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Regulatory Compliance Checklist for Employing Farm Workers

If you employ people on your farm operation whether it is seasonal or permanent there are some important regulatory issues that may affect your business.

There are three provincial Acts you need to be familiar with if you are employing workers on your farm, these are:

- The Workplace Safety and Insurance Act,
- The Occupational Health and Safety Act, and
- The Employment Standards Act.

This checklist will provide you with a simple and practical understanding of the Acts so that your farming operation will be in compliance with the Acts. It is not intended to replace or supplement the Acts themselves but rather should be used as a resource that explains your responsibilities as a farm employer.

WSIA & WSIB

Duties and Responsibilities under the Workplace Safety and Insurance Act (WSIA) and the Workplace Safety and Insurance Board (WSIB)

What is the WSIA?

The purpose of the WSIA is to promote health and safety in workplaces; to ensure compensation and other benefits are provided to injured workers and to the survivors of deceased workers; and to facilitate the return to work and recovery of workers who are injured on the job or who suffer from an occupational disease.

Who is the WSIB?

The WSIB is responsible for administering the WSIA and delivers no-fault workplace insurance for employers and workers in Ontario. Funding for the WSIB, for disability benefits, and for programs to assist workers injured on the job return to work, comes from premiums paid by employers on behalf of their employees.

Who is an Employee?

According to WSIA, an [employee](#) is *anyone* who provides labour on your farm in exchange for a wage (money). This includes all relatives, friends, neighbours, students, etc.; and it doesn't matter if they are full time, part time, on-call, or only few hours a week – if there's a wage involved, they are an employee.

Custom Work and Contractors

If you are planning on hiring a custom operator to work on your farm, you must provide proof to the WSIB – *even if you are not a client* – that the operator is independent of your farm so that you will not be responsible for their insurance premiums. For more information on this, refer to [Custom Farm Work Fact sheet](#), and call WSIB. Another option is to use the new internet-based [eClearance system](#) available through the WSIB website.

Getting Started

The WSIB has a number of Factsheets available on their website to help get you started. Please refer to the factsheet: [System Overview for Employers](#).

Compliance

Agricultural employers are required to provide coverage to their employees through the WSIB. No other coverage is acceptable for an *employee*. The WSIB requires that you register your new employee within 10

days of their first day of work. Also, if your employee is injured at work or gets sick as a result of their job, you must report it to the WSIB within three days of learning about it. This is the law.

The law also requires employers provide workers with a first aid box on the farm. It needs to be easily accessible and fully stocked with specific items. [Regulation 1101](#) details what items need to be in the box, as well as the inspection, documentation, and training requirements for first aid.

Consequences

Farm employers who do not register employees with the WSIB can face significant financial and legal penalties if they are discovered during WSIB audits and investigations. You should know that the WSIB has an information sharing agreement with the Canada Revenue Agency (CRA) to facilitate these investigations.

Required Workplace Postings

WSIB regulations require one poster to be displayed in a noticeable place on the farm. The most likely place is a farm office, though an equipment shed, or workshop where your employee will see it is also acceptable:

- Form 82 – [1234 In Case of Injury at Work Poster](#)

Compliance Checklist

- I have contacted WSIB and registered my employee(s);
- I have paid the WSIB insurance premiums for my employee(s);
- I have printed and posted Form 82 – [1234 In Case of Injury at Work Poster](#)
- I have a [first aid box](#) on the farm
 - It is stocked with the required items and easily accessible
 - My employee(s) knows where the first aid box is located

For More Information:

WSIB has an agriculture sector office located in Guelph. To set up an account and register your new employee, or inquire about clearance certificates, contact:

Phone: 519-826-4650 or 1-888-259-4228

Fax: 519-826-4678

WSIB's Clearance Department at 1-800-387-8638

100 Stone Road West, 2nd floor, Guelph, ON N1G 5L3

MINISTRY OF LABOUR

Duties and Responsibilities under the Occupational Health and Safety Act (OHSA)

What is the OHSA?

OSHA is the key piece of legislation in Ontario governing workplace health and safety. The Act is based on the Internal Responsibility System (IRS) and is meant to share responsibility between employers and workers in creating a safe workplace with healthy workers. It sets out a number of rights and duties for employers and workers and establishes a process for enforcing the Act where there is non-compliance. For most cases in agriculture, the *workplace* is considered to be the farm property, excluding any personal residences.

Getting Started

An important document that new and existing farm employers should have on hand is the "[Guide to the Occupational Health and Safety Act for Farming Operations](#)".

Compliance

All farm operations with one or more paid employees are covered under OSHA. It is important to know that this applies whenever one of your employees is present in the workplace, no matter how short that time might be.

While there are few substantial requirements for farm operations under OSHA, a critical provision in the Act dictates that employers must “*take every precaution reasonable in the circumstances for the protection of a worker*”.

To achieve this goal, the legislation requires farm employers to provide workers with:

- Information on workplace hazards and toxic substances;
- Instruction and supervision for farm equipment or hazardous locations;
- An opportunity to identify and resolve health and safety concerns; and
- The right to refuse work that they believe is dangerous without fear of employer reprisal.

Also, it's important to know that OSHA requires an employer to immediately notify the Ministry of Labour if a worker is [fatally or critically injured](#) in the farm.

Consequences

The Act and its regulations are enforced by Health and Safety Inspectors at the Ministry of Labour (MOL). Their role is to both inspect workplaces to check for compliance with the Act, and investigate workplace incidents, complaints, and work refusals. MOL inspectors most often visit workplaces in response to complaints or reports of injuries; however, they will also conduct random inspections and focused blitzes.

If you are found to be in non-compliance, MOL Inspectors can:

- Write compliance orders that carry specific legal requirements;
- Issue “stop work” orders if there is an immediate risk that a worker could be injured;
- Issue tickets or initiate prosecution where a worker has been injured as a result of non-compliance

Required Workplace Postings and Documents

OSHA requires a few postings and documents to be completed by employers:

- A copy of the [Occupational Health and Safety Act](#) must be posted in a prominent place – ideally where you have placed your other postings – or have it be available at the workplace.
- If you have six or more regularly employed workers, you must prepare and post a written and signed [Health and Safety policy](#), and must develop and maintain a program to implement that policy.
- Every employer in Ontario, regardless of the size of the operation or the number of workers, must prepare and review a policy on workplace violence and harassment. A plain language guide, “[Workplace Violence and Harassment: Understanding the Law](#)”, is available from the Ministry of Labour and provides policy templates for employers in the appendices.
- If a workplace report is given to you by an MOL inspector, it must be posted as well.

Compliance Checklist

I have fewer than 6 employees:

- I have posted a copy of the [Occupational Health and Safety Act](#)
- I have prepared a [violence and harassment policy](#) for the farm, and I have informed my employees of the policy
- I am aware that should a worker or individual be [fatally or critically injured](#) on the farm, OSHA requires an employer to immediately notify the Ministry of Labour.

I have 6 or more employees:

- I have posted a copy of the [Occupational Health and Safety Act](#)
- I have posted a written [Health and Safety policy](#)
- I have posted a written [violence and harassment policy](#) for the farm
- I have 6 to 19 regularly employed workers, and they have selected a co-worker as their [Health and Safety Representative](#)
- I have posted the name of worker Health and Safety Representative in the workplace
- I am aware that should a worker or individual be [fatally or critically injured](#) on the farm, OSHA requires an employer to immediately notify the Ministry of Labour.

For More Information

Ministry of Labour Health and Safety Contact Centre

Phone: 1-877-202-0008

Website: www.labour.gov.on.ca/english/hs/

Regional Offices: www.labour.gov.on.ca/english/about/reg_offices.php

Employer Responsibilities under the Employment Standards Act, 2000 (ESA)

What is the ESA?

The ESA provides the minimum rights and responsibilities of most employees and employers in Ontario workplaces. It covers a number of employment standards, including the payment of wages, hours of work, and termination of employment. Like WSIB premium rate groups, there are different categories of agricultural workers covered by the ESA, each with their own set of [exemptions or special rules](#).

Getting Started

The Ministry of Labour publishes two guides to help employers understand their responsibilities under the ESA. While not specific to farming, the publications, [Your Guide to the Employment Standards Act, 2000](#), and [Complying with the Employment Standards Act \(ESA\): A Workbook for Employers](#) provide the necessary information for your workplace.

Compliance

There are three major ESA categories that farm employers may hire under: Farm Employees; “Farm Related Exemptions”; and Harvesters of Fruit, Vegetables and Tobacco. As mentioned above, each of these categories carries various [exemptions and special rules](#). Most small farms will hire under the ‘farm employees’ category, but it’s important to refer to the guide to determine which category your employee best fits and make sure you understand the minimum standards.

If you are planning on hiring a student to work on your farm during the summer break, it is important to note that there are special rules and exemptions for *student employees*. The “student employee” category would only apply on your farm if you are hiring the student for work **not** related to primary production. If the student is working in primary production on the farm, they will be considered a ‘farm employee’ – basically there’s no special category for “student farm labour”.

Regardless of the ESA job category, all farm employers in Ontario must:

- Keep [written records](#) of each employee’s name, address, and employment starting date;
- Establish a [regular pay period](#) and a regular payday for employees;
- Provide an employee with a [wage statement](#);
- Provide an employee with either written [notice of termination](#), [termination pay](#) or a combination of both when a worker has been employed continuously for more than three months
- Provide an employee with job-protected, statutory [leaves of absences](#)
- Provide a qualified employee with severance pay who has his or her employment “severed.”

Consequences

The Act gives the Ministry of Labour the power to investigate infractions and enforce the ESA. The majority of ESA investigations are the result of claims filed by an employee; however Employment Standards Officers also conduct proactive inspections. Officers have the power to issue orders to pay wages, compliance orders or tickets, notices of contravention, or initiate prosecution in severe cases of non-compliance.

Required Workplace Postings and Documents

The ESA requires that employers in Ontario post the [What You Should Know About the Ontario Employment Standards Act](#) poster in a prominent place, likely where you have posted WSIB and OHS documents. Printing the poster in a regular legal size sheet is acceptable.

Compliance Checklist

- I have posted the required [What You Should Know About the Ontario Employment Standards Act](#) poster
- I have collected the [necessary information](#) from my employee to document their employment
- I have established a [regular pay period](#) and [pay records](#) for my employee

For More Information

Employment Standards Information Centre

Phone: 1-800-531-5551

Website: www.labour.gov.on.ca/english/es/

Key Employer Resources

Workplace Safety and Insurance Board (WSIB)

- [Custom Farm Work](#)
- [First Aid Requirements Factsheet](#)
- [Reporting workplace injuries and illnesses](#)
- [Reporting earnings for workers with irregular hours/work days](#)

Occupational Health and Safety Act (OHSA)

- [Occupational Health and Safety Guidelines for Farming Operations in Ontario](#)
- [Workplace Safety and Prevention Services](#) – A Health and Safety Ontario Partner
- [Information for Farming Operations: Enforcement of the Occupational Health and Safety Act – When Self Compliance Fails](#)
- [Information for Farming Operations: Role of the Ontario Ministry of Labour Health and Safety Inspector](#)
- [Agricultural Safety Audit Program Checklist](#)

Employment Standards Act (ESA)

- [Your Guide to the Employment Standards Act, 2000](#)
 - [Complying with the Employment Standards Act \(ESA\): A Workbook for Employers](#) – first stop for information on the ESA
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Conclusion

This checklist presents only a small portion of the situations and questions that may arise from employing workers in your farm business. It is the intention of the authors to provide you with a simple guideline and framework for seeking additional information when your situation dictates.

Disclaimer

This checklist is not intended to be used as a substitute or replacement for the Acts described herein. It does not cover all situations or circumstances when you have employees on your farm. If your business is setup as a corporate entity there may be different or additional obligations. This checklist is intended to provide the farm owner with a simplified overview of the regulations contained in these Acts and to provide resources should you require further information. Professional advice should always be sought from your legal representative or accountant when looking for an interpretation of the legislation.

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