure

- Foundation, floors, walls, doors, windows, ceilings, roof, staircases, chimney & structural elements are maintained to be weather/water tight, rodent proof, and in good repair
- No standing water or excessive moisture that may cause mold growth
- Compliance with VT Lead Law for pre-1978 units – some towns may require pre-1980 units

Other Best Practices:

- Farm owners should monitor housing for proper maintenance, cleanliness & safety on a regular basis. A checklist is useful. <http://www.uvm.edu/extension/agriculture/faccp/?Page=housing.html&SM=faccpmenu.html> Include employee housing maintenance expectations as part of employee orientation & provide refreshers to current employees.
- When there is a change in farm labor, farm owners should clean the property prior to the next occupant.
- Farm workers often do not have the means or the time to properly clean & maintain a property. Invest in your property by providing a basic weekly cleaning/housekeeping service & stay on top of any minor repairs before they become larger issues. Or consider paying or providing an incentive for farm labor to clean & maintain property.
- Keep worker housing a safe distance from any manure, fuel, chemical fertilizer, cleaning chemicals or animal health product storage.
- Provide laundry facilities either in the housing unit or at a central location on the farm.
- Any newly constructed housing should be at least 100 feet from livestock housing.
- Integrated Pest Management (IPM) should be used to deal with common pests like bedbugs and cockroaches, which have become a common pest in many farm worker housing units.
- Pay extra attention to ventilation & egresses when structure is a 'Barn Apartment'
- Give proper notice prior to entering farm labor housing. Respect farm workers' privacy.
- Visitors to farmworker housing have the right to visit occupants in the housing units without interference from employer. Housing occupants should discuss pest management issues with all visitors.

AGRICULTURAL EMPLOYEES & VERMONT'S MINIMUM WAGE, OVERTIME, & LANDLORD - TENANT LAWS

This brochure is intended to provide basic overview of labor law as it pertains to agricultural employment in Vermont. It should not be construed as legal advice. Inquires about specific issues should be addresses to the labor or employment attorney of your choice, or to the VT Department of Labor or the US Department of Labor.

1. Landlord/Tenant Law:

9 V.S.A. Chapter 137 contains the law regarding landlord and tenant relationships.

- **Agricultural employers who provide housing to their employees may be entitled to an expedited eviction process under certain conditions.**
- **In order to qualify for the expedited eviction process the employer cannot charge the employee rent or require a security deposit. In exchange, the employer can evict the employee immediately when the employee's employment is terminated.**
- **If the employer chooses to charge rent or require a security deposit, the employer cannot evict the employee without giving him or her notice.**

The other provisions of Chapter 137 do apply to agricultural employees living in employer provided housing. These include the employer's obligation to provide habitable premises and protection against retaliation.

Permissible Deductions:

An employer **may deduct from wages an allowance for meals and lodging** actually furnished. This deduction would be considered rent and prohibit the employer from the expedited eviction process.

The meals and lodging deduction **shall not** exceed the amount specified in the Vermont Minimum Wage Rules.

Effective January 01, 2015, the following rates will apply for permissible deductions:

- Nightly Lodging: \$4.11 daily.
- Full Room: \$24.71 weekly.
- Full Room and Board: \$85.36 per week.

After July 1, 2015, please check the Vermont Department of Labor web site for updated rates.

2. Fair Labor Standards Act:

Definition of "agriculture" in the Federal Fair Labor Standards Act:

"Agriculture includes farming in all its branches, the cultivation & tilling of the soil, dairying, the production, cultivation, growing, & harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, & any practices performed by a farmer or on a farm as incident or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market."

Individuals employed in agriculture are exempt from Vermont's minimum wage & overtime laws pursuant to 21 V.S.A. § 383.

Agricultural employees may be covered by the Fair Labor Standards Act & entitled to the Federal minimum wage if they are employed by a farm that used 500 or more “man days” of agricultural labor during any calendar quarter in the previous calendar year.

A “man day” means any employee performing at least one hour of work during a day. 500 “man days” is roughly equivalent to 7-8 employees working full-time in a calendar quarter. However, this is an estimate. The number of employees may be greater or less than 7-8, based on the days worked by each employee, each week. Therefore, an agricultural employee may be exempt from the Vermont minimum wage but may be entitled to the Federal minimum wage. The U.S. Government, through the Fair Labor Standards Act (FLSA), sets minimum requirements for the payment of wages & overtime. The Federal minimum wage is currently \$7.25 as of 01/01/2015. In cases where State law exempts certain types of employees from the State minimum wage, FLSA will act as a “floor” or “safety net” ensuring that employees receive at least the federal minimum wage of \$7.25.

Courts have held that the following activities are not “agriculture” for purposes of the exemption under FLSA:

- Mechanics performing maintenance on farm equipment.
- Employees who delivered and disposed of dairy products.
- Employees who processed fruits and vegetables from their natural state.
- **Value –Added processing on a farm. These activities may not be considered “agriculture” for purposes of exemptions.** Employers should be aware that an employee engaging in manufacturing or processing of agricultural products may not be considered an agricultural employee & thus, may likely be entitled to overtime or the potentially higher minimum wage provided by Vermont law. Please contact the Department of Labor’s Wage & Hour Division at **802-828-0267** with any questions.

Based on recent legislation, Vermont’s minimum wage will be as follows:

- Effective January 01, 2015: \$9.15 per hour
- Effective January 01, 2016: \$9.60 per hour
- Effective January 01, 2017: \$10.00 per hour
- Effective January 01, 2018: \$10.50 per hour

Vermont’s statutes regarding employment conditions & payment of wages do apply to agricultural employees.

3. Workers’ Compensation and Safety:

Vermont’s workers’ compensation law covers employees working for agricultural employers that have an aggregate payroll greater than \$10,000 in a calendar year. Value of housing is included in aggregate payroll.

Employers must report all workplace injuries to the Department of Labor within 72 hours. Any questions regarding Workers’ Compensation can be addressed by calling **802-828-2286**

Employers must provide employees with reasonable opportunities to eat and use toilet facilities during the work periods.

4. Payment of Wages:

Agricultural Employees are required to be paid weekly or bi-weekly pursuant to 21 V.S.A. §342, and are required to be paid within 72 hours if discharged.

Weekly payment of wages:

(1) Any employer having one or more employees doing & transacting business within the State shall pay each week, in lawful money or checks, the wages earned by each employee to a day not more than six days prior to the date of such payment.

(2) After giving written notice to the employee or employees, any employer having an employee or employees doing & transacting business within the State may, notwithstanding subdivision (1) of this subsection, pay biweekly or semimonthly in lawful money or checks each employee the wages earned by the employee to a day not more than six days prior to the date of the payment. If a collective bargaining agreement so provides, the payment may be made to a day not more than 13 days prior to the date of payment.

Vermont's minimum wage rules require that an employer deliver a **wage statement** to each employee at the time he or she receives their paycheck. The statement is required to set forth the employee's gross pay, hours worked, hourly rate, & all itemized deductions.

An employer may not withhold wages as a security deposit or as a means to ensure that workers give two weeks' notice. See Section 1.

It is a **criminal act to withhold, destroy or confiscate any actual or purported passport, immigration document, or any other government identification document from another person** (worker). Title 13 §2651(2)(d).

Protective Clothing:

An employer may neither deduct from an employee's wages, nor require an employee to pay, any amount for personal protective equipment required by occupational safety & health regulations, except as allowed by sections 1910.132(h) & 1926.95(d) of Title 29 of the Code of Federal Regulations.

Payment for protective equipment. – Section 1910.132(h)(1 – 5)

- 1) Except as provided by paragraphs (h)(2) through (h)(6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.
- 2) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) & non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.
- 3) When the employer provides metatarsal guards & allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.
- 4) The employer is not required to pay for:
 - i. The logging boots required by 29 CFR 1910.266(d)(1)(v);
 - ii. Everyday clothing, such as long-sleeve shirts, long pants, street shoes, & normal work boots;
 - iii. Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, & sunscreen.
- 5) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

5. Family Medical Leave Act (FMLA) & VT Parent & Family Leave Act (PFLA):

- Employees are eligible for FMLA if they have worked for a covered employer for at least 12 months, have 1,250 hours of service in the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.
- Vermont also has its own parental & family leave act that may cover some employees who would not be eligible for FMLA. Under Vermont law, all employers who employ ten or more persons (15 or more for family leave) for an average of at least 30 hours per week per year must offer eligible employees parental leave.
- In Vermont, employees who have worked an average of 30 hours per week and have been employed at the company for at least 12 months are eligible for parental leave.

If you have questions about FMLA please call the **Attorney General's Civil Rights Unit. (888) 745-9195.**

6. Salaried employees:

The Fair Labor Standards Act excludes from minimum wage and overtime coverage salaried employees engaged in a "bona fide executive, administrative, or professional capacity."

Employees engaged in manual labor are not exempt and should not be paid on a salaried basis.

7. Interns:

A private "for-profit" employer may use unpaid interns if all of the following criteria are met:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under the supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern, & on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer & the intern understand that the intern is not entitled to wages for the time spent in the internship.

If the employer cannot show that the internship meets all of these criteria, then the intern must be paid wages.

8. Apprenticeships:

Questions about apprenticeships should be directed to the Apprenticeship office at the Vermont Department of Labor. 1-802-828-5250.

9. Volunteers:

Generally, an individual can only volunteer for public agencies such as a state government, or a non-profit corporation. An individual that volunteers for a for-profit businesses must be paid the applicable minimum wage.

10. Retaliation Protections:

It is unlawful for any employer to fire, demote, or otherwise discriminate against any employee who files a complaint with the Vermont Department of Labor or the United States Department of Labor.

It is unlawful for an employer to discriminate against an employee based on the employee's race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, or physical or mental condition.

Complaints of discrimination may be made to the Attorney General's Civil Rights Unit. (888) 745-9195.

Additional Practices for Worker Recruitment and Retention

- Consider higher wages based on experience, performance & years of service.
- Consider additional days off per week for excellent work. Potential for paid vacation days & paid sick days.
- Hold weekly or bi-weekly meetings with employees to review work schedules, take suggestions, & discuss safety measures & plan for upcoming events. Provide interpreter if needed.
- Provide clear job descriptions to employees including maintenance of housing – in native language if needed.
- Provide opportunities for employee job training & growth.
- Work schedule should be such that 8 hours is available for adequate rest between shifts.

CONTACT INFORMATION:

The agricultural provisions of the Fair Labor Standards Act are enforced by the United States Department of Labor.

- **U.S. Department of Labor Wage & Hour Division toll-free help line:**
- **1-866-4-USWAGE (487-9243)**
- **For information on the H2A program, please contact a lawyer, an employment agent or the Vermont Department of Labor.**

Additional Resources:

State of Vermont Offices are open between 7:45 a.m. and 4:30 p.m.

Vermont Department of Labor -Language Line will be accessed on this number	<u>802-828-4301</u>
Wage and Hour	802-828-0267
Worker's Compensation	802-828-2286
VOSHA	802-828-2765
Foreign Labor Certification/ Migrant Seasonal Farmworker	802-828-3920
Vermont Department of Health	802-951-0107
Vermont Agency of Agriculture, Food and Markets	802-828-1619
Vermont Division of Fire Safety	800-640-2106
UVM Extension, Migrant Education Program	802-223-2389 x208
Migrant Justice	802-658-6770

For Housing Concerns, please contact the Local Town Health Officer