

# CSA LABOR ISSUES

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# CSA LABOR ISSUES-INTERNS

- Many farms across Maryland use interns or apprentices to lighten the overall farm work load and help young people gain practical farming knowledge.
- The compensation of farm interns varies but what is the legality of these arrangements?
- Can interns work for free or be provided a small stipend or must they be paid minimum wage?
- When and how can interns be treated differently than the average employee?



# CSA LABOR ISSUES-INTERNS

- The U.S. Department of Labor has specific definitions of both internships and apprenticeships.
- The Maryland Department of Labor and Licensing (DLLR) administers the federal program of regulation and registration of apprenticeship programs, and the bar for having a registered apprenticeship is quite high.
- Therefore, a farmer cannot simply qualify a position on a farm as an apprenticeship and pay or otherwise treat the person in the position differently than the average employee unless the apprenticeship is properly registered with the state and federal government.



# CSA LABOR ISSUES-INTERNS

- As for interns, the U.S. Department of Labor has established six legal criteria to define an internship that can be compensated at less than minimum wage (see [Fact Sheet #71](#)).
- Generally, for an internship to be legal the employer must derive no immediate advantage from the activities of the intern and the intern cannot displace regular employees. By this definition, a farm intern that performs general farm duties and provides helpful labor is not a legal intern and must be compensated not less than the minimum wage unless another exemption applies.



# CSA LABOR ISSUES-INTERNS

- Maryland law does allow students in DLLR approved work-study programs to be paid less than the minimum wage.



# CSA LABOR ISSUES- INTERNS

- Glatt vs. Fox Searchlight Pictures, S.D.N.Y., 6/11/13

An intern sued Fox Searchlight Pictures for back-wages after an unfulfilling summer working on the set of *Black Swan*, where he performed menial tasks like retrieving files, delivering paychecks, organizing file cabinets, and making copies. The court held that because these activities were primarily for the benefit of the employer and not for the education or professional development of the plaintiff, the plaintiff was an “employee” covered by the Fair Labor Standards Act and the New York State Labor Law. Status as an employee entitled the plaintiff to receive minimum wage for his time on the set of *Black Swan*.



# MINIMUM WAGE- FLSA AND WAGE AND HOUR

- FLSA and W&H -set the minimum hourly pay rate that interns and other employees must be paid. Although the federal minimum wage is \$7.25, the Maryland minimum wage is \$8.00/hour and effective July 1, 2015, the rate increases to \$8.25/hour, excluding Prince George's and Montgomery counties who have adopted higher rates. The higher State minimum wage is the wage that must be paid to all employees.
- Workers cannot waive their right to be paid minimum wage. It is not a viable defense for an agricultural employer to claim that the intern knew and accepted an unpaid position.





# 500 MAN DAY EXEMPTION

- The 500 Man-Day Exemption allows smaller scale farm operations to pay interns and other employees less than minimum wage if, during each quarter of the preceding calendar, the farm employer used no more than 500 agricultural-worker days.
- A man day is defined as any day during which an employee performs agricultural work for at least one hour. To qualify the agricultural work must be hands-on work related to planting, maintaining, and harvesting crops, and raising animals. Off-farm sales work such as work at a farmers' market does not qualify as agricultural work for the purpose of the 500 Man-Day Exemption.
- $7 \text{ workers} \times 5 \text{ days/week} \times 13 \text{ weeks} = 455 \text{ man days}$



# 500 MAN DAY EXEMPTION

- According to the Code of Federal Regulations (29 C.F.R. 780.11) if an employee in the same workweek performs work which is exempt under one section of Act (agricultural) and work which is non-exempt (non-agricultural), the employee is not exempt for the entire week and the minimum wage requirements apply.



# EXEMPTIONS TO MINIMUM WAGE

- Agricultural employees who are an **immediate** family member of their employer
- Those principally engaged on the range in the production of livestock
- Local hand harvest laborers who commute daily from their permanent residence, are paid on a piece rate basis in traditionally piece-rated occupations, and were engaged in agriculture less than thirteen weeks during the preceding calendar year
- Minors, 17 years of age or under, who are hand harvesters, paid on a piece rate basis in traditionally piece-rated occupations, employed on the same farm as their parent, and paid the same piece rate as those over 17



# EXEMPTIONS TO MINIMUM WAGE

- Maryland excludes employees engaged in canning, freezing, packing or first processing of perishable or seasonal fresh fruits, vegetables or horticultural commodities, poultry or seafood from the State minimum wage requirements. Unless these types of employees are excluded for another reason, they would still need to be paid minimum wage under federal law.
- Additionally, if the employee is under 20 years of age, the State of Maryland permits an employer to pay the employee, for the first six months, a wage equal to 85% of the State minimum wage.



# OVERTIME

- In Maryland, agricultural employers shall pay employee overtime pay for all hours over 60 hours a week.



# CSA LABOR ISSUES- ROOM & BOARD

- When can room and board be deducted from an intern's compensation?
- The reasonable cost of board, lodging or other facilities may be included as part of an employee's wage if the facilities are regularly available to all similarly situated employees, the acceptance of the facilities is voluntary on the part of the employee and the employee actually receives the benefits. An employer may not calculate the reasonable cost of board, lodging or other facilities to exceed the actual cost to the employer.
- It is advisable that agricultural employers keep very careful records of the cost of providing board, lodging and facilities provided to intern employees and consult with DLLR before making any income deductions.



# CSA LABOR ISSUES- ROOM & BOARD

- Before an agricultural employer decides to build or convert an existing building into intern housing, he or she should consult the local zoning ordinance to make sure that group housing is legally permitted in that location.
- Additionally, an employer will need to make sure that intern housing meets all local and state housing and/or health code standards prior to occupation.



# CSA LABOR ISSUES-MSPA

- Many farmers may be surprised to learn that interns, performing seasonal agricultural work, fall under the protections of the Migrant and Seasonal Worker Agricultural Protection Act (MSPA).
- If interns are required to be away from their permanent residence while performing the seasonal agricultural work, they will be considered migrant workers and if not, they will be considered to be a seasonal worker.
- The MSPA has two main exemptions, the 500 Man Day Exemption described above and the family business exemption which exempts a farm labor contractor working for a farm owned and operated by either himself or his immediate family member.





# CSA LABOR ISSUES-MSPA

- If an employer is not exempt, the MSPA requires an agricultural employer provide migrant employees with written disclosures and seasonal employees with verbal disclosures prior to the initiation of employment regarding the place of employment, wages to be paid, types of work the intern will perform, period of employment, transportation, housing, and workers compensation benefits.
- Agricultural employers must also provide employees with detailed pay stubs showing their earnings and deductions and retain copies of payroll records for a period of 3 years.
- Employers must also post worksites with a poster from the U.S. Department of Labor detailing the rights of workers pursuant to the MSPA.



# CSA LABOR ISSUES-WORKER COMP

- If a farmer has at least 3 full-time employees or an annual payroll of at least \$15,000 for full-time employees, then the farmer is subject to Maryland's Worker Compensation Insurance law.
- Farm workers exempt from workers compensation-
  - (1) the individual customarily is engaged in an independent business occupation of the same nature as that of the service performed;
  - (2) the individual is free from control and direction over the individual's performance of the service;
  - (3) the individual provides the individual's own equipment, materials, and tools; and
  - (4) the farmer is not required to withhold Social Security, unemployment, State, or federal taxes from the compensation paid to the individual.



# CSA LABOR ISSUES- WORKER SHARES

- Having members work on a CSA creates a higher risk for the grower due to the increased liability should a member be injured, so you may consider having members perform nonfield activities such as creating and distributing the newsletter, assisting at distribution sites, or supervising product pickup at the farm.
- Members could also be encouraged to research, compile, or contribute recipes for the newsletter.
- Growers need to contact their insurance provider and have a detailed risk management plan before they proceed with involving members in these and other tasks.
- Your insurance provider may view members working on the farm as employees, which will have a major impact on the cost of workers' compensation insurance.



# CSA LABOR ISSUES- UNEMPLOYMENT INSURANCE

- Further, if a farmer pays wages of at least \$20,000 to employees for agricultural work or employs at least 10 individuals in a period of 20 weeks in the current or preceding calendar year, the employer must also participate in the Maryland Unemployment Insurance program.



# CSA LABOR ISSUES- PICK UP SITE INSURANCE/VOLUNTEER WAIVER

- Make sure you have insurance coverage for off farm pick-up site locations. Most farm liability policies will not cover an off-farm injury.
- Consult your insurance agent- you may need a general commercial liability policy.
- You may want to have your attorney draft a liability waiver if you are going to have volunteers or social activities on the farm. A form liability waiver is available here- <http://hdl.handle.net/1903/15985>



# CSA LABOR ISSUES

- Consult your attorney and insurance agent regarding establishing a CSA and describe how you plan to organize and implement the operation.
- You may be required to purchase workers' compensation insurance and increase your product liability insurance. Your current business structure may also need to be revised to accommodate the additional risk of having the public visiting or working on your farm.
- Having these concerns addressed will help alleviate stress and reduce liability exposure should an accident or another emergency arise.



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# THANK YOU AND ANY QUESTIONS?

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