



Texas

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 TEXAS STATE LAWS PERTAINING TO DAIRY FARMS ABOUT:

HIRING

TOPIC	ANSWER	DETAILS
Notice of Payday/ Pay Rate ¹	YES	You must post a notice, in a conspicuous place in the workplace or electronically, that specifies the payday.
Reporting ²	YES	Report <u>new hires</u> and rehires to the Texas New Hire Reporting Operations Center in the Texas Office of the Attorney General within 20 calendar days after the hire date.

WAGES

TOPIC	ANSWER	DETAILS
Paydays ³	YES	Employees that are exempt from federal overtime laws must be <u>paid at least once a month</u> ; others must be paid at least twice a month, spaced evenly apart (or as close to as possible). If you don't designate a set payday, the default is the first and 15th of each month. If an employee is not paid on a payday for any reason, including the employee's absence on a payday, the employer must pay the employee on another regular business day on the employee's request.
Final Pay ⁴	YES	If an employee is discharged, employers must pay the employee in full not later than six days after the date of discharge. If an employee voluntarily quits or resigns, the wages are due on the next regular payday.
Overtime	NO	No Texas overtime pay laws; check federal laws (see federal fact sheet).
Minimum Wage ⁵	NO	<u>Dairy farming</u> is exempt from Texas minimum wage law. However, federal minimum wage law may apply (see federal fact sheet).
Hours Worked	NO	Texas 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.
Reporting Time Pay	NO	Texas does not have reporting time pay requirements, i.e. an employee is only required to be paid for actual hours worked.
Pay Stub ⁶	NO	Dairy farming is exempt from Texas requirements around pay stubs.

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WAGES

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TOPIC	ANSWER	DETAILS
Taxes and Withholding ⁷	YES/NO	<p>No personal income tax withholding requirements but may be subject to federal tax withholding. You must give your employees a statement of taxes withheld, like a federal Form W-2, 1099-MISC or 1099-R.</p> <p>You must pay Texas Unemployment Insurance taxes if:</p> <ul style="list-style-type: none"> • You paid cash wages for labor of \$6,250 or more in a quarter in the current or prior calendar year; • You employed three or more farm workers for some part of a day in 20 or more weeks of the current or prior calendar year; or, • You employ migrant or seasonal labor. <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 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 Texas in calculating how much you owe for federal unemployment taxes. More details.</p>
Deductions ⁸	YES	<p>Deductions required by law or courts (for ex. tax withholdings) do not require written authorization from the employee. However, other deductions must be both (1) <u>allowed by law</u>; and (2) agreed to in writing. This includes deductions for damage or loss of equipment. Employers should fully review all state and federal rules.</p> <p>Please see: detailed information on Texas pay issues. Refer to the federal fact sheet for further information on deductions authorized under federal law.</p>
Bonuses ⁹	YES	<p>Bonuses are not explicitly addressed in Texas wage 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. While it may be permissible, it is not recommended to meet your minimum wage requirement through bonuses.</p> <p>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>

RECORD KEEPING

TOPIC	ANSWER	DETAILS
Payroll	YES/NO	Payroll records are not required under Texas minimum wage or wage payment laws; however there are requirements under Unemployment Insurance below.
Personnel Files – Employee Access	NO	Texas law does not require employers to let employees view their personnel file.
Unemployment Insurance ¹⁰	YES	<p>Employers subject to Unemployment Taxes must submit <u>quarterly wage reports</u>. Whether or not subject to Unemployment Tax contributions, Texas employers must keep <u>wage records</u> for every worker for at least 4 years:</p> <ul style="list-style-type: none"> • <i>The names and correct address of the employing unit</i> • <i>The names and address of each branch or division or establishment operated, owned, or maintained by the employment unit</i> • <i>The individual's name, address and Social Security number</i> • <i>The dates on which the individual performed services for the employing unit and the state or states in which the services were performed</i> • <i>For each payroll period: the wages paid, date of payment, any remuneration other than wages</i> • <i>Whether during any payroll period the individual worked less than full time, and if so, the hours and dates worked</i> • <i>A job description of duties performed (can be for an individual or group of individuals)</i> <p>Employers must also keep records that reflect the ownership and any changes of ownership of the employing unit, the correct address where the headquarters of the employing unit is located, the correct mailing address of the employing unit, and the address where records are available for inspection or audit by representatives of the Tax Department. The records shall show the addresses of owners of the employing unit; or if a corporation or unincorporated organization, the directors, officers, and any individuals on whom subpoenas, legal processes, or citations may be served in Texas.</p> <p>Records must be readily accessible to authorized representatives of the Texas Workforce Commission. If the records are not kept in Texas, the employer must pay the expenses and costs for the representative to go outside of Texas to inspect or audit the records.</p>
Workers' Compensation ¹¹	YES/NO	Texas does not require an employer to have workers' compensation coverage. An employer who elects to obtain coverage is subject to the requirements in the Texas Workers' Compensation Act. In terms of recordkeeping, those requirements are limited: when requested by the workers' compensation insurance carrier, an employer must fill out an <u>Employer's Wage Statement form within 30 days</u> .
OSHA	YES	See Health and Safety section below.
Federal	YES	There are numerous federal rules about recordkeeping. Employers should review the federal fact sheet.

WORKING CONDITIONS

TOPIC	ANSWER	DETAILS
Bathrooms ¹²	YES	<u>Texas law incorporates</u> the federal Grade A 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	NO	<u>No max hour or day requirements for adults</u> , but may be subject to federal overtime pay requirements.
Rest and Meal Breaks	NO	No state law requiring rest or meal breaks. Employers that choose to provide rest and meal breaks must follow the applicable federal rules. Refer to federal fact sheet.
Labor Relations	NO	No provision in state law recognizing farm worker rights to organize.
Whistleblower Protection	YES/NO	Texas 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 or Sick Leave ¹³	NO	<u>Employers are not required to provide vacation, sick, holiday pay</u> or any pay for hours not worked. But if employers choose to provide them, they need to follow any written agreement or written policy on how these benefits are earned, accrued, used, and paid out.
Breaks for Nursing Mothers ¹⁴	NO	No state laws on workplace accommodations for nursing employees. <u>Texas law</u> lets businesses use the term “mother-friendly” if they have policies supporting worksite breastfeeding. Federal rules may apply, refer to the federal fact sheet.
Pregnancy Leave and Accommodations ¹⁵	YES/NO	Employers with fifteen or more employees are required to treat female employees affected by pregnancy, childbirth, or a related medical condition the same as other employees not so affected but similar in their ability or inability to work for all purposes related to employment, including in leave and benefit policies. In other words, if duties would be altered for an employee with back pain, duties should be similarly altered for a pregnant employee with back pain. Texas law does not address pregnancy leave for private sector employees.
Family and Medical Leave	NO	Texas 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.
Jury Duty Leave ¹⁶	YES	An employer may not discharge a permanent employee because the employee serves as a juror. However, an employer is not required to pay an employee for time spent responding to a jury summons or serving on a jury.
Crime Victim and Witness Leave ¹⁷	YES/NO	An employer may not discharge, discipline, or penalize in any manner an employee because the employee complies with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding. However, Texas law does not otherwise address leave for crime victims or witnesses.
Military and Other Service Leave ¹⁸	YES	Members of the state military forces called to active duty or training are entitled to unpaid leave. Returning employee is entitled to reinstatement to the same position with no loss of time, efficiency rating, vacation, or benefits unless employer’s circumstances have changed so that reemployment is impossible or unreasonable. Employees called into state active duty or to state training and other duty by the governor, the adjutant general, or another proper authority under the law of this state is entitled to the same benefits and protections provided to persons under federal laws, the Servicemembers Civil Relief Act and the Uniformed Services Employment and Reemployment Rights Act. Refer to the federal fact sheet.

WORKING CONDITIONS

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TOPIC	ANSWER	DETAILS
Voting Leave ¹⁹	YES	All employer must allow employee to be absent from work to vote on election day without being penalized by a loss or reduction of wages or other benefits, unless the polls are open for voting two hours before or after their working hours.
School Activity Leave	NO	Texas law does not address leave for private sector employees to attend a child's school activity.

HUMAN RIGHTS

TOPIC	ANSWER	DETAILS
Employment Discrimination ²⁰	YES	<p>Texas law prohibits employment discrimination based on race, color, disability, religion, sex, pregnancy, childbirth or related medical conditions, national origin, genetic information, emergency evacuation, or age (40+). Applies to employers with 15 or more employees.</p> <p>Employment discrimination means bias in hiring (including during interviews), promotion, compensation, job assignments, firing, pay, and other terms of employment.</p> <p>It is illegal to retaliate against employees for filing or otherwise aiding with a complaint.</p>
Harassment/ Sexual Harassment ²¹	YES	<p>Generally sexual harassment is included under employment discrimination. Sexual harassment is unwelcome conduct. 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 of a sexual nature when:</p> <ul style="list-style-type: none"> • <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> • <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> • <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> <p>It is illegal to retaliate against employees for filing or otherwise aiding with a complaint.</p>
Forced Labor ²²	YES	<p>Human trafficking for forced labor or services is a criminal offense in Texas. Labor trafficking is the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery. More details.</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 ²³	NO	<p>Texas child labor laws do not apply for children employed or supervised by their parent or guardian OR minors working in agriculture during a period not legally required to be attending school. More details.</p> <p>Employers are encouraged to review the federal laws found in the federal fact sheet, including rules on prohibited and restricted hazardous work for minors.</p>

HEALTH AND SAFETY

TOPIC	ANSWER	DETAILS
Health and Safety	YES	<p>Texas is under federal OSHA jurisdiction. See the federal portion of the fact sheet for more information.</p>
Workers Compensation and Accident/Injury Reporting ²⁴	YES/NO	<p>Farms in Texas are generally <u>not required to have worker's compensation</u> coverage. However, worker's compensation coverage does apply to migrant and seasonal workers meeting certain conditions (see pages 139-142).</p> <p>Employers <u>that do not have workers' compensation coverage</u> and have five or more employees must still report some illnesses or injuries to the Division of Workers' Compensation: deaths, injuries/illnesses that result in more than one day of lost work, and occupational diseases that employers know about. The report has to be filed by the 7th of the month following the month when the injury/illness occurred.</p> <p>If you buy worker's compensation coverage, you must let employees know about it and post written notices about coverage and employee rights. You must file a First Report of Injury (FROI) form within 8 days to the insurance carrier for workplace fatalities, occupational diseases that you know about, and any injuries resulting in a missed day of work. If an employee waives coverage, you still need to file the injury/illness with the Division of Workers' Compensation. An employer must keep a record of all work-related injuries, illnesses and fatalities for at least 5 years after the date the record was created, or for the period of time required by the Occupational Safety and Health Administration (OSHA), whichever is longer. More details.</p>
Housing	YES/NO	<p>Texas state laws do not explicitly address agricultural housing (except for migrant labor/temporary 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.</p>

References

1. Tex. Lab. Code §61.012. See also 40 Tex. Admin. Code §821.7
2. Texas Fam. Code §234.101 - 234.104
3. Tex. Lab. Code §61.011; 61.012; 61.013; 61.015; 61.016; 61.017
4. Tex. Lab. Code §61.014. See also 40 Tex. Admin. Code §821.25
5. Tex. Lab. Code §62.051; §62.160(a)
6. Tex. Lab. Code §62.051; §62.160; §62.003
7. Tex. Lab. Code §201.028; §201.47; §201.065
8. Tex. Lab. Code §61.018; 61.016; 40 Tex. Admin. Code §821.27; See also FOH §30c10; FOH §30c04; and 29 C.F.R. §516.27
9. 29 CFR §778.208; FOH §30b07
10. Texas Admin. Code §15.106; 815.107; 815.109
11. Tex. Lab. Code §406.002; §406.091; 40 Texas Admin. Code 45.13
12. 25 Tex. Admin. Code §217.2
13. 40 Tex. Admin. Code §821.25
14. Tex. H&S Code §165.001 et seq.
15. Tex. Lab. Code §21.106
16. Tex. Civ. Prac. & Rem. Code Ann. § 122.001
17. Tex. Lab. Code §52.051
18. Tex. Gov't. Code §437.204, 437.213
19. Tex. Elec. Code Ann. § 276.004
20. Tex. Lab. Code §21.001 et seq.
21. See above
22. Texas Pen. Code §20A.02
23. Tex. Lab. Code §51.003
24. Tex. Lab. Code §406.091; 406.161 et seq.; 409; 28 Tex. Admin. Code §160.2 and 160.3

