



# New Mexico

# Human Resources LEGAL FACT SHEET

*Disclaimer: This fact sheet summarizes state laws and regulations on a variety of human resource issues for dairy farms, including wages, paystubs, deductions, child labor, and more. It is not intended to provide legal advice. The fact sheet is simply an overview of select issues with a high-level explanation of key requirements for each one, with links to more information and resources throughout the document. This fact sheet does not include all legal requirements for dairies. It was created in May 2018, and while it will be periodically updated, it may not reflect the current state of the law on every topic covered. Dairies should also review the federal fact sheet because employers—depending on size—may be required to comply with some or all of the applicable federal laws and regulations as well. By using this fact sheet you understand that there is no attorney-client relationship between you and the attorneys who were involved in developing the fact sheet. This fact sheet should not be used as a substitute for competent legal advice from a licensed attorney.*

## ARE THERE NEW MEXICO STATE LAWS PERTAINING TO DAIRY FARMS ABOUT:

### HIRING

TOPIC	ANSWER	DETAILS
Notice of Payday/ Pay Rate	<b>NO</b>	State law does not require a notice of payday / pay rate for new hires. However, the <a href="#">Department of Workforce Solutions guidance</a> says that you must notify workers of any wage reductions before they work the hours.
Reporting <sup>1</sup>	<b>YES</b>	<a href="#">New hires</a> and rehires must be reported to the New Mexico New Hires Directory within 20 days.

### WAGES

TOPIC	ANSWER	DETAILS
Payday <sup>2</sup>	<b>NO</b>	New Mexico payday law excludes employers of agricultural labor.
Final Pay <sup>3</sup>	<b>NO</b>	New Mexico final pay law excludes employers of agricultural labor. It is recommended that employers pay former employees on the next regular payday following the employee's employment separation.
Overtime <sup>4</sup>	<b>NO</b>	Agricultural workers are exempt from state overtime laws.
Minimum Wage <sup>5</sup>	<b>YES/NO</b>	<u>\$7.50 per hour</u> , but many dairy workers are exempt. Typical exemptions: Employees principally working in milk production; parent, spouse, child or other member of employer's immediate family; small farm (no more than 500 man-days of agricultural labor in the calendar year. Employer may apply for an exemption for seasonal workers. Minimum wage may apply: Other workers NOT principally in milk production. For example, a seasonal worker hired only to bale hay, etc.
Hours Worked	<b>NO</b>	New Mexico law does not explicitly address the definition of 'hours worked' for the purposes of calculating compensable time. Employers should follow federal laws summarized in the federal fact sheet.
Reporting Time Pay	<b>NO</b>	New Mexico law does not require reporting time pay, i.e. an employee is only required to be paid for actual hours worked.



# WAGES

(Continued)

TOPIC	ANSWER	DETAILS
Pay Stub <sup>6</sup>	<b>NO</b>	New Mexico pay stub law excludes employers of agricultural labor.
Taxes and Withholding <sup>7</sup>	<b>YES</b>	<p>Employers are required to withhold <a href="#">New Mexico state income tax</a> if they are also required to withhold federal income taxes. You must also give your employees a statement of taxes withheld, like a federal Form W-2, 1099-MISC or 1099-R.</p> <p>Employers must pay New Mexico <a href="#">Unemployment Insurance taxes</a> if:</p> <ul style="list-style-type: none"> <li>You paid cash wages to farm workers of \$20,000 or more in a quarter in the current or prior calendar year; OR,</li> <li>You employed ten or more farm workers for some part of a day in 20 or more weeks in the current or prior calendar year.</li> </ul> <p>Certain family employment is excluded from coverage requirements (a parent employed by their son/daughter, a person employed by their spouse, or a child under 18 employed by a parent). Unemployment taxes are paid by the employer; they are not taken out of employee pay. You can credit the amount you pay to New Mexico in calculating how much you owe for federal unemployment taxes. <a href="#">More details.</a></p>
Deductions <sup>8</sup>	<b>YES/NO</b>	<p>New Mexico law addresses the issue of deductions as follows: employers can only deduct lawful deductions and payroll deductions authorized by the employer and employee. Because employees in milk production may be exempt from New Mexico minimum wage law, but still fall under the federal FLSA, employers are encouraged to look at the federal fact sheet for additional guidance on deductions.</p> <p>If you provide food, supplies, housing, or utilities, you can deduct the reasonable value of these benefits from employee wages. Usually, reasonable value means the cost to provide the benefits, not a fair market value.</p>
Bonuses	<b>YES/NO</b>	<p>Bonuses are not explicitly addressed in New Mexico wage laws. Generally, nondiscretionary bonuses are considered a type of wage, protected under wage payment laws. On the other hand, discretionary bonuses are usually not considered wages.</p> <p>A nondiscretionary bonus is one where the amount and criteria for getting the bonus are announced in advance. For example, performance goals (like meeting somatic cell count goals) that workers know about in advance. Discretionary bonuses are ones that are not announced in advance, not expected by the employee, and not an incentive for the employee. For example, when the farm reaches a certain financial goal and decides to give all employees a bonus.</p> <p>Employers should follow any written policy they have about paying bonuses as a best practice.</p>

# RECORD KEEPING

TOPIC	ANSWER	DETAILS
Personnel Files – Employee Access	<b>NO</b>	New Mexico law does not address personnel file access for private employers.
Unemployment Insurance <sup>9</sup>	<b>YES</b>	Employers covered by Unemployment Insurance Law must file <a href="#">quarterly wage reports</a> . See 'Payroll' below for additional recordkeeping requirements.
Workers' Compensation	<b>YES</b>	Quarterly wage reports are required (see 'Unemployment Insurance'). Otherwise, New Mexico law does not specify workers' compensation recordkeeping requirements; however there are OSHA recordkeeping requirements for injuries and employers should also ensure they retain records.
OSHA <sup>10</sup>	<b>YES</b>	New Mexico has incorporated federal OSHA recordkeeping and reporting requirements. See federal fact sheet for details.
Federal	<b>YES</b>	There are numerous federal rules about recordkeeping. Employers should review the federal fact sheet.



## RECORD KEEPING

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TOPIC	ANSWER	DETAILS
Payroll <sup>11</sup>	YES	<p>Each employer covered under the Unemployment Insurance Law (see ‘Taxes and Withholding’ above) must keep <u>employment and payroll records</u> that include:</p> <ul style="list-style-type: none"> <li>• Name and address of the employer</li> <li>• Name and address of each branch, division or establishment operated, owned or maintained by the employer</li> <li>• All disbursements for services rendered to employer to include: <ul style="list-style-type: none"> <li>- Individual’s name, address and social security number</li> <li>- Dates on which individuals performed services and state or states in which such services were performed;</li> <li>- Total amount of payment for service for each separate payroll period and date each payment was made;</li> <li>- Notation of individuals working less than full time and if so, the hours and dates worked; and</li> <li>- Reason for separation of individuals (if applicable)</li> </ul> </li> <li>• Verification of ownership or change in ownership.</li> <li>• Address where records are available for inspection or audit.</li> <li>• Any non-cash remuneration given for services and the cash value of the remuneration.</li> </ul> <p>The records must be kept for four years in addition to the current calendar year (i.e. remainder of calendar year plus four years). The employment and payroll records shall be readily accessible to authorized representatives of the Department of Workforce Solution’s Tax Section. If these records are maintained out-of-state, the employer is responsible for expenses and cost incurred to travel out of New Mexico to inspect and/or audit these records.</p>

## WORKING CONDITIONS

TOPIC	ANSWER	DETAILS
Bathrooms <sup>12</sup>	YES	Dairies in New Mexico must comply with the Pasteurized Milk Ordinance. The PMO specifies that dairy farms have one or more toilets that are conveniently located, properly constructed, properly operated, and maintained in a sanitary manner.
Working Hours <sup>13</sup>	YES/NO	<p>No max hour or day requirements for adults working as farm hands whose duties require them to work longer hours. Other employees are limited to 16 hours in any 24-hour period.</p> <p>If there is a change to the beginning of the workday, you must notify workers at least the day before during working hours.</p> <p>See Child Labor (below) for maximum hours for minors.</p>
Rest and Meal Breaks	NO	<u>There is no state statute</u> that requires an employer to provide meal or rest breaks. Employers that choose to provide rest and meal breaks must follow the applicable federal rules. Refer to federal fact sheet.
Labor Relations <sup>14</sup>	NO	No provision in state law recognizing farm worker rights to organize.
Whistleblower Protection <sup>15</sup>	YES/NO	New Mexico law does not provide a general protection for private sector employees in whistleblower cases. However, topic-specific laws (like wage discrimination, wage laws, etc.) may protect employees that report unlawful practices. And specific employee disclosures (for example, OSHA-related violations) are protected from retaliation.
Paid Vacation and Sick Leave	NO	New Mexico state law does not require paid sick or vacation leave. However, employers should follow any written policy they have about such fringe benefits.
Voting Leave <sup>16</sup>	YES	Employees must be given up to 2 hours of paid leave to vote on election day or in an election for an Indian nation, tribe, or pueblo. An employer may specify the hours between the opening and closing of the polls when the employee may take voting leave. This leave does not apply to an employee whose work day begins more than two hours after the opening of the polls, or ends more than three hours prior to the time of closing the polls.



# WORKING CONDITIONS

(Continued)

TOPIC	ANSWER	DETAILS
Breaks for Nursing Mothers <sup>17</sup>	YES	Employers must provide a clean, private place near the workplace for employees who are breastfeeding to pump. The place cannot be a bathroom. Also requires that the employee be given flexible break times to express milk, but does not require that she be paid for this time.
Pregnancy Accommodations and Leave <sup>18</sup>	YES/NO	New Mexico law does not explicitly require pregnancy accommodations or leave for private sector employees. However, per state anti-discrimination law, employers must treat employees affected by pregnancy, childbirth or related medical conditions the same as other employees who are temporarily disabled for other reasons. Applies to employers with four or more employees.
Family and Medical Leave	NO	New Mexico has not enacted a family or medical leave law that applies to employees in the private sector. Federal law requiring unpaid leave may apply depending on the size of the employer. Employers should refer to the federal fact sheet.
Jury Duty Leave <sup>19</sup>	YES	Employers must excuse employees from work to serve on a jury, paid or unpaid. An employer cannot require or request an employee to use annual, vacation, or sick leave for time spent on jury duty.
Crime Victim and Witness Leave <sup>20</sup>	YES	<p>New Mexico has a state law relating to domestic violence leave. Employees must be given up to 14 days of leave in a calendar year, paid or unpaid, to:</p> <ul style="list-style-type: none"> <li>• Obtain an order of protection or other judicial relief.</li> <li>• Meet with law enforcement officials.</li> <li>• Consult with attorneys or victim advocates.</li> <li>• Attend court proceedings related to the domestic abuse of the employee or the employee's family member.</li> </ul> <p>This leave may be taken intermittently.</p> <p>An employer may require that the employee verify the need for leave by timely providing one of the following:</p> <ul style="list-style-type: none"> <li>• A police report indicating the employee or the employee's family member was a domestic abuse victim.</li> <li>• A copy of an order of protection or other court evidence connected with an incident of domestic abuse.</li> <li>• A written statement from either: <ul style="list-style-type: none"> <li>- the employee's attorney;</li> <li>- a district attorney's victim advocate; or</li> <li>- a prosecuting attorney.</li> </ul> </li> </ul> <p>Employers must allow employees to use accrued sick or other available paid time off, compensatory time, or unpaid leave consistent with an employer's leave policies, and maintain confidentiality.</p>
Military or Other Service Leave <sup>21</sup>	YES	<p>Employers are prohibited from discharging or otherwise discriminating in employment against any person because of membership in the National Guard. Employers are further prohibited from preventing employees who are National Guard members from performing any military service they may be called to perform.</p> <p>Permanent employees who leave a job to enter the U.S. armed forces, National Guard, or reserves are entitled to a leave of absence for the period of their military service. Employers must reinstate individuals returning from such service to their former position or a position of like seniority, status, and pay, provided that they:</p> <ul style="list-style-type: none"> <li>• Are either honorably discharged, released from activity duty to complete remaining service in reserve, or entitled to a certificate of service; or terminate service without dishonor</li> <li>• Apply within 90 days of their release from training and service or within 2 years of service-related hospitalization</li> <li>• Have not had a leave of absence for uniformed service of greater than five years</li> <li>• Are still qualified to perform their previous job</li> </ul> <p>Private employers must reinstate these individuals unless circumstances make their reinstatement impossible or unreasonable. During their service, employees are considered on a leave of absence, and are entitled to participate in insurance or other benefits pursuant to the employer's policy on leaves of absence. Federal rules also apply; employers should refer to the federal fact sheet.</p>
School Activity Leave	NO	New Mexico law does not address leave for private sector employees to attend a child's school activity.



# HUMAN RIGHTS

TOPIC	ANSWER	DETAILS
Employment Discrimination <sup>22</sup>	YES	<p>New Mexico law <u>prohibits employment discrimination</u> based on race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition, pregnancy, childbirth, or related medical condition. Applies to employers with 4 or more employees.</p> <p>If you have 15 or more employees, it is also illegal to discriminate based on sexual orientation or gender identity. If you have 50 or more employees, the law also protects against discrimination based on spousal affiliation.</p> <p>Employment discrimination means bias in hiring (including during interviews), promotion, job assignments, firing, pay, and other terms of employment.</p> <p>Employers cannot pay men and women different wages for comparable work on jobs that have virtually the same requirements in terms of skills, effort, and responsibility. Wage differences based on seniority, merit, quantity or quality of production or other factors other than sex are permitted.</p> <p>It is illegal to retaliate against employees for filing or otherwise aiding with a complaint.</p>
Harassment/ Sexual Harassment <sup>23</sup>	YES	<p>Sexual harassment is included in the definition of employment discrimination based on sex (above). It becomes illegal when (1) employees have no choice but to tolerate the harassment if they want to keep their job; (2) it is so severe that a regular person would see it as intimidating, hostile, or abusive.</p> <p>Sexual harassment includes unwelcome sexual advances, requests for sexual favors and verbal or physical conduct or suggestions of a sexual nature when:</p> <ul style="list-style-type: none"> <li>• <i>Engaging in such conduct is made an implicit or explicit term or condition of employment. Example: A newly hired milker is told that sexual jokes, touching and nude posters are just part of farm life and she should try to ignore it.</i></li> <li>• <i>Acceptance or rejection of such conduct is used as the basis for an employment decision affecting an employee. Example: A manager tells a worker applying for a promotion that the job would be his if he just “treated her right.”</i></li> <li>• <i>The conduct interferes with an employee’s work or creates an intimidating, hostile or offensive work environment. Example: One worker experiences repeated advances from another asking her for dates or “just to go out for drinks after work.” The worker says she isn’t interested, but the co-worker won’t take ‘no’ for an answer.</i></li> </ul> <p>It is illegal to retaliate against employees for filing or otherwise aiding with a complaint.</p>
Forced Labor <sup>24</sup>	YES	<p>Human trafficking is illegal in New Mexico. Trafficking for labor means: recruiting, soliciting, enticing, transporting, benefiting financially or receiving anything of value from the labor or services of another person, or obtaining by any means another person with the intent or knowledge that force, fraud or coercion will be used to subject the person to labor or services.</p> <p>Employers should ensure they are carefully following all visa requirements or work agreements to avoid any inadvertent violations.</p>

# CHILD LABOR

TOPIC	ANSWER	DETAILS
Child Labor <sup>25</sup>	YES	<p>Minors working for their parents/legal guardians are exempt from the minimum age and max hours listed below and do not need to obtain a work permit, as long as they are not working in a hazardous or prohibited occupation.</p> <p>Work permit required if under 16. Age certificate can be requested for anyone under 18.</p> <p><u>Minimum age:</u></p> <ul style="list-style-type: none"> <li>• <i>During school hours: 16 (14 for hardship cases)</i></li> <li>• <i>Outside school hours: 14</i></li> </ul> <p><u>Max hours:</u></p> <ul style="list-style-type: none"> <li>• <i>16 or older: None</i></li> <li>• <i>14 or 15</i> <ul style="list-style-type: none"> <li>- <i>Non-school week: Max of 8 hours per day, 40 hours per week</i></li> <li>- <i>School week: Max of 3 hours per day, 18 hours per week</i></li> <li>- <i>Cannot work before 7am or after 7pm, except from June 1 through Labor Day when evening hours are extended to 9pm</i></li> </ul> </li> </ul> <p>Minors are subject to hazardous work restrictions and prohibitions. Refer to the federal fact sheet. At the state level, minors under 16 are also <u>prohibited from several occupations</u>.</p>



# HEALTH AND SAFETY

TOPIC	ANSWER	DETAILS
Workers' Compensation <sup>26</sup>	YES	Employers with three or more employees are required to have worker's compensation coverage. Seasonal and part-time employees count for determining coverage, as do any family/neighbors that are paid wages. <a href="#">More details.</a> Once an employer receives a Notice of Accident (NOA) form from an employee, agent of an employee, or direct supervisor, the employer has to notify the insurance carrier within 72 hours. Employers then work with their insurance carrier to submit the Employer's First Report of Injury or Illness (FROI) form within 10 days for any injury/illness resulting in more than 7 days of missed work (whether consecutive or not). You cannot retaliate against employees for seeking worker's compensation benefits.
OSHA <sup>27</sup>	YES	New Mexico has adopted all OSHA standards, so dairy farms in the state need to comply with the applicable federal standards (see the federal portion of the fact sheet). Similar to federal OSHA, New Mexico OSHA has a general duty clause that requires employers to provide employees a workplace free from recognized hazards that can cause death or serious physical harm. In addition, <a href="#">New Mexico OSHA</a> has adopted state-specific standards that dairy farms need to follow. All farms: <ul style="list-style-type: none"> <li>• <i>Emergency medical care – If the nearest hospital or clinic is far away, someone needs to be trained in first aid. And there needs to be first aid supplies readily available. If people may be exposed to corrosive materials, you need quickly accessible eye and body-wash stations.</i></li> <li>• <i>Retaliation – Cannot fire or discriminate against employees that file a complaint or testify in any situation relating to the Occupational Health and Safety Act.</i></li> </ul>
Housing	YES/NO	New Mexico law does not explicitly address standards for permanent agricultural housing, though general landlord/tenant or public health laws may apply. Employers should follow best practices when providing housing – which includes, at minimum, a written housing agreement and properly maintaining the facilities. The FARM HR Manual has guidance around best practices for agricultural worker housing.

## References

1. NM Stat. 50-13-1 to 50-13-4
2. NM Stat. 50-4-1, 50-4-2
3. NM Stat. 50-4-1, 50-4-4; 50-4-5
4. NM Stat. 50-4-24 (B)
5. NM Stat. 50-4-21 (C)(12)(e)
6. NM Stat. 50-4-1, 50-4-2
7. NM Stat. 7-3-3, 51-1-42 et seq.
8. NM Stat. 50-4-2(B), 50-4-22(B)
9. NM Admin Code 11.3.400.401, 11.3.400.404
10. NM Admin Code 11.5.1.16
11. NM Admin Code 11.3.400.401
12. NM Admin Code 21.34.3
13. NM Stat. 50-4-30, 50-4-15
14. NM Stat. 50-4-28
15. NM Stat. 10-16C
16. NM Stat. 1-12-42
17. NM Stat. 28-20-2
18. NM Admin. Code. 9.1.1.7
19. NM Stat.38-5-18(B)
20. NM Stat. 50-4A-1 et seq.
21. NM Stat. 20-4-6, 28-15-1
22. NM Stat. 28-1-7,28-23-3
23. See above; NM Admin. Code. 9.1.1.7
24. NM Stat. 30-52-1
25. NM Stat. 50-6-2 50-6-3, 50-6-4, 50-6-17
26. NM Stat. 52-1-2, 52-1-28.2, 54-1-58
27. NM Admin. Code 11.5.4.1 et seq.; NM Stat. 50-9-25, 50-9-5

