



Human Resources Legal Fact Sheet: **Federal**

Updated October 2021

*Disclaimer: This fact sheet summarizes federal 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 general 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 dairy farms** It was created in October 2021, 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 applicable state fact sheets because employers may be required to comply with some or all of the applicable state 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 federal laws for dairy farms about the following?

Hiring

Topic	Answer	Summary
Notice of Payday / Pay Rate ¹	YES	<p>Every employer employing any employees subject to the Fair Labor Standards Act’s minimum wage provisions shall post and keep posted a notice explaining the Act, as prescribed by the Wage and Hour Division, in conspicuous places in every establishment where such employees are employed so as to permit them to observe readily a copy. Any employer of employees to whom section 7 of the Act does not apply because of an exemption of broad application to an establishment may alter or modify the poster with a legible notation to show that the overtime provisions do not apply.</p> <p>For example, dairy farmers could amend the poster to state: “Overtime Provisions Not Applicable to Agricultural Employees (section 13(b)(12)).”</p> <p>Please review the Minimum Wage and Overtime Sections below to determine whether and when the FLSA minimum wage and overtime requirements apply to employees on dairy farms.</p>
Reporting ²	YES	<p>Federal law requires all employers to collect and transmit new hire reporting data to the applicable State New Hire Directory. Employers do not have to submit any data directly to the federal government.</p> <p>Please see applicable State Law Fact sheet for further information.</p>
I-9/Employment Verification ³	YES	<p>Employers cannot hire, recruit, or refer a person that is known to be an unauthorized alien in the United States. Employers must receive attestation from an applicant and supporting documents affirming their identity and authorization to work in the United States within three business days of hire.</p> <p>Both the employee and the employer must complete the I-9 Form, which is used to verify the identity and employment authorization of individuals hired for employment in the United States. All employers must ensure proper completion of the I-9 Form for each individual they hire for employment in the United States, including citizens and noncitizens.</p>



Human Resources Legal Fact Sheet: **Federal**

	<p>An employee must attest to his or her employment authorization on the I-9 Form. The employee must also present his or her employer with acceptable documents evidencing identity and employment authorization. The employer must examine the employment eligibility and identity document(s) an employee presents to determine whether the document(s) reasonably appear to be genuine and to relate to the employee and record the document information on the Form I-9.</p> <p>Page 3 of the I-9 Form provides a list of necessary documents that an employer must obtain to establish identity and employment authorization.</p> <p>Employers must retain the I-9 form for three years after the date of the hire or one year after the date the individual's employment is terminated, whichever is later.</p> <p>A recruiter or referrer for a fee must retain the I-9 form for three years after the date of hire.</p> <p>The form must be available for inspection by authorized U.S. Government officials from the Department of Homeland Security, Department of Labor, or Department of Justice.</p> <p>Agricultural associations, agricultural employers, or farm labor contractors who recruit or refer employees for a fee may designate agents, such as national associations or employers, to complete the verification procedures on their behalf. If the employer is designated as the agent, the employer should provide the recruiter or referrer with a photocopy of the I-9 Form. Recruiters and referrers for a fee must retain the I-9 Form for three years after the date the referred individual was hired by the employer and make it available for inspection.</p>
<p>H2-A Visa/Migrant Workers⁴</p>	<p>YES</p> <p>The Immigration and Nationality Act (INA) regulates the admission of foreign workers into the United States and in certain circumstances allows agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature.</p> <p>The H-2A temporary agricultural program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. Employers seeking to participate in the H-2A temporary agricultural program must apply and obtain approval through the Department of Labor (DOL) and U.S. Citizenship and Immigration Services (USCIS). Please note that the H2-A visa program typically does not apply to dairy workers because dairy farm positions are mostly permanent positions.</p> <p>Some dairies may use H1-B visas for specialized workers. The H-1B program applies to employers seeking to hire nonimmigrant aliens as workers in specialty occupations. A specialty occupation is one that requires the application of a body of</p>



Human Resources Legal Fact Sheet: **Federal**

		highly specialized knowledge and the attainment of at least a bachelor’s degree or its equivalent. The intent of the H-1B provisions is to help employers who cannot otherwise obtain needed business skills and abilities from the U.S. workforce by authorizing the temporary employment of qualified individuals who are not otherwise authorized to work in the United States.
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Wages

Topic	Answer	Summary
Payday	YES	The FLSA does not require employers to pay wages on certain days of the month or at a particular frequency. Rather, the FLSA requires only that employers pay employees their wages on the regular payday for the pay period in which they worked those hours.
Final Pay	YES	<p>Federal law does not require employers to give employees their final paycheck immediately. The final paycheck must include all wages earned for that pay period including any overtime, commissions or payments that would normally be included in the paycheck for that pay period.</p> <p>Some states, however, may require immediate payment. Please see applicable State Law Fact sheet for further information.</p>
Overtime ⁵	YES	<p>Dairy farmers may have employees working on a farm who are exempt from the Fair Labor Standards Act overtime provisions and some who are not.</p> <p>Employees who are employed in <i>agriculture</i> as that term is defined in the Act are exempt from the overtime pay provisions. They do not have to be paid time and one half their regular rates of pay for hours worked in excess of forty per week.</p> <p>The definition of agriculture is divided into two branches: primary and secondary agriculture.</p> <ul style="list-style-type: none"> • Primary agriculture includes “farming in all its branches,” including the cultivation and tillage of the soil; the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities; and the raising of livestock, bees, fur-bearing animals, or poultry. • Secondary agriculture encompasses “any practices . . . performed either by a farmer or on a farm as an incident to or in conjunction with” farming operations. In order to qualify as secondary agriculture, an activity must be (1) “performed by a farmer or on a farm,” and (2) “incident to or in conjunction with such farming operations.” Generally, a practice “performed in connection with farming operations is within the statutory definition only if it constitutes an established part of agriculture, is subordinate to the farming operations involved, and does not amount to an independent business.” <p>For example, primary agriculture includes the raising of livestock or poultry. Dairying the production is specifically identified as a primary agricultural activity - which includes the work of caring for and milking cows, putting the milk in containers,</p>



Human Resources Legal Fact Sheet: **Federal**

	<p>cooling it, and storing it where done on the farm. Secondary agriculture includes any practices performed by a farmer or on a farm as an incident to or in conjunction with farming operations, such as preparation for market, delivery to storage or to a market or to carriers for transportation to a market.</p> <p>If an employee is engaged in nonfarming operations performed on or off of the farm – i.e. not within the scope of primary or secondary farming activities – employees engaged in such operations do not fall within the agriculture exemption from the overtime provisions of the FLSA and must be paid time and a half for all hours worked over 40 in a workweek, unless the activities fall under a separate exemption.</p> <p>Where an employee in the same workweek performs work within the scope of primary or secondary agriculture and also performs work that is not, the FLSA overtime exemption does not apply to that employee and the minimum wage and overtime requirements of the FLSA apply for all hours worked over 40 during that workweek – i.e. the employee must be paid time and a half pay for all hours worked over 40.</p> <p>The workweek is the unit of time to be taken as the standard in determining the applicability of an exemption.</p>
<p>Minimum Wage⁶</p>	<p>YES</p> <p>Dairy farmers may have employees working on a farm who are exempt from the FLSA minimum wage provisions and some who are not. There are three major provisions that dairy farmers need to be aware of to evaluate whether employees are exempt from the FLSA’s minimum wage requirements.</p> <p>First, for the minimum wage exemption to apply, employees must be employed in agriculture, as explained in the overtime section above. If an agriculture employer is engaged in nonfarming operations performed on or off the farm – i.e. not within the scope of primary or secondary farming activities – employees engaged in such operations do not fall within the agriculture exemption from the minimum provisions of the FLSA. Those employees who are not employed in agriculture must be paid the federal minimum wage.</p> <p>Where an agricultural employee in the same workweek performs work within the scope of primary or secondary agriculture and work that does not, the FLSA exemption does not apply and the employee must be paid at least the federal minimum wage for all hours worked during that workweek.</p> <p>The workweek is the unit of time to be taken as the standard in determining the applicability of an exemption.</p> <p>Second, if a dairy farmer uses more than 500 “man days” of agricultural labor in any calendar quarter of the preceding calendar year, the FLSA minimum wage requirements apply, and agricultural employees must be paid at least the federal minimum wage for the current calendar year.</p>



Human Resources Legal Fact Sheet: **Federal**

		<p>However, if in the preceding calendar year the number of man-days used did not exceed 500 in any calendar quarter, there is no requirement to comply with respect to employment of agricultural labor in the current calendar year regardless of how many man-days are used in any calendar quarter of the current calendar year.</p> <p>It is necessary to consider each of the four calendar quarters (January 1-March 31; April 1-June 30; July 1-September 30; October 1-December 31) in the preceding calendar year (January 1-December 31).</p> <p>A "man day" is defined as any day during which an employee performs agricultural work for at least one hour. Agricultural labor performed by an employer's parent, spouse, child, or other member of his immediate family, i.e., step-children, foster children, step-parents and foster parents, brothers, and sisters is not counted as man-days.</p> <p>Third, the following employees are also exempt from the minimum wage requirements:</p> <ul style="list-style-type: none"> • Agricultural employees who are immediate family members 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 • Non-local minors, 16 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 16 <p>For employees that are not exempt from the FLSA minimum wage requirement the federal minimum wage is \$7.25 per hour.</p> <p>Employers should also check their state fact sheet.</p>
Hours Worked ⁷	YES	<p>Employees are only required to be paid for all time in which they are "suffered or permitted" to work. The rule is also applicable to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed, it must count the time as hours worked.</p> <p>An employee who resides on an employer's premises on a permanent basis or for extended periods of time is not considered as working all the time he is on the premises.</p>
Reporting Time Pay	NO	<p>There is no requirement for reporting pay under the Fair Labor Standards Act. The FLSA only requires that employees be paid for time worked.</p>
Pay Stub	NO	<p>Federal law does not require employers to provide itemized wage statements or paystubs to employees.</p>



Human Resources Legal Fact Sheet: **Federal**

<p>Taxes and Withholding⁸</p>	<p>YES</p>	<p>Employer must withhold Social Security and Medicare taxes if:</p> <ol style="list-style-type: none"> 1. You pay cash wages to an employee of \$150 or more in a year for farm work; or 2. The total that you pay for farm work to all of your employees is \$2,500 or more during the year. <p>Dairy farmers must withhold federal income tax from the wages of farmworkers if the wages are subject to Social Security and Medicare taxes.</p> <p>NOTE: Foreign agricultural workers on H-2A visas are exempt from Social Security and Medicare taxes. Additionally, an employer is not required to withhold federal income tax from compensation paid to an H-2A worker for agricultural labor performed in connection with this visa but may withhold if the worker asks for withholding and the employer agrees. In that case, the worker must give the employer a completed Form W-4. Federal income tax withheld should be reported in box 2 of Form W-2. Further information on how to report compensation paid to H-2A visa holders can be found in the IRS Publication 51, (Circular A), Agricultural Employer's Tax Guide 2020.</p> <p>Dairy farmers should ask each new employee to give them a signed Form W-4 when starting work, and they should have a Form W-4 on file for each employee.</p> <p>Dairy farmers must file Form 943 for each calendar year beginning with the first year that you pay \$2,500 or more for farm work or you employ a farmworker who meets the \$150 test explained above.</p> <p>Dairy farmers must also pay Federal Unemployment (FUTA) Taxes to the Internal Revenue Service if:</p> <ol style="list-style-type: none"> 1. you paid cash wages of \$20,000 or more to farmworkers in any calendar quarter, or 2. employed 10 or more farm workers during at least some part of a day (whether or not at the same time) during any 20 or more different weeks in the calendar year. <p>To determine whether you meet either of the tests above, you must count wages paid to H-2A visa workers. However, H-2A visa workers are not subject to FUTA taxes.</p> <p>Dairy farmers that are required to pay state unemployment insurance taxes may deduct such taxes from their federal tax obligation.</p>
<p>Deductions⁹</p>	<p>YES</p>	<p>Dairy farmers can deduct the following from an employee's wages:</p> <ol style="list-style-type: none"> 1. Taxes owed by the employee such as social security and withholding. 2. Deductions voluntarily authorized by the employee including union dues pursuant to a collective bargaining agreement; purchase of savings bonds; payment of insurance premiums; and voluntary contributions to church, charitable, fraternal, athletic or social organizations.



Human Resources Legal Fact Sheet: **Federal**

		<p>3. Deduction where the employer is legally obligated by court order to pay the sum to the creditor of an employee such as garnishments, wage attachments, trustee process or bankruptcy as long as the employer does not derive a benefit from the transaction.</p> <p>An employer may deduct the reasonable cost of furnishing an employee with board, lodging, or other facilities which are customarily furnished by the employer. Reasonable cost is not more than the actual cost of the board, lodging, or other facility and may not include a profit or benefit to the employer or an affiliated person. Employers may deduct the reasonable cost for food. The “reasonable cost” for food includes the cost of the food, preparation and other related supplies, of meals supplied to the employees that are supplied for the convenience of the employees.</p> <p>If deductions are made for items not included in the category of “board, lodging, or other facilities” and the result is a weekly wage less than the minimum, those deductions cannot be made.</p>
Bonuses ¹⁰	YES	<p>Discretionary bonuses are not included in an employee’s regular rate of pay for purposes of computing overtime. If an employee on an agricultural farm does not satisfy the exception for agricultural employees, a non-discretionary bonus would be considered in calculating an employee’s regular rate of pay for overtime.</p> <p>Bonuses are discretionary if the payment is to be made and the amount of the payment are determined at the sole discretion of the employer, and the bonuses are not paid under any prior contract, agreement, or promise causing the employee to expect such payments regularly.</p> <p>Bonuses are nondiscretionary if the employer promises, contracts, or agrees to pay a bonus to the employee, including:</p> <ol style="list-style-type: none"> 1. Bonuses that are promised to employees upon hiring. 2. Bonuses that are the result of collective bargaining. 3. Bonuses that are announced to employees to induce them to work more steadily, more rapidly, or more efficiently. 4. Attendance bonuses. 5. Individual or group production bonuses. 6. Bonuses for quality and accuracy of work. 7. Bonuses that are announced to employees to induce them to remain with the firm. 8. Bonuses contingent upon the employee continuing in employment until the time the payment is to be made

Recordkeeping

Topic	Answer	Summary
Payroll ¹¹	YES	No records, except for those required for minors under the age of 18 years old who are employed on days when school is in session or minors engaged in a hazardous



Human Resources Legal Fact Sheet: **Federal**

occupation (explained below), need to be maintained by an employer who did not use more than 500 man-days of agricultural labor in any quarter of the preceding calendar year, unless it can reasonably be anticipated that more than 500 man-days of agricultural labor will be used in at least one calendar quarter of the current calendar year.

If it can reasonably be anticipated that the employer will use more than 500 man-days of agricultural labor in at least one calendar quarter of the current calendar year, the employer shall maintain and preserve for each employee records containing the following:

1. The employee's name in full
2. The employee's identifying symbol or number
3. Home address including zip code
4. Sex and occupation in which employed (sex may be indicated by use of the prefixes Mr., Mrs., Miss., or Ms.)
5. Symbols or other identifications separately designating those employees who are:
 - a. members of the employer's immediate family, which includes a parent, spouse, child, or other member of the employer's immediate family,
 - b. hand harvest laborers, and
 - c. employees principally engaged in the range production of livestock.
6. For each employee, other than members of the employer's immediate family, the number of man-days worked each week or each month.

For the entire year following a year in which an agricultural employer used more than 500 man-days of agricultural labor in any calendar quarter, the employer shall maintain for the following year, for each covered employee (other than members of the employer's immediate family, hand harvest laborers and livestock range employees) records containing all the following information:

1. Name in full, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records,
2. Home address, including zip code,
3. Sex and occupation in which employed (sex may be indicated by use of the prefixes Mr., Mrs., Miss., or Ms.)
4. Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice,
5. (i) Regular hourly rate of pay for any workweek in which overtime compensation is due, (ii) explain basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on



Human Resources Legal Fact Sheet: **Federal**

sales, or other basis, and (iii) the amount and nature of each payment which is excluded from the “regular rate,”

6. Hours worked each workday and total hours worked each workweek (for purposes of this section, a “workday” is any fixed period of 24 consecutive hours and a “workweek” is any fixed and regularly recurring period of 7 consecutive workdays),
7. Total premium pay for overtime hours,
8. Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total additions and deductions,
9. Total wages paid each pay period,
10. Date of payment and the pay period covered by payment.

For employees working on a dairy farm that are subject to the FLSA minimum wage or minimum wage and overtime requirements of the FLSA, the employer must maintain the following records:

1. Name in full, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records,
2. Home address, including zip code,
3. Date of birth, if under 19,
4. Sex and occupation in which employed (sex may be indicated by use of the prefixes Mr., Mrs., Miss., or Ms.) (Employee's sex identification is related to the equal pay provisions of the Act which are administered by the Equal Employment Opportunity Commission.)
5. Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice,
6. (i) Regular hourly rate of pay for any workweek in which overtime compensation is due under section 7(a) of the Act, (ii) explain basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, and (iii) the amount and nature of each payment which is excluded from the “regular rate,”
7. Hours worked each workday and total hours worked each workweek (for purposes of this section, a “workday” is any fixed period of 24 consecutive hours and a “workweek” is any fixed and regularly recurring period of 7 consecutive workdays),
8. Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation,
9. Total premium pay for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under paragraph 8 above,



Human Resources Legal Fact Sheet: **Federal**

		<p>10. Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total additions and deductions,</p> <p>11. Total wages paid each pay period,</p> <p>12. Date of payment and the pay period covered by payment.</p> <p><u>Additional Specific Recordkeeping Requirement for Minors</u> Every employer (other than parents or guardians standing in the place of parents employing their own child or a child in their custody) who employs in agriculture any minor under 18 years of age on days when school is in session or on any day if the minor is employed in a hazardous occupation must maintain and preserve records containing the following data for each minor:</p> <ol style="list-style-type: none"> 1. Name in full; 2. Place where minor lives while employed (if the minor's permanent address is elsewhere, give both addresses); and 3. Date of birth. <p>Payroll records must be maintained for a period of three years.</p>
Personnel File – Employee Access	NO	There is no federal law concerning employee access to their personnel file. Please review the applicable State Fact sheet for further information.
Unemployment Insurance	YES / NO	Unemployment insurance is a federal-state partnership based upon federal law. However, unemployment insurance is administered under state laws. Please see applicable State Law Fact Sheet for further information.
Workers' Compensation	NO	There are no federal laws governing workers' compensation for private employers. Please see applicable State Law Fact sheet for further information.
OSHA ¹²	YES	<p><u>OSHA INJURY AND ILLNESS RECORDKEEPING REQUIREMENTS</u> Covered employers are required to prepare and maintain records of serious occupational injuries and illness using the OSHA 300 Log; OSHA Form 300-A; and OSHA Form 301. Covered employers must record new cases related to:</p> <ol style="list-style-type: none"> 1. Any work-related fatality. 2. Any work-related injury or illness that results in loss of consciousness, days away from work, restricted work, or transfer to another job. 3. Any work-related injury or illness requiring medical treatment beyond first aid. 4. Any work-related diagnosed case of cancer, chronic irreversible diseases, fractured or cracked bones or teeth, and punctured eardrums. 5. There are also special recording criteria for work-related cases involving: needlesticks and sharps injuries; medical removal; hearing loss; and tuberculosis. <p>Employers with 10 or fewer employees at all times during the year and employers classified in low-hazard industries – i.e. on OSHA's Partially Exempt Industries list – do not need to comply with OSHA's recordkeeping requirements, unless OSHA or</p>



Human Resources Legal Fact Sheet: **Federal**

	<p>the Bureau of Labor Statistics informs you in writing that you must keep records. Please note that dairy farmers are not included on the Partially Exempt Industries List. Thus, only dairy farmers with 10 or fewer employees at all times throughout the year are exempt from OSHA’s recordkeeping requirements. All others must maintain an OSHA 300 or equivalent log of workplace injuries and illnesses.</p> <p>The records must be maintained at the worksite for at least five years. Each February through April, employers must certify and post a summary of the injuries and illnesses recorded the previous year – i.e. the OSHA Form 300A. (29 C.F.R. 1904.32) Also, if requested, copies of the records must be provided to current and former employees, or their representatives.</p> <p>For further information on OSHA’s Recordkeeping Regulations, please review OSHA’s Detailed Guidance for OSHA’s Injury and Illness Recordkeeping Rule.</p>
<p>Federal¹³</p>	<p><u>FAMILY MEDICAL LEAVE ACT RECORDKEEPING REQUIREMENTS</u></p> <p>Dairy Farmers with 50 or more employees in 20 or more workweeks in the current or preceding calendar year must maintain records, for a period of three years, that disclose the following:</p> <ol style="list-style-type: none"> 1. Basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid. 2. Dates FMLA leave is taken by FMLA eligible employees (e.g., available from time records, requests for leave, etc., if so designated). Leave must be designated in records as FMLA leave; leave so designated may not include leave required under State law or an employer plan which is not also covered by FMLA. 3. If FMLA leave is taken by eligible employees in increments of less than one full day, the hours of the leave. 4. Copies of employee notices of leave furnished to the employer under FMLA, if in writing, and copies of all written notices given to employees as required under FMLA and these regulations. Copies may be maintained in employee personnel files. 5. Any documents (including written and electronic records) describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leaves. 6. Premium payments of employee benefits. 7. Records of any dispute between the employer and an eligible employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and for the disagreement. <p>For further information on who is considered an eligible employee under the FMLA, please see the Family Medical Leave Section of this Fact Sheet.</p>



Human Resources Legal Fact Sheet: **Federal**

IMMIGRATION REFORM AND CONTROL ACT RECORDKEEPING REQUIREMENTS

Employers are required to examine employee documents and keep records verifying that their employees are authorized to work in the United States. I-9 forms should be kept for all current employees. After an employee resigns or is terminated, the I-9 form should be kept separately and the length of time it is kept [depends](#) on the length of time the employee worked for the Company. If the employee worked for the Company for more than one year before separating employment, the Company must keep the I-9 form for one year and then should destroy it. If the employee worked for the Company for less than one year before separating employment, the Company must keep the I-9 form for three years and then should destroy it.

TITLE VII, ADA, and GINA RECORDKEEPING REQUIREMENTS

Dairy farmers with 15 or more employees who worked at least twenty calendar weeks in the current or preceding calendar year must retain all personnel and employment records made or used in the course of their business for one year from the date the record is made or personnel action is taken, whichever is later. These types of documents include, but are not limited to:

1. Requests for reasonable accommodation;
2. Application forms;
3. Hiring, promotion, demotion, transfer, layoff and termination records; and
4. Records on pay rates compensation, tenure, selection for training or apprenticeship, and other terms of employment.

Records of an involuntarily terminated employee must be kept for one year from the date of termination. Employers must retain all records relevant to charges filed until their final disposition.

AGE DISCRIMINATION IN EMPLOYMENT ACT RECORDKEEPING REQUIREMENTS

Dairy farmers with 20 or more employees who worked at least twenty calendar weeks in the current or preceding calendar year must also make and keep for 3 years payroll or other records for each of his employees which contain:

1. Name;
2. Address;
3. Date of Birth;
4. Occupation;
5. Rate of Pay; and
6. Compensation earned each week

Employers must also maintain for a period of one year from the date of a personnel action or until final disposition of an action:

1. job applications, resumes, or any other form of employment inquiry whenever submitted to the employer in response to an advertisement or other notice of existing or anticipated job openings, including records pertaining to the failure or refusal to hire any individual;



Human Resources Legal Fact Sheet: **Federal**

2. promotion, demotion, transfer, selection for training, layoff, recall, or discharge of any employee,
3. job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings,
4. test papers completed by applicants or candidates for any position which disclose the results of any employer-administered aptitude or other employment test considered by the employer in connection with any personnel action,
5. the results of any physical examination where such examination is considered by the employer in connection with any personnel action,
6. any advertisements or notices to the public or to employees relating to job openings, promotions, training programs, or opportunities for overtime work.

If an employer provides an employee benefit plan, the employer must also retain records of the plan for the full period that it is in effect, plus one year following an employee's termination.

Every covered employer must post and keep posted in conspicuous place upon its premises the notice pertaining to the applicability of the ADEA.

EEO-1 REPORTING REQUIREMENT

On or before September 30 of each year, every employer that is subject to Title VII of the Civil Rights Act of 1964, as amended (see Discrimination section below), and that has 100 or more employees shall file with the Commission or its delegate executed copies of [Standard Form 100](#). Covered employers must maintain a copy of the report at company or division headquarters and make it available upon request to an officer, agent, or employee of the EEOC.

MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT RECORDKEEPING REQUIREMENTS

Each farm labor contractor, agricultural employer, and agricultural association which employs any migrant agricultural worker shall--

1. with respect to each such worker, make, keep, and preserve records for three years of the following information:
 - a. the basis on which wages are paid;
 - b. the number of piecework units earned, if paid on a piecework basis;
 - c. the number of hours worked;
 - d. the total pay period earnings;
 - e. the specific sums withheld and the purpose of each sum withheld; and
 - f. the net pay; and
2. provide to each such worker for each pay period, an itemized written statement of the information required by paragraph (1) above.



Human Resources Legal Fact Sheet: **Federal**

For further information please review the section below on Migrant and Seasonal Agricultural Worker Protections.

Working Conditions

Topic	Answer	Summary																
Bathrooms ¹⁴	YES	<p>OSHA sets specific expectations for the number of toilet facilities needed at workplaces based on the number of employees working there. Employers may utilize separate bathrooms for each gender OR lockable, single-occupant toilet rooms within a common bathroom facility. To meet the General Industry standard for prompt access to a toilet facility when needed, employers must provide at least the minimum number of toilet facilities per the table below:</p> <table border="1"> <thead> <tr> <th># of Employees</th> <th>Minimum # of Toilet Facilities</th> </tr> </thead> <tbody> <tr> <td>1 to 15</td> <td>1</td> </tr> <tr> <td>16 to 35</td> <td>2</td> </tr> <tr> <td>36 to 55</td> <td>3</td> </tr> <tr> <td>56 to 80</td> <td>4</td> </tr> <tr> <td>81 to 110</td> <td>5</td> </tr> <tr> <td>111 to 150</td> <td>6</td> </tr> <tr> <td>Over 150</td> <td>+1 for each additional 40 workers</td> </tr> </tbody> </table> <p>Bathrooms, washing facilities, and lavatories must be maintained in sanitary conditions.</p> <p>Note: The OSHA General Industry standard on Sanitation is not explicitly required for agricultural employers. However, OSHA can use its General Duty Clause to cite employers, and the general industry standards often serve as the basis for such violations. As such, dairy farmers should use the general industry standards as a baseline for compliance. See the 'OSHA' section of this document for more information.</p>	# of Employees	Minimum # of Toilet Facilities	1 to 15	1	16 to 35	2	36 to 55	3	56 to 80	4	81 to 110	5	111 to 150	6	Over 150	+1 for each additional 40 workers
# of Employees	Minimum # of Toilet Facilities																	
1 to 15	1																	
16 to 35	2																	
36 to 55	3																	
56 to 80	4																	
81 to 110	5																	
111 to 150	6																	
Over 150	+1 for each additional 40 workers																	
Working Hours	YES / NO	<p>Federal law does not limit the number of hours employees 16 years or older may in a day or workweek. However, federal child labor laws provide certain restrictions on when an employee under the age of 16 years old can work in agriculture.</p> <p>Please review the Child Labor Law section below for further information.</p>																
Rest and Meal Breaks ¹⁵	YES	<p>Federal law does not require employers to provide meal, lunch, or break periods for their employees. However, it does place obligations on employers who, at their own discretion, choose to do so. Specifically, federal law requires an employer who grants employee non-meal rest period (usually the type lasting 20 minutes or less) to pay employees for their time on break.</p> <p>On the other hand, if an employer gives employees a bona fide meal or lunch period (usually of the type lasting more than 30 minutes), an employer does not need to pay for the break time so long as the employee is free to do what they wish while on break.</p>																



Human Resources Legal Fact Sheet: **Federal**

Labor Relations ¹⁶	NO	<p>The National Labor Relations Act specifically excludes “any individual employed as an agricultural laborer” from its definition of “employee.” Check the appropriate state fact sheet for applicable State labor relations law, if any.</p>
Migrant and Seasonal Agricultural Worker Protections ¹⁷	YES	<p>Most jobs on a dairy operation are permanent positions. However, dairy farms that hire migrant or seasonal labor may benefit from the following information.</p> <p>Under the Migrant and Seasonal Agricultural Worker Protection Act, each agricultural employer – i.e. a person who owns or operates a farm and who recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker – is required to pay wages when due, prohibited from requiring workers to purchase goods and services from them, and prohibited from violating the terms of working arrangements made with workers.</p> <p>An employer that owns or controls a facility or real property used for housing migrant workers must comply with federal and state safety and health standards. A written statement of the terms and conditions of occupancy must be posted at the housing site where it can be seen or be given to the workers. If transportation is provided for migrant or seasonal workers, the vehicles must be safe and properly insured, and each driver must have a valid and appropriate license to operate the vehicle, as provided by applicable State law.</p> <p>An agricultural employer who recruits any migrant or seasonal agricultural worker must disclose in writing to each worker who is recruited for employment the following information at the time of the worker's recruitment:</p> <ol style="list-style-type: none"> 1. the place of employment; 2. the wage rates to be paid; 3. the crops and kinds of activities on which the worker may be employed; 4. the period of employment; 5. the transportation, housing, and any other employee benefit to be provided, if any, and any costs to be charged for each of them; 6. the existence of any strike or other concerted work stoppage, slowdown, or interruption of operations by employees at the place of employment; 7. the existence of any arrangements with any owner or agent of any establishment in the area of employment under which the farm labor contractor, the agricultural employer, or the agricultural association is to receive a commission or any other benefit resulting from any sales by such establishment to the workers; and 8. whether State workers' compensation insurance is provided, and, if so, the name of the State workers' compensation insurance carrier, the name of the policyholder of such insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be give <p>The information required to be disclosed to migrant or seasonal agricultural workers shall be provided in written form. Such information must be provided in</p>



Human Resources Legal Fact Sheet: **Federal**

		<p>English or, as necessary and reasonable, in Spanish or other language common to migrant agricultural workers who are not fluent or literate in English.</p> <p>Certain agricultural employers are exempt from the requirements of the Migrant and Seasonal Agricultural Workers Protection Act if:</p> <ol style="list-style-type: none"> 1. they qualify for the 500-man day exemption under the Fair Labor Standards Act (please review FLSA section for explanation of 500-man day requirement); or 2. individuals or immediate family members engage in farm labor contracting activities on behalf of their exclusively owned and operated operation. <p>Farm labor contractors and each of their employees who will be performing farm labor contractor activities must obtain a certificate of registration from the U.S. Department of Labor before they can start farm labor contracting activities. A farm labor contractor is any person, other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association, who, for any money or other valuable consideration paid or promised to be paid, recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker.</p> <p>The term “migrant agricultural worker” means an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence.</p> <p>The term “seasonal agricultural worker” means an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence--</p> <ol style="list-style-type: none"> 1. when employed on a farm or ranch performing field work related to planting, cultivating, or harvesting operations; or 2. when employed in canning, packing, ginning, seed conditioning or related research, or processing operations, and transported, or caused to be transported, to or from the place of employment by means of a day-haul operation.
Paid Sick and Vacation Leave	NO	Employees may be entitled to unpaid sick leave under the Family Medical Leave Act or state laws. Please review the Family and Medical Leave Act below for more information.
Breaks for Nursing Mothers ¹⁸	YES	<p>Employers must provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time such employee has need to express the milk. Employers are not required to pay for time spent on a break to express breast milk.</p> <p>Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.</p>



Human Resources Legal Fact Sheet: **Federal**

		<p>An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.</p> <p>For further information please review the DOL Wage and Hour Division Guidance on Break Time for Nursing Mothers</p>
<p>Pregnancy Accommodations and Leave¹⁹</p>	<p>YES</p>	<p>There are three different federal laws that relate to pregnancy accommodations and leave that dairy farmers must be aware of.</p> <p>Under the Pregnancy Discrimination Act (PDA), dairy farmers with 15 or more employees may not discriminate against or harass an employee because of or on the basis of pregnancy, childbirth, or related medical conditions. Although the law does not specify that employers must provide pregnant employee an accommodation, the employee must be provided the same treatment and benefits as other persons not so affected but similar in their ability or inability to work.</p> <p>Additionally, although pregnancy is not a disability, many pregnancy-related conditions may classify as a disability. In that case, the Americans with Disabilities Act (ADA) requires dairy farmers with 15 or more employees to provide an employee with a reasonable accommodation unless doing so would cause undue hardship – i.e. significant difficult or expense.</p> <p>Reasonable accommodations available to pregnant workers with impairments that constitute disabilities might include allowing a pregnant worker to take more frequent breaks, to keep a water bottle at a work station, or to use a stool; altering how job functions are performed; providing a temporary assignment to a light duty position; or unpaid leave.</p> <p>Finally, the Family and Medical Leave Act (FMLA) requires covered employers to provide unpaid leave for a number of different reasons, including the birth of a son or daughter. Please see the Family and Medical Leave section below for further information.</p>
<p>Family and Medical Leave²⁰</p>	<p>YES</p>	<p>Under the Family and Medical Leave Act (FMLA), dairy farmers with 50 or more employees in 20 or more workweeks in the current or preceding calendar year must provide an eligible employee up to 12 workweeks of unpaid leave in a 12-month period for one or more of the following reasons:</p> <ol style="list-style-type: none"> 1. The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care; 2. To care for a spouse, son, daughter, or parent who has a serious health condition; 3. For a serious health condition that makes the employee unable to perform the essential functions of his or her job; or



Human Resources Legal Fact Sheet: **Federal**

4. For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or called to cover active duty status.

The [military family leave provisions](#) of the FMLA also permit an eligible employee to take up to 26 workweeks of unpaid leave during a single 12-month period to care for a covered servicemember with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember. The single 12-month period for military caregiver leave is different from the 12-month period used for other FMLA leave reasons.

An eligible employee is a person who has worked for at least 12 months, has at least 1,250 hours of service for the employer during the 12-month period preceding the leave, and works at a location where the employer has at least 50 employees within 75 miles.

Employees must comply with their employer's usual and customary requirements for requesting leave and provide enough information for their employer to reasonably determine whether the FMLA may apply to the leave request. Employees generally must request leave 30 days in advance when the need for leave is foreseeable. When the need for leave is foreseeable less than 30 days in advance or is unforeseeable, employees must provide notice as soon as possible and practicable under the circumstances.

When an employee requests FMLA leave due to his or her own serious health condition or a covered family member's serious health condition, the employer may require certification in support of the leave from a health care provider. An employer may also require second or third medical opinions (at the employer's expense) and periodic recertification of a serious health condition.

When an employee returns from FMLA leave, an employee must be restored to his or her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

Covered dairy farmers cannot interfere with an employee's ability to exercise their rights under the FMLA or discriminate against any employee for taking FMLA leave.

Please review the Department of Labor's [Guide to the Family and Medical Leave Act](#) for further information.

Military and other Service Leave²¹

YES

The Uniformed Services Reemployment Rights Act (USERRA) prohibits employment discrimination against a person on the basis of past military service, current military obligations, or intent to serve. An employer must not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to a person on the basis of a past, present, or future service obligation. In addition,



Human Resources Legal Fact Sheet: **Federal**

		<p>an employer must not retaliate against a person because of an action taken to enforce or exercise any USERRA right or for assisting in an USERRA investigation.</p> <p>USERRA applies to persons who perform duty, voluntarily or involuntarily, in the "uniformed services," which include the Army, Navy, Marine Corps, Air Force, Coast Guard, and Public Health Service commissioned corps, as well as the reserve components of each of these services. Federal training or service in the Army National Guard and Air National Guard also gives rise to rights under USERRA.</p> <p>A dairy farmer must reemploy a servicemember returning from a period of service in the uniformed services if that servicemember meets five criteria:</p> <ol style="list-style-type: none"> 1. The person must have been absent from a civilian job on account of service in the uniformed services; 2. The person must have given advance notice that he or she was leaving the job for service in the uniformed services, unless such notice was precluded by military necessity or otherwise impossible or unreasonable; 3. The cumulative period of military service with that employer must not have exceeded five years; 4. The person must not have been released from service under dishonorable or other punitive conditions; and 5. The person must have reported back to the civilian job in a timely manner or have submitted a timely application for reemployment, unless timely reporting back or application was impossible or unreasonable. <p>Returning servicemembers are to be reemployed in the job that they would have attained had they not been absent for military service, with the same seniority, status and pay, as well as other rights and benefits determined by seniority.</p>
Crime Victim and Witness Leave	YES / NO	<p>There is no federal law directly concerning crime victim or witness leave.</p> <p>However, physical or mental conditions related to domestic violence, sexual assault, and stalking may count as a serious health condition under the Family and Medical Leave Act. Please see the Family and Medical Leave section above for further information.</p>
Jury Duty Leave	NO	Federal law does not address an employer's obligation to an employee regarding jury duty.
Voting Leave	NO	Federal law does not require employers to give their employees time off to vote.
School Activity Leave ²²	YES / NO	<p>There is no federal law requiring employers to provide employees leave for school-related activities.</p> <p>However, under the Family and Medical Leave Act, a covered employee may take leave to enroll or transfer a child of a <i>military member</i> to a new school or day care facility when the enrollment or transfer is necessitated by the covered active duty of the military member, or to attend meetings with staff due to circumstances arising from the military member's covered active duty. Such meetings may include, for example, meetings with school officials regarding disciplinary measures, parent-</p>



Human Resources Legal Fact Sheet: **Federal**

teacher conferences, or meetings with school counselors. FMLA leave may not be used to meet with staff for routine events or academic concerns.

Please review the Family and Medical Leave Act section above and the Department of Labor's [Guide to the Family and Medical Leave Act](#) for further information regarding whether the FMLA applies to your farm.

Human Rights

Topic	Answer	Summary
Employment Discrimination ²³	YES	<p>Title VII of the Civil Rights Act of 1964 prohibits employers with 15 or more employees from discriminating against an employee on the basis of their race; color; religion; sex; national origin; pregnancy; child birth; or related medical conditions. Title VII also prohibits employers from retaliating against an applicant or employee who asserts his or her rights under the law.</p> <p>The Americans with Disabilities Act of 1990, as amended (ADA), prohibits employers with 15 or more employees from discriminating against applicants or employees on the basis of a qualified disability in any aspect of employment, including applications, interviews, testing, hiring, job assignments, evaluations, compensation, leave, benefits, discipline, training, promotions, medical exams, layoffs, and firing. Covered employers may have to provide a reasonable accommodation to a disabled employee unless it would create undue hardship or causes a direct threat to workplace safety.</p> <p>The Age Discrimination in Employment Act of 1967 (ADEA) prohibits employers with 20 or more employees from discriminating against employees on the basis of age (40 or older) in hiring, promotion, discharge, compensation, or terms, conditions or privileges of employment.</p> <p>The Equal Pay Act, which amended the Fair Labor Standards Act, prohibits dairy farmers from paying different wages to men and women if they perform substantially equal work in the same workplace. Note, however, that an employer can pay men and women different salaries for doing equal work if the difference is based on seniority, merit, an incentive system, or any factor other than gender.</p> <p>The Immigration Reform and Control Act of 1986 (IRCA) prohibits employers with 4 or more employees from discriminating against applicants and employees on the basis of their citizenship or national origin. IRCA's prohibition on discrimination applies to all terms, conditions, and privileges of employment, including hiring, firing, compensation, benefits, job assignments, promotions, and discipline. This antidiscrimination provision applies to federal, state, and local governments and to private employers with at least four employees.</p> <p>The Genetic Information Nondiscrimination Act (GINA) prohibits employers with 15 or more employees from using an applicant's or employee's genetic information as</p>



Human Resources Legal Fact Sheet: **Federal**

		<p>the basis for employment decisions and requires employers to keep genetic information confidential. GINA also prohibits employers from requiring or asking employees to provide genetic information.</p>
Harassment / Sexual Harassment ²⁴	YES	<p>Harassment is generally considered a type of employment discrimination. 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; and (3) it is based on a protected class, including race, color, religion, gender, sex, national origin, age, ancestry, sexual orientation, disability, genetic information, pregnancy, marital status, veteran status or other military status.</p> <p>Harassment is any verbal or physical conduct that disparages, threatens, intimidates, coerces, or shows hostility or dislike toward any employee because his or her membership in a protected category.</p> <p>Sexual harassment is a violation of Section 703 of Title VII of the Civil Rights Act. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:</p> <ol style="list-style-type: none"> 1. Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment; 2. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or 3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. <p>Employers cannot retaliate against employee for filing or otherwise aiding with a complaint.</p>
Forced Labor ²⁵	YES	<p>It is a criminal offense to provide or obtain the labor or services of a person through one of three prohibited means:</p> <ol style="list-style-type: none"> 1. by threats of serious harm to, or physical restraint against, that person or another person; 2. by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or 3. by means of the abuse or threatened abuse of law or the legal process. <p>Furthermore, it is a criminal offense to knowingly recruit, entice, harbor, transport, provide, or obtain by any means a person for labor or other services.</p>

Child Labor

Topic	Answer	Summary
Child Labor ²⁶	YES	Once a young person turns 16 years old, he or she can work on any day, for any number of hours and in any job in agriculture.



Human Resources Legal Fact Sheet: **Federal**

A youth 14- or 15-years old can work in agriculture, on any farm, but only during hours when school is not in session and only in non-hazardous jobs.

If the youth is 12 or 13 years of age, he or she can only work in agriculture on a farm if a parent has given written permission, or a parent is working on the same farm. Again, the work can only be performed during hours when school is not in session and in non-hazardous jobs.

If the youth is younger than 12, he or she can only work in agriculture on a farm if the farm is exempt from the minimum wage and overtime requirements of the FLSA. Workers under 12 years of age can be employed in non-hazardous jobs, but only during hours when school is not in session, and only with a parent's permission.

The following occupations in agriculture are particularly hazardous for the employment of children below the age of 16:

1. Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.
2. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
 - i. Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;
 - ii. Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or
 - iii. Power post-hole digger, power post driver, or nonwalking type rotary tiller.
3. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
 - i. Trencher or earthmoving equipment;
 - ii. Fork lift;
 - iii. Potato combine; or
 - iv. Power-driven circular, band, or chain saw.
4. Working on a farm in a yard, pen, or stall occupied by a:
 - (i) Bull, boar, or stud horse maintained for breeding purposes; or
 - (ii) Sow with suckling pigs, or cow with newborn calf (with umbilical cord present)
5. Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches.
6. Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.
7. Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.



Human Resources Legal Fact Sheet: **Federal**

8. Working inside:
 - i. A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;
 - ii. An upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;
 - iii. A manure pit; or
 - iv. A horizontal silo while operating a tractor for packing purposes.
9. Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 *et seq.*) as Category I of toxicity, identified by the word "poison" and the "skull and crossbones" on the label; or Category II of toxicity, identified by the word "warning" on the label;
10. Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or
11. Transporting, transferring, or applying anhydrous ammonia.

Youth of any age may be employed at any time, in any occupation in agriculture on a farm owned or operated by their parent or person standing in place of their parent. There are also certain exemptions for student-learners enrolled in a vocational education training program in agriculture under a recognized State or local educational authority, or in a substantially similar program conducted by a private school, or a minor under 16 years of age who has completed certain training programs.

Health and Safety

Topic	Answer	Summary
OSHA	YES	<p>General Industry Standards</p> <p>General Duty Clause (29 U.S.C. § 654(a)(1)): OSHA's General Duty Clause – Sec. 5(a)(1) of the OSH Act – requires employers to provide employees with workplaces which are free from recognized hazards likely to cause death or serious physical harm. Agricultural operations are covered by several Occupational Safety and Health standards including Agriculture specific standards (29 CFR 1928) and parts of General Industry (Hazard Communication, Temporary Labor Camps, Slow-Moving Vehicles, etc.), as well as the General Duty Clause of the Occupational Safety and Health Act.</p> <p>Although OSHA's general industry standards do not specifically apply to agricultural operations and activities integrally related to agricultural operations, OSHA can use its General Duty Clause to cite employers, and the general industry standards often serve as the basis for such violations.</p>



Human Resources Legal Fact Sheet: **Federal**

Additionally, OSHA's general industry standards do apply to activities performed that "are not related to farming operations and are not necessary to gain economic value from products produced on the farm," such as manufacturing activities. Dairy farmers should be aware of OSHA's general industry requirements and its possible application to portions of the workplace.

As such, dairy farmers should use the following general industry standards as a baseline for compliance:

Manure Lagoon Safety/Permit Required Confined Spaces ([29 C.F.R. § 1910.146](#)): A confined space exists where the following three factors are present: 1) the space is large enough for an employee to enter and perform work; 2) the space has limited or restricted means for entry or exit; and 3) it is not designed for continuous occupancy. Manure Lagoon Pits have been recognized by [OSHA](#) as a confined space with the potential for a toxic and/or explosive environment. Employers operating manure lagoon pits should take precautions and ensure that they are complying with OSHA's confined space standard.

Among other things, compliance require employer to evaluate the workplace to determine if any spaces are *permit-required* confined spaces. A "permit-required confined space" is defined as a confined space that has one or more of the following characteristics: contains or has the potential to contain a hazardous atmosphere; contains material that has the potential to engulf an entrant; has walls that converge inward or floors that slope downward and taper into a smaller area which could trap or asphyxiate an entrant; or contains any other recognized safety or health hazard, such as unguarded machinery, exposed live wires, or heat stress.

Employers must develop and implement a written permit space program that complies with the requirements of 1910.146(d) if employees are required to enter a permit-required confined space. If the workplace contains permit spaces, the employer must inform potentially exposed employees of those areas by posting danger signs or by any other equally effective means of the existence and location of and the danger posed by the permit spaces.

The standard distinguishes between "affected" employees and "authorized" employees. Employers must provide training on confined space entry so that all authorized and affected employees have the understanding, knowledge, and skills necessary for the safe performance of work in confined space areas. Additionally, employers must develop and implement procedures for summoning rescue and emergency services for rescuing entrants from permit spaces. If employers allow employees to perform rescue service by entering a permit space or use a retrieval system, the employer must provide training on such rescue operations and ensure that retrieval system complies with 1910.146(k)(3). At least one member of the



Human Resources Legal Fact Sheet: **Federal**

rescue team or service must hold a current certification in first aid and be able to perform CPR.

Walking Working Surfaces (29 C.F.R. §§ 1910.21-1910.30):

Generally, employers must set up the workplace to prevent employees from falling from an elevated surface, such as an overhead platform, or elevated work station, or into holes in the floor and walls. Walking working surfaces must be maintained free of hazards such as sharp or protruding objects (i.e., sharp edges), loose boards, corruptions, leaks, spills, snow and ice, and be capable of supporting the maximum intended load for that surface.

Employers must ensure that each employee on a walking working surface with an unprotected side or edge that is 4 feet or more above a lower level or 4 feet or more above dangerous equipment is protected from falling by one or more of the following:

1. Guardrail systems;
2. Safety net systems; or
3. Personal fall protection systems, such as fall arrest, travel restraint, or positioning systems.

Employees also must be protected from tripping into or stepping into or through any hole that is less than 4 feet above a lower level by covers or guardrails.

Employers must provide training to each employee on the following:

1. The nature of the fall hazards in the work area and how to recognize them;
2. The procedures to be followed to minimize those hazards;
3. The correct procedures for installing, inspecting, operating, maintaining, and disassembling the personal fall protection systems that the employee uses;
4. The correct use of personal fall protection systems and equipment including, but not limited to, proper hook-up, anchoring, and tie-off techniques, and methods of equipment inspection and storage, as specified by the manufacturer; and
5. The proper care, inspection, storage, and use of fall protection equipment

Additional training must be provided when changes in the workplace render previous training obsolete or inadequate, when changes in the types of fall protection systems or equipment to be used render previous training obsolete or inadequate, or when inadequacies in an affected employee's knowledge indicate that they no longer have the understanding or skills necessary to use equipment or perform the job safely.

Weather Protection/Heat Stress: There are currently no specific Federal OSHA standards for occupational heat exposure. However, under the General Duty Clause, Section 5(a)(1) of the OSH Act, employers are required to provide their employees



Human Resources Legal Fact Sheet: **Federal**

with a place of employment that is free from recognizable hazards that are causing or likely to cause death or serious harm to employees. To ensure employees do not experience heat stress employers should consider monitoring temperatures and humidity, ensuring that the workplace is properly ventilated, maintaining adequate potable water close to work areas, scheduling heavy work and tasks for cooler hours, to the extent feasible, and providing employees adequate break times. Further information regarding occupational heat exposure can be found [here](#). Employers should check state plan states, to determine if their state has a heat stress/heat illness standard.

First Aid (29 C.F.R. §§ 1910.151): In the absence of an infirmary, clinic, or hospital in near proximity to the workplace, a person must be adequately trained to render first aid and first aid supplies must be readily available at your farm. OSHA has [interpreted](#) the term “near proximity” to mean that emergency care must be available within no more than 3-4 minutes from the workplace.

Clean Lunch/Break Rooms (29 C.F.R. § 1910.141(g)(2)): Employees are prohibited from consuming or storing food or beverage in a toilet room or in any area exposed to toxic materials. Dairy farmers must provide waste disposal containers for employees to dispose trash and to maintain sanitary conditions. The number, size, and location of such receptacles shall encourage their use and not result in overflowing. They must be emptied frequently and at least once each working day, unless unused, and shall be maintained in a clean and sanitary condition. Receptacles shall be provided with a solid tight-fitting cover unless sanitary conditions can be maintained without use of a cover.

Potable Water (29 C.F.R. §1910.141(b)(1)): Under section [1910.141\(b\)\(1\)](#), employers must provide potable water for drinking, washing of the person, cooking, washing of foods, washing of cooking and eating utensils, washing of food preparation or processing, and personal service rooms (i.e., rooms for first-aid, medical services, dressing, showering/washing, toilet use and eating). Potable water means water that meets standards for drinking purposes of the State or local authority, or quality standards set by the EPA.

Any potable drinking water dispenser must be maintained in a sanitary condition, capable of being closed, and equipped with a tap. The use of a common drinking cup or shared open containers such as barrels, pails, or tanks for drinking water are prohibited.

Hazard Assessment/Personal Protective Equipment (29 C.F.R. §1910.132-140): Employers are required to provide personal protective equipment (“PPE”) to their workers based on the types of hazards that exist at their farms. To determine what PPE each dairy farmer is required to provide, it must perform a hazard assessment. Each employer must assess the workplace (i.e., perform a hazard assessment) to determine if hazards are present, or are likely to be present, that would necessitate



Human Resources Legal Fact Sheet: **Federal**

the use of PPE such as, but not limited to, gloves, safety glasses, protective clothing, or respirators (including dust masks). Although the hazard assessment does not need to be memorialized in writing, dairy farmers must verify that a workplace hazard assessment has been performed through a written certification that:

- Identifies the workplace evaluated;
- Includes the person certifying the evaluation has been performed;
- Provides the dates of the hazard assessment; and
- Identifies the document as a certification of the hazard assessment.

If hazards requiring PPE are found to be present, or likely to be present, an employer must select the PPE necessary to protect each affected employee, communicate its selection, and take steps to ensure proper use. In addition, the dairy farmer is required to provide training to each employee required to use PPE. Each employee must demonstrate he or she understands the training before use.

The training must cover:

- When PPE is necessary;
- What PPE is necessary;
- How to don, doff, adjust, and wear PPE;
- Limitations of the PPE; and
- Proper care/maintenance of PPE and disposal.

Retraining may be required in certain circumstances. Generally, PPE must be provided at no cost to the employee. For more information, refer to [29 C.F.R. §1910.132](#).

OSHA also has specific requirements for certain types of PPE. Specifically, OSHA has standards regulating (1) face and eye protection ([§1910.133](#)); (2) respiratory protection ([§1910.134](#)); (3) head protection ([§1910.135](#)); (4) foot protection ([§1910.136](#)); (5) electrical protection ([§1910.137](#)); (6) hand protection ([§1910.138](#)); and (7) personal fall protection ([§1910.140](#)). The standard sets out when each form of protection described would be required and how to select the particular type of protection to use. For example, under 1910.138, OSHA requires employers to consider the performance characteristics of the protection relative to the work tasks, conditions present, duration of use and the specific hazards identified. For more information on OSHA's enforcement of these standards, refer to its [directive](#).

One of the most frequently cited standards related to PPE is the respiratory protection standard - §1910.134 – because employers must develop and implement a respiratory protection program if respirators are required for work to be performed. Generally, the use of any type of respirator will necessitate implementation of a respiratory protection program, except where the only use of respirators involves a voluntary wearing of dust masks (a situation where the employer does not mandate the use of a respirator but an employee chooses to wear one nonetheless). Even then, employers would be required to determine that the dust mask would not in itself create a hazard AND provide information



Human Resources Legal Fact Sheet: **Federal**

contained in Appendix D of §1910.134 to each employee voluntarily wearing a respirator.

Agriculture Standards/Farm Equipment Safety:

The following agriculture specific standards and general industry standards – specifically incorporated into the agricultural standard in 29 C.F.R. § 1928.21 - apply to all dairy farmers and should be adhered to in the workplace:

Hazard Communication (29 C.F.R. §§ 1910.1200 *et seq.*): Employers that have hazardous chemicals in their workplaces are required by OSHA's [Hazard Communication Standard](#) (HCS) to implement a written hazard communication program. The standard requires that employers with hazardous chemicals in their workplaces also must have labels and safety data sheets (SDSs) for each hazardous chemical in the workplace and train their employees to handle the chemicals appropriately. Hazardous chemical means any chemical which is classified as a physical hazard or a health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified. Training may be provided to employees on the category of hazards present in the workplace (such as flammability, carcinogenicity, etc.) or on each specific chemical that is present in the workplace.

Storage and Handling of Anhydrous Ammonia (29 C.F.R. §§ 1910.111(a)-(b)): This standard applies to the design, construction, location, installation, and operation of anhydrous ammonia systems, including refrigerated ammonia storage systems.

Slow Moving Vehicles (29 C.F.R. § 1910.145(d)(10)): Slow moving vehicles (25mph or less) that operate on public roads must be equipped with an [emblem](#) containing a fluorescent yellow-orange triangle with a dark reflective border.

Retention of DOT Markings (29 C.F.R. §§ 1910.1201 *et seq.*): An employer who received a package of hazardous material which is required to be marked, labeled or placarded in accordance with U.S. Department of Transportation Hazardous Materials Regulations (49 C.F.R. Parts 171 through 180) must retain those markings, labels and placards on the package until the package is sufficiently cleaned of residue and purged of vapors to remove any potential hazards. Additionally, an employer who received a freight container, rail freight car, motor vehicle, or transport vehicle that is required to be marked or placarded in accordance with the Hazardous Materials Regulation must retain those markings until the hazardous materials which require the marking are sufficiently removed to prevent any potential hazards. For non-bulk packages that will not be re-shipped, employers can satisfy this standard by complying with the labeling requirements in OSHA's Hazard Communication Standard, 29 C.F.R. §§ 1910.1200 *et seq.*

LOTO and Guarding: All farm field (tractors, self-propelled implements, etc.) and farmstead (stationary) equipment must be properly guarded when the machine is



Human Resources Legal Fact Sheet: **Federal**

in operation. [29 C.F.R. § 1928.57](#) *et seq.* No person may ride on farm field equipment other than persons required for instruction or assistance in machine operation. Farm field equipment must be stopped, disconnected from the power source, and employees must wait for all machine movement to stop before servicing, adjusting, cleaning, or unclogging equipment, except where the machine must be running to properly service or maintain. In such cases, an employer must instruct employees on all steps and procedures necessary to safely service or maintain the equipment. All electrical power on farmstead equipment must be “locked out” before performing maintenance or service.

Dairy farmers engaged in non-agricultural operations also must ensure that they provide adequate policies and procedures regarding machine guarding and lock-out/tag-out for non-agricultural operations performed on the farm, such as manufacturing activities. Guards must be affixed to machines to protect operators and other employees in machine areas from those hazards created by point of operation, nip points, rotating parts, flying chips, and sparks. [29 C.F.R §§ 212](#) *et seq.* Dairy farmers engaged in non-agricultural operations must establish a program consisting of energy control procedures, employee training, and periodic inspections to ensure that before any employee performs any servicing or maintenance on a machine or equipment where the unexpected energizing, startup or release of stored energy could occur and cause injury, the machine or equipment shall be isolated from the energy source and rendered inoperative. [29 C.F.R. §§ 1910.147](#) *et seq.*

Power Take-Off Safety ([29 C.F.R. §§ 1928.57](#) *et seq.*): All power take-off shafts, including rear, mid- or side-mounted shafts, shall be guarded either by a master shield or by other protective guarding. Where power take-off driven equipment is of a design requiring removal of the tractor master shield, the equipment also must include protection from that portion of the tractor power take-off shaft which protrudes from the tractor. Signs must be placed at prominent locations on tractors and power take-off driven equipment specifying that power drive system safety shields must be kept in place.

Employees must be trained annually in the safe operation and servicing of tractors, field implements, and farmstead equipment that they operate.

Rollover Protection ([29 C.F.R. §§ 1928.51](#) *et seq.*): All tractors with more than 20 horsepower operated by an employee and manufactured after October 1976 must be equipped with a roll-over protective structure. Certain tractors are exempt where a rollover protection system would interfere with its intended operation. Employers must train every employee annually in safe tractor operation.

Additional Safety and Health Guidance from OSHA Local Emphasis Programs

The OSHA Dairy Farm Local Emphasis Programs identify 12 items for inspection, known as the Dairy Dozen. In addition to the above OSHA standards which cover



Human Resources Legal Fact Sheet: **Federal**

	<p>the majority of the Dairy Dozen, farms should be aware of the following additional hazards:</p> <ul style="list-style-type: none"> • Crushed-by Hazards / Animal handling and worker positioning • Electrical Systems • Horizontal Bunker Silos • Noise (see PPE) • Manure storage facilities and collection structure (in addition to the confined space hazards, must be aware of drowning hazards, etc.) <p>Please review the FARM Safety Manual for more information about managing these and other hazards.</p> <p>For information on how these items may be inspected and enforced by OSHA, you can refer to the New York Local Emphasis Program.</p> <p>Fatality/Serious Injury Reporting (29 C.F.R. 1904.39): All work-related fatalities must be reported to OSHA within 8 hours. All work-related in-patient hospitalizations (formal admission to an in-patient service of a hospital or clinic for care or treatment), all amputations, and all losses of an eye must be reported to OSHA within 24 hours. The timeframe provided (8 or 24 hours) begins when the employer becomes aware of the fatality, in-patient hospitalization, etc. Employers can report a fatality, in-patient hospitalization, amputation, or loss of an eye using one of the following methods:</p> <ol style="list-style-type: none"> 1. By telephone or in person to the OSHA Area Office that is nearest to the site of the incident; 2. By telephone to the OSHA toll-free central telephone number, 1-800-321-6742; or <p>By electronic submission using the reporting application on OSHA’s website.</p>
<p>Housing²⁷</p>	<p>Section 1910.142 governs the sanitation and lodging requirements for temporary labor camps. Dairies do not typically operate temporary labor camps. For specific information on OSHA’s requirements for temporary labor camps, click here.</p> <p>Dairy employees are usually hired for permanent positions. Dairies that hire migrant or seasonal workers should be aware of the following requirements. Under the Migrant and Seasonal Worker Protection Act regulations, an employer who owns or controls a facility or real property used for housing migrant workers must receive a certificate of housing inspection from a State, local or Federal agency to ensure that the housing conditions comply with federal and state safety and health standards. A written statement of the terms and conditions of occupancy must be posted at the housing site where it can be seen or be given to the workers. Additionally, employers must provide housing at no cost to H-2A workers and to workers in corresponding employment who are not reasonably able to return to their residence within the same day. If the employer elects to secure rental (public)</p>

YES /
NO



Human Resources Legal Fact Sheet: **Federal**

accommodations for such workers, the employer is required to pay all housing-related charges directly to the housing's management.

Employers are encouraged to consult the FARM HR Manual, which contains best practices for managing employee housing. Additionally, state or local laws may apply.

¹ 29 C.F.R. § 516.4

² 42 U.S.C. § 653a

³ 8 U.S.C. § 1324a; 8 C.F.R. §§ 274a.1 *et seq.*

⁴ 8 U.S.C. § 1188; 20 C.F.R. §§ 655.100 *et seq.*

⁵ 29 U.S.C. § 203; 29 U.S.C. § 213; 29 C.F.R. §§ 780.0-780.12; 29 C.F.R. §§ 780.100-780.159; 29 C.F.R. §§ 780.300-780.332

⁶ 29 U.S.C. § 203; 29 U.S.C. § 213; 29 C.F.R. § 500.30; 29 C.F.R. §§ 780.0-780.12; 29 C.F.R. §§ 780.100-780.159; 29 C.F.R. §§ 780.300-780.332; 29 C.F.R. §§ 780.400-780.404.

⁷ 29 U.S.C. § 203(g), (o); 29 C.F.R. § 785.11 *et seq.*

⁸ 26 U.S.C. §§ 1 *et seq.*, 26 C.F.R. §§ 1.0-1 *et seq.*; IRS Publication 51 (Circular A), Agricultural Employer's Tax Guide (2020).

⁹ 29 U.S.C. § 203; 29 C.F.R. §§ 531.3; 531.30; 531.32; 531.39; 531.40.

¹⁰ 29 U.S.C. § 207(e)(3); 29 C.F.R. § 778.211(c)

¹¹ 29 C.F.R. § 516.2(a), (c); 29 C.F.R. § 516.5; 29 C.F.R. § 516.33

¹² 29 C.F.R. §§ 1904.29 *et seq.*; 29 C.F.R. §§ 1904.4 *et seq.*; 29 C.F.R. §§ 1904.5 *et seq.*; 29 C.F.R. §§ 1904.6 *et seq.*; 29 C.F.R. §§ 1904.7 *et seq.*; 29 C.F.R. §§ 1904.8 *et seq.*; 29 C.F.R. §§ 1904.9 *et seq.*; 29 C.F.R. §§ 1904.10 *et seq.*; 29 C.F.R. §§ 1904.11 *et seq.*; 29 C.F.R. §§ 1904.1; 1904.2

¹³ 29 C.F.R. §§ 825.500 *et seq.*; 8 U.S.C. § 1324a(b)(3); 8 C.F.R. § 274a.2(b)(2); 29 C.F.R. §§ 1602.1-1602.14; 29 C.F.R. §§ 1821; 1831

¹⁴ 29 CFR § 1910.141 *et seq.*

¹⁵ 29 C.F.R. § 785.11; 29 C.F.R. §§ 785.18-19

¹⁶ 29 U.S.C. § 152(3)

¹⁷ 29 U.S.C. §§ 1801 *et seq.*; 29 C.F.R. §§ 500.0 *et seq.*

¹⁸ 29 U.S.C. § 207(r)

¹⁹ 42 U.S.C. §§ 2000e *et seq.*; 42 U.S.C. §§ 12111 *et seq.*; 29 U.S.C. §§ 2611 *et seq.*

²⁰ 29 U.S.C. §§ 2611 *et seq.*; 29 C.F.R. §§ 825.100 *et seq.*

²¹ 38 U.S.C. §§ 4301-4335

²² 29 C.F.R. § 825.126(b)(3)

²³ 42 U.S.C. §§ 2000e *et seq.*; 42 U.S.C. §§ 12101-12213; 29 U.S.C. §§ 621-634; 29 U.S.C. 206(d); 8 U.S.C. § 1324; 42 U.S.C. 2000ff.

²⁴ 29 C.F.R. § 1604.11

²⁵ 18 U.S.C. § 1584 *et seq.*

²⁶ 29 U.S.C. § 212; 29 C.F.R. §§ 570.2 *et seq.*; 29 C.F.R. §§ 570.71-570.72

²⁷ 29 C.F.R. §§ 500.130-500.135; 29 C.F.R. §§ 142 *et seq.*; 20 CFR §§ 654.404 *et seq.*