

# Labor Law and Management Tipsheets

## Farm Apprenticeships



An apprenticeship or internship is a model whereby people work on a farm for the summer in exchange for the opportunity to learn about running a farm, a stipend, and sometimes housing or meals. There is a lot of misinformation about the legality of these arrangements, so while this tipsheet should not be taken as complete legal advice, it will hopefully be of use to farmers interested in setting up an apprenticeship.

In the context of this tipsheet, “apprenticeship” and “internship” refer interchangeably to the arrangement described above. Some farms use those terms to describe their employees, but pay and provide benefits in accordance with the standard state and federal labor laws, in which case the content of this tipsheet is not relevant.

### Apprenticeship and Internship Definitions:

The US Department of Labor has specific definitions of both internships and apprenticeships. There is a federal Office of Apprenticeship in the US Department of Labor that regulates and registers apprenticeship programs, and the bar for having a registered apprenticeship is quite high. The US Department of Labor defines an internship as unpaid academic or vocational training that is primarily for the benefit of the intern, does not displace regular employees, does not guarantee a job to the intern when the internship ends, and is of no immediate advantage to the employer.

Therefore, most farm employment arrangements that are called apprenticeships or internships would not, in fact, be considered as such by state or federal regulators. Any arrangement that does not follow standard labor laws because the employer has self-defined it as an internship or apprenticeship is technically illegal. The people working under those circumstances would be considered employees whose rights are being violated, even if they have willingly entered into the working relationship.

In the eyes of the state and federal government, you are an employer if you have people working on

your farm. The question is not whether you are an employer and the people working for you are your employees or apprentices, but whether your employment practices are legal or illegal.

### Requirements of Employers:

#### Wages:

If a person is doing work on your farm, even if they are willing to accept a rate of pay below minimum wage in exchange for the learning experience, the law requires that they be paid the Massachusetts minimum wage, which is currently \$8/hour. Even volunteering or “work-shares” are not condoned on for-profit farms. Stipends that work out to less than the minimum wage are in violation of state Wage and Hour Laws and federal labor laws.



Massachusetts has an exemption for agricultural work. If an employee is doing work that can be clearly classified as agricultural in nature (field work), then it may be acceptable to pay them as little as \$1.60 per hour. This exemption does not apply to workers doing retail work (including deliveries, working a farmers’ market stand, or staffing a CSA distribution) or office work – only to workers engaged in strictly agricultural work.

The exemption requires that the employer be exempt from the federal Fair Labor Standards Act (FLSA) and the Migrant and Seasonal Agricultural Workers Protection Act (MSPA). If your farm clocks fewer than 500 “man days” in every calendar quarter of the previous year, you may be exempt. A “man day” is any day where an employee who is not in the immediate family of the farm owner reports for work for an hour or more. So if you have five employees working six days a week, that counts as 30 man days per week. If you have five employees working one hour per day, six days a week, that also counts as 30 man days per week. Man days are counted per quarter, so the exemption is not based on an annual average.



There are some overlapping requirements that may continue to apply to employers that are exempt from FLSA and MSPA. For example, MSPA has regulations about on-farm housing which do not apply to exempt farms. However, OSHA (Occupational Safety and Health Administration) rules still apply to any farm that houses workers. Even an exemption from the particular rules in FLSA and MSPA may not mean that your farm is exempt from all related regulation.

### **Deductions:**

Offering housing in exchange for labor is a difficult

issue. Any circumstance in which an employee’s housing is provided by the farm requires approval by the appropriate regulatory body. The particular regulatory body that would be interested in your particular farm housing depends on whether the farm is covered by MSPA or just by OSHA and the Massachusetts Department of Public Health, but either way, it is illegal to house employees in any lodging (even one person in your own house) that has not been inspected and granted a Certificate of Occupancy. The standards for acceptable housing are quite stringent, and converting an existing structure into approved farm worker housing is likely to require a significant investment.

Providing meals or goods from the farm to employees is not as carefully controlled as housing, but there are rules about deductions that would include housing or food, in addition to uniforms or tools. Massachusetts State Law stipulates specific amounts that employees may be charged for housing or meals, which can be found under regulatory code 455 CMR 2.04.

The bottom line here is that an agreement with your interns that they receive room and/or board in exchange for their work would not be acceptable in the eyes of regulators, should you attract their attention. Furthermore, if you offer housing to apprentices that is not up to code, the consequences could be severe.

### **Taxes and other legal requirements:**

Like any other employer, you are required to have an Employer Identification Number and report new hires. You are also required to pay and withhold taxes, purchase workers’ compensation insurance, and provide pay records to your employees in the form of a pay stub. There is extensive information on the mass.gov website about the requirements for employers, all of which apply to any apprenticeship or internship arrangement.

### **The Bottom Line:**

The only completely legal way to continue the practice of offering enthusiastic learners low pay in exchange for a learning opportunity, housing, and meals/food is to fall under the Massachusetts Agricultural Exemption that allows employers to pay agricultural workers a rate of \$1.60 per hour. In this

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case, the employer would still be required to track employees' hours, have an Employer Identification Number, withhold and pay taxes, carry workers' comp, and provide paychecks with stubs in compliance with the rules about timeliness and disclosures. Any deductions, such as providing food in exchange for labor, would have to be in compliance with the laws about deductions and disclosures. Housing would have to be inspected, and the value assigned to it would also have to be in line with the laws about deductions. Interns' work would have to be restricted to field work. If all these conditions were met, the employer would be able to pay the lower hourly rate, and be exempt from paying overtime.



*The information on this sheet is based on a workshop series on Farm Labor, organized by CISA in 2010-2011. Speakers included Adam Prizio of Law For Food, Judy Gillan from New England Small Farm Institute and representatives from the Office of the Massachusetts Attorney General, the US Department of Labor Wage and Hour Division, and the Massachusetts Department of Workforce Development.*

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