



# South Dakota

# 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 SOUTH DAKOTA STATE LAWS PERTAINING TO DAIRY FARMS ABOUT:

### HIRING

TOPIC	ANSWER	DETAILS
Notice of Payday / Pay Rate	<b>YES</b>	Not required under South Dakota law.
Reporting <sup>1</sup>	<b>NO</b>	<a href="#">New hires</a> and rehires must be reported to the South Dakota New Hire Reporting Center within 20 days.

### WAGES

TOPIC	ANSWER	DETAILS
Paydays <sup>2</sup>	<b>YES</b>	Must designate paydays in advance that are at least once each calendar month.
Final Pay <sup>3</sup>	<b>YES</b>	Employees that quit, are fired or otherwise terminated by an employer must be paid by the next regular payday, or as soon after the next payday as they return all of the employer's property they may have in their possession. Employers providing vacation or sick leave are not required by state law to pay out accrued and unused vacation or sick leave at termination; however, policies regarding payment for unused vacation or sick leave in a handbook that details employee compensation and fringe benefits may be considered a contract.
Overtime	<b>NO</b>	South Dakota law does not govern overtime pay; federal rules may apply. Refer to the federal fact sheet.
Minimum Wage <sup>4</sup>	<b>YES</b>	<u>\$9.10 per hour</u> , effective 1/2019. Annually adjusted based on any increase in cost of living.
Reporting Time Pay	<b>NO</b>	South Dakota law does not require reporting time pay, i.e. an employee is only required to be paid for actual hours worked.
Hours Worked	<b>NO</b>	South Dakota law does not explicitly address the definition of 'hours worked' for calculating compensable time. Employers should follow federal laws summarized in the federal fact sheet.
Pay Stub	<b>NO</b>	South Dakota law does not address pay stubs/pay statements requirements.

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# WAGES

(Continued)

TOPIC	ANSWER	DETAILS
Taxes and Withholding <sup>5</sup>	YES	<p>South Dakota does not have a personal income tax law that applies generally to private employers. However, certain private employers are covered by federal income tax laws. Employers must give employees a statement of taxes withheld, like a federal Form W-2, 1099-MISC or 1099-R.</p> <p>Employers must pay <a href="#">South Dakota Unemployment Insurance</a> taxes 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 preceding calendar year; OR,</li> <li>• You employed ten or more farm workers for some part of a day in each of 20 or more weeks of the current or preceding calendar year.</li> </ul> <p>Certain family employment is excluded from coverage (a parent employed by their son/daughter, a person employed by their spouse, or a child under 21 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 South Dakota in calculating how much you owe for federal unemployment taxes. <a href="#">More details.</a></p>
Deductions <sup>6</sup>	YES/NO	<p>South Dakota law does not explicitly address allowed/prohibited deductions. It does specify that employers cannot require employees to pay the cost of medical examinations or of furnishing records the employer requires. Employers should follow federal rules found in the federal fact sheet.</p>
Bonuses	YES/NO	<p>Bonuses are not explicitly addressed in South Dakota wage and hour law. Generally, discretionary bonuses would not be considered wages, while nondiscretionary bonuses should be considered wages and protected under wage laws.</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
Payroll <sup>7</sup>	YES/NO	<p>South Dakota generally defers to federal law for recordkeeping requirements. However, employers with 25 or more employees must maintain the following records for a reasonable amount of time:</p> <ul style="list-style-type: none"> <li>• <i>Wage and wage rates;</i></li> <li>• <i>Job classifications; and</i></li> <li>• <i>Other terms and conditions of employment.</i></li> </ul> <p>Additionally, there are requirements under Unemployment Insurance below.</p>
Personnel File – Employee Access	NO	<p>South Dakota law does not require private employers to let employees access their personnel files.</p>
Unemployment Insurance <sup>8</sup>	YES	<p>Employers subject to Unemployment Insurance taxes must submit <u>quarterly wage reports</u>.</p> <p>Whether or not subject to paying Unemployment Insurance taxes, every employer in South Dakota must keep the following records for each employee:</p> <ul style="list-style-type: none"> <li>• <i>Full name and Social Security number;</i></li> <li>• <i>Places of work within the state;</i></li> <li>• <i>Date hired, rehired or returned to work after temporary or partial layoff</i></li> <li>• <i>Date of termination of employment</i></li> <li>• <i>Information covering the termination, stating if the termination occurred by voluntary action of the individual, or by discharge, and complete reason for such termination</i></li> <li>• <i>The cause of all time lost due to unavailability for work occurring within any week</i></li> <li>• <i>Number of hours worked and wages paid each week</i></li> <li>• <i>Total wages earned in each calendar quarter:</i> <ul style="list-style-type: none"> <li>- <i>Money wages</i></li> <li>- <i>Cash value of other remuneration</i></li> <li>- <i>Deductions from wages or expenses</i></li> </ul> </li> <li>• <i>Hours worked and wages earned in exempt employment such as agricultural labor.</i></li> </ul> <p>Employers with both covered and exempt employees must keep records for the two separate.</p> <p>The records must be kept for four years. They must be open to inspection and be subject to being copied by the Department of Labor and Regulation at any reasonable time and as often as may be necessary.</p>
Workers' Compensation <sup>9</sup>	YES	<p>Agricultural employers who elect to be covered under workers' compensation in South Dakota must comply with the recordkeeping requirements.</p> <p>Employers must also keep a record of every known work-related injury/illness/fatality. The injuries need to be recorded within 7 calendar days. The record needs to be kept for four years from the date of injury.</p> <p>For covered employers, all books, records, and payrolls showing or referring to the amount of wage paid must be open for inspection by the SD Department of Labor &amp; Regulation.</p>
OSHA	YES	<p>Employers must comply with the federal OSHA recordkeeping standard. See the federal fact sheet for details.</p>
Federal	YES	<p>There are numerous federal rules about recordkeeping. Employers should review the federal fact sheet.</p>

## WORKING CONDITIONS

TOPIC	ANSWER	DETAILS
Bathrooms <sup>10</sup>	YES	South Dakota has incorporated the federal Pasteurized Milk Ordinance (PMO). 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	NO	No max hour or day requirements for adults. See Child Labor (below) for maximum hours for minors.
Rest and Meal Breaks	NO	South Dakota law does not require rest or meal breaks for adults but federal law applies where meal and rest breaks are provided. Refer to federal fact sheet.
Labor Relations <sup>11</sup>	YES	South Dakota law addresses agricultural workers in its laws on labor unions and strikes. Labor unions are prohibited from going onto farm property without the consent of the owner or operator. Labor unions are prohibited from soliciting or accepting money or other payment from agricultural workers. Picketing at a farm is a misdemeanor. Agricultural employees are excluded from state collective bargaining law.
Whistleblower Protection	YES/NO	South Dakota law does not provide a general protection for private employees in whistleblower cases. However, topic-specific laws (like wage discrimination, wage laws, non-discrimination laws, etc.) may protect employees that report unlawful practices. Further, court-crafted common law protections may protect whistleblowing employees against discharge when their actions protect the public good such as reporting unlawful conduct to a supervisor.
Paid Sick and Vacation Leave	NO	Not required under South Dakota law. Employers who choose to provide fringe benefits should follow their written policy/contract.
Breaks for Nursing Mothers	NO	South Dakota law does not address workplace accommodations for employees that are nursing, but federal rules may apply. Employers should refer to the federal fact sheet.
Pregnancy Accommodations and Leave <sup>12</sup>	YES/NO	According to the state's anti-discrimination law, employers must treat pregnancy and childbirth the same as they treat temporary disabilities, except in the context of insurance. This applies to all employers. State law does not otherwise provide for pregnancy leave or accommodations; employers should refer to the federal fact sheet.
Family and Medical Leave	NO	South Dakota has not enacted a family and 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.
Crime Victim and Witness Leave	NO	State law does not explicitly address leave for crime victims or witnesses.
Military or Other Service Leave <sup>13</sup>	YES	Members of the South Dakota National Guard ordered to active duty by the governor or president have the same leave and reinstatement rights and benefits guaranteed under federal USERRA. Refer to the federal fact sheet.
Jury Duty Leave <sup>14</sup>	YES	Employers must allow employees to take paid or unpaid leave to perform jury duty. Employers can't discharge, or alter pay or seniority status of, employees because they take jury duty leave.
Voting Leave <sup>15</sup>	YES	Employers must allow employees enough time off to vote – up to two hours on election days if the employee does not have two consecutive hours to vote before or after work. Employers also must grant leave to employees to perform official duties as members of the South Dakota Legislature.
School Activity Leave	NO	South Dakota law does not address leave for private sector employees to attend a child's school activity.

# HUMAN RIGHTS

TOPIC	ANSWER	DETAILS
Employment Discrimination <sup>16</sup>	YES	<p>South Dakota <a href="#">law prohibits employment discrimination</a> based race, color, creed, religion, sex (includes pregnancy), ancestry, disability, blindness or partial blindness, genetic information, or national origin. Employers cannot seek, obtain, or use employees' and applicants' genetic information for discrimination employment purposes.</p> <p>Employment discrimination means bias in hiring (including during interviews), promotion, job assignments, firing, pay, training, 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 skill, 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 a complaint of discrimination or otherwise aiding with a complaint.</p>
Harassment/ Sexual Harassment <sup>17</sup>	YES	<p><a href="#">South Dakota prohibits harassment</a> on the basis of the protected classes described above. Employers must take action to investigate and resolve harassment situations as notified by employees. It is unlawful 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>Prohibited harassment includes sexual harassment. <a href="#">Sexual harassment</a> is unwelcome conduct. Sexual harassment includes unwelcome sexual advances, requests for sexual favors and verbal or physical conduct 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 a complaint of harassment or otherwise aiding with a complaint.</p>
Forced Labor <sup>18</sup>	YES	<p>Human trafficking is illegal in South Dakota. Trafficking for labor means: the recruitment, harboring, transporting, provisioning, or obtaining of a person for labor by any means for the purpose of subjection to forced labor, forced services, debt bondage, or slavery. <a href="#">More details.</a></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>19</sup>	YES	<p><a href="#">South Dakota child labor laws</a> are less stringent than federal laws; employers should consult the federal fact sheet. Must follow <a href="#">federal restrictions/prohibited occupations</a> for agricultural work.</p> <p>Work permits not required for minors in South Dakota. If a child under 16 is employed based on a permit issued because employment is necessary to support the child or his family, the employer must keep the required permit.</p> <p>Minimum age not specified in South Dakota law.</p> <p>Max hours:</p> <ul style="list-style-type: none"> <li>• <i>Under 16:</i> <ul style="list-style-type: none"> <li>- <i>When school in session: No more than 4 hours on a school day, 8 hours on a non-school day, for a total of 20 hours per non-school week and 40 hours in any non-school week. Cannot work after 10pm on any day before a school day.</i></li> <li>- <i>And minors under 14 cannot be employed later than 7pm</i></li> </ul> </li> <li>• <i>16 or over: No maximum specified</i></li> </ul>

# HEALTH AND SAFETY

TOPIC	ANSWER	DETAILS
Workers' Compensation <sup>20</sup>	YES	<u>Workers' Compensation coverage is not required</u> under South Dakota law, though certain operations may be required to have coverage (operating threshing machines, grain combines, corn shellers, cornhuskers, shredders, silage cutters, and seed hullers for profit) except for the farm owner.  Employers who elect coverage must <u>report any injury that requires</u> more than minor first aid or that incapacitates an employee for 7 or more calendar days. Such injuries need to be reported to the insurer within 7 calendar days, not counting Sundays or legal holidays, from when the employer learns of the injury.
OSHA	YES	South Dakota falls under federal OSHA jurisdiction. See the federal fact sheet for more information.
Housing	YES/NO	South Dakota 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. SD Codified Laws § 25-7A-3.3
2. SD Codified Laws §60-11-9
3. SD Codified Laws §§ 60-1-8, 60-11-10, §60-11-11
4. SD Codified Laws §60-11-3 and 60-11-3.2
5. SD Codified Laws §§61-1-44, 61-1-17
6. S.D. Codified Laws §§ 60-11-2, 60-11-8
7. SD Codified Law §60-12-17
8. S.D. Admin. R. 47:06:02:04; 47:06:02:01; SD Codified Laws §61-3-2
9. SD Codified Laws §§62-3-15, 62-3-17, 62-6-1, 62-6-4
10. S.D. Admin. R. 12:05:14:01
11. SD Codified Laws §§60-9-7, 60-9-8, 60-10-4, 60-9A-1
12. S.D. Admin. R. 20:03:09:12
13. S.D. Codified Laws 33A-2-9
14. SD Codified Laws §§16-13-41.1, 16-13-41.2
15. SD Codified Laws §12-3-5
16. SD Codified Laws §§20-13-10, 60-1-1; 60-2-20 to 60-2-21, 60-12-15; S.D. Admin. R. 20:03:09:12
17. See above
18. SD Codified Laws §22-49-1
19. SD Codified Laws §§60-12-1, 60-12-3, 60-12-6
20. SD Codified Laws §§62-3-15, 62-3-17, 62-6-2