

Labor Regulations & Record Keeping for Fruit Farm Businesses:

A brief overview of regulations growers commonly overlook

Alison M. De Marree
Cornell Cooperative Extension
Lake Ontario Fruit Program
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Why Keep Records?

- **Required by law and government agency regulations**
- To PROTECT your business against government agency audits (non-compliance fines) and lawsuits.
- To increase profits, efficiencies, return on investment by monitoring labor use and expense as related to the income generated by various enterprises.
- To evaluate progress by comparing set standards from one year to the next

Forms To Use When Hiring / Rehiring

1. **I-9 Form** – when hired or rehired after break in employment
2. **Farm Work Agreement / H-2A Work Order-** when recruited, hired , rehired or when anything changes (rate of pay, change in benefits, etc.)
3. **Form W – 4** (2013)
Employee's Withholding Allowance Certificate
4. **Form IT-2104** (2013)
Employee's Withholding Allowance Certificate
5. **Forms LS 309 or 309 S** (6/13) (English, Spanish or other language)
Notice & Acknowledgement of Wage Rate & Designated Payday
when hired & on or before **February 1st annually.**

Must be in the employees native language & employee signed copies in your files for 6 years, as well as giving copy to employee

Federal Labor Regulations: To Whom Do They Apply?

Farms with 500 Man Days in Previous Year Calendar Quarter

		# of	# of	MAN
Week	2009	workers	Days	DAYS
1	7/3/09	5	5	25
2	7/10/09	5	5	25
3	7/17/09	5	5	25
4	7/24/09	5	5	25
5	7/31/09	5	5	25
6	8/7/09	5	5	25
7	8/14/09	7	6	42
8	8/21/09	7	6	42
9	8/28/09	7	6	42
10	9/4/09	8	6	48
11	9/11/09	10	6	60
12	9/18/09	10	6	60
13	9/25/09	10	6	60
				504

Highlights of Applicable Federal Regulations

- **Migrant and Seasonal Worker Protection Act**
 - Housing statement
 - Work conditions / agreement when recruiting
 - Wage statement: weekly hours & weekly summary of piecework & rates
 - Records: daily hours & daily piecework with rates
 - Inspection of vehicles transporting workers
 - Housing inspection even if only ONE migrant / worker (USDOL inspection)
- **OSHA Field Sanitation Standards**
 - Potable water - enough for each worker
 - field toilets (2 if 20 or more workers)
- **Fair Labor Standards Act** (if sending fruit out of state or if handling fruit other than your own)
 - **record daily start and end times for each employee – keep 2 years**
 - employee's permanent address must be on pay statement

Non-Agricultural (941) Employees

- – They are subject to overtime after 40 hours
- Employees who work in the following areas:
U-Pick,
farm market ,
storage / packinghouse employees who handle another
growers produce.
- If hiring school age children under 18– be aware of
child labor laws, hours of work (both per day & week)
& types of work are restricted.
- Keep separate record of hours worked for farm vs
non-farm jobs (for workers comp purposes)

Be Aware of Child Labor Laws!

- 12 & 13 year olds restricted to hand harvest of fruits & vegetables 4 hours or less per day 7 am to 7pm 6/21 – Labor Day, 9am – 4pm day after Labor Day until 6/20
- Keep copy of working papers in your file
- Parent's signature needed on some forms
- 14–15 years old need tractor/equipment operating certificate & also need working papers
- Be aware of “Hazardous jobs” those under 16 are NOT allowed to do
- Be aware of Workers Comp Law – your account could be paying for person's lifetime if injury causes percent loss of full use / range of motion

H-2A Temporary Labor

- Adverse effect wage rate for all employees doing the same work - \$10.91 per hour in 2013 for WNY
- Must apply for work order certification 60 days before date of need & complete I-129 USCIS form when approved by USDOL
- Must keep records of US citizens applying for jobs, letter to applicant stating reason not hired & complete two (2) signed reports (last one ½ way thru work order - keep in your files until requested) for USDOL
- Must notify NYSDOL within 2 days of a domestic employee quitting or being fired so that employee can be interviewed.

H-2A Continued

- Must provide housing, transportation & reimburse travel & subsistence while travelling to & from work site from permanent address
- Must keep track of hours offered to each employee & include this on their pay statement (in addition to summary of hours worked, piecework rates & amounts)
- Daily records of hours worked by the piece & hour, rates paid, description piecework completed (bins, volume, etc.) Includes recording daily starting & ending time if your farm falls under the Fair Labor Standards Act (if you sell fruit to out of state buyers)

NYS Regulations that Apply

- **NYS Minimum Wage Order**
 - Wage statements, daily records: pieces, rates, hours worked
- **Portable Toilets & Potable Water in Field**
- **Grower Registration: Bringing in 5 or More Workers**
- **Grower Registration if Using Crew Leader**
- **Dept of Health Inspection of Farmworker Housing (5 or more workers) or US DOL for 1 migrant worker**
- **Child Labor Laws**
- **Organic Growers: Unpaid Interns are usually illegal in NYS! (unless intern has an education plan & receiving college credits – usually monitored by faculty member).**

NYS Posters Required By Law

LS-110 (11-90) FARM	Summary of Minimum Wage Order for Farm Workers
LS-309(S) (1-86)	Your Farm Work Agreement with Wage Ranges
IA 133 (4-03)	Unemployment Insurance Notice to Employees
LS-113.1 (3-04)	Farm Labor Contractor Registration/Labor Camp Commissary Permit
LS-113 (2-04)	Grower Certificate of Migrant Registration
DOH-1320(9/91)	NYSDOH Permit to Operate a Labor Camp
No number	Prohibiting sexual orientation or military status discrimination
2706	The Right To Know Poster (health effects/hazards of workplace toxins)
C-105(10-97)	Notice of Compliance to Workers Comp Law
64-1637(2/98)	

Federal Posters Required By Law

- EEOC-P/E-1 (Revised 9/02) Equal Employment Opportunity is the Law
- WH Pub. 1462 Sept 1988 Employee Polygraph Protection Act
- WH Pub. 1386 Ag Employee Rights Under the Fair Labor Standards Act
Revised 7/98
- OSHA 3165 Employee Right to A Safe & Healthful Workplace
- WH-516 Rev 5/96 MSPA Worker Info -Terms & Conditions of Employment in language employee can understand
- OMB #1215-0146 Housing Terms & Conditions
- OSHA No. 200 OSHA's Form 300A Listing Injuries & Accidents
- WH Pub 1376 Rev 4/83 Migrant & Seasonal Agricultural Worker Protection Act Notice
- WHD 1491 Feb 2010 Employee Rights Under the H-2A Program

State & Federal Posters Available for Purchase

- Ag Affiliates has 2 giant posters (one covering NYS laws, the other covering Federal Laws) for sale
- include most of the posters required by law for:
\$29.50- \$39.40 if you are a member or
\$39.50-\$49.50 each if you are not a member.

Contact Paul Baker to order at 716-807-6827 or
fax 616-219-4089 or email at pbaker.ag@roadrunner.com

Excel Spreadsheet: Daily/Weekly Piecework Records

Farm Name:																	
9/9/10			Hours	Piece	Picking by the piece						bin \$10.00	9/9/10	Earnings	Total # of bins			
Thurs	Emp	Hrly	Paid	Hours	bin	bin	bin	bin	bin	bin		Thurs	per				
Name	#	Employees	by Hr	Worked	\$22.00	\$20.00	\$18.00	\$15.00	\$12.00	\$10.00		Totals	hour				
Crew #1			block number >									\$					
	1											0.00	#DIV/0!	0.00			
	2											0.00	#DIV/0!	0.00			
	3											0.00	#DIV/0!	0.00			
	4											0.00	#DIV/0!	0.00			
	5											0.00	#DIV/0!	0.00			
	6											0.00	#DIV/0!	0.00			
	7											0.00	#DIV/0!	0.00			
	8											0.00	#DIV/0!	0.00			
	9											0.00	#DIV/0!	0.00			
	10											0.00	#DIV/0!	0.00			
	11											0.00	#DIV/0!	0.00			
	12											0.00	#DIV/0!	0.00			
	13											0.00	#DIV/0!	0.00			
	14											0.00	#DIV/0!	0.00			
	15											0.00	#DIV/0!	0.00			

Another Daily Field Record Example

[illegible]

Excel Spreadsheet: Wage Statements

1														
Tremendous Tree Fruit Farm					2012 Seasonal Worker Pay Statement					Fed. Emp ID #			16-0000001	
1234 Hard Knock Road, Sodus, NY 14551					Employee Permanent Address: Example: 1234 Straight Road, Cowpen P.O. Cowpen District, St. Peter, Jamaica									
Name														
Harry Pickler														
S.S. # XXX- XX- XXXX														
Number					Hours offered >									
123456					Hours worked >									
					Hourly work >									
					Earnings for hours paid by the hour >									
					Description of piece work unit: volume/size									
Fresh Fruit Rate 1 >					20 - 1 1/8 bushel bin > 513.00									
Fresh Fruit Rate 2 >					20 - 1 1/8 bushel bin > 0.00									
Fresh Fruit Rate 3 >					20 - 1 1/8 bushel bin > 0.00									
Fresh Fruit Rate 4 >					20 - 1 1/8 bushel bin > 0.00									
Fresh Fruit Rate 5 >					20 - 1 1/8 bushel bin > 0.00									
Process Fruit Rate 1 >					20 - 1 1/8 bushel bin > 62.50									
Process Fruit Rate 2 >					20 - 1 1/8 bushel bin > 0.00									
Process Fruit Rate 3 >					20 - 1 1/8 bushel bin > 0.00									
Picked Juice					20 - 1 1/8 bushel bin > 0.00									
Drops / Juice >					20 - 1 1/8 bushel bin > 0.00									
AM Start Time >					Adjustment for Adverse Effect Rate if necessary >									
AM Start Time >					per hour > \$14.23 Gross Pay >									
PM Start Time >					0 @ 0.000%									
PM End Time >					Soc Sec @ 0.000%									
					Health Ins. @ \$0.00 /wk									
					Withheld at Worker's Request Fed Inc Tax									
					State Inc Tax									
					Total Deductions									
					Net Earnings									
Picker Number >					1 Harry Pickler									

Electronic Records

- Use of spreadsheets & smart phones
- Summarizing daily records on spreadsheets
- Back Ups!
- Hard Copies in Files

Food Safety: Traceability Records

Truck Driver: Record <u>ALL</u> bins of apples trucked				F=Fresh	Temporary Storage or Holding			Final Destination	Weigh	
Block # or name	No. of Bins	Variety	Date	P=Process J=Juice	Bldg #1	Bldg #2	Pick-up Area	name of processor, packer or comm strg.	ticket number	Inspected? Y or N

Bin Tickets: Yields by Block, Picker, Variety

Farm Name Here				
Farm Address Here				
Picker No. _____		Orchard No. _____		
Date: _____		Variety/Strain _____		
FRESH		PEELER		JUICE
GingerGold	AutumnCrisp	Honeycrisp	McIntosh	Gala
Cortland	Acey Mac	Macoun	Golden	CrimsonCrisp
20 Oz	RI Greening	Empire	Red Delicious	N. Spy
Ben Davis	Fortune	Jonagold	Crispin	L. Rome
Idared	Rome	Cameo	Fuji	Braeburn
Inspector # 1 2 3		Bin: W P 20 22 ____		

For More Information:

- Please contact Alison DeMarree
- amd15@cornell.edu – be sure to note the nature of your request in the subject line
- Our website: www.fruit.cornell.edu/lof/ has many forms under the business & labor management section