



**Basic Workers' Compensation Insurance Information Related to Value-Added Agriculture,
Direct Marketing and Agritourism Enterprises**

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Disclaimer

This information is for educational purposes only and does not constitute legal advice nor is it intended to be a substitute for the services of a legal professional. Employers should seek expert advice from a workers' compensation attorney and/or insurance professional.

Determining whether workers' compensation insurance is required by law can be confusing. In some cases, there may not even be a clear answer as to whether coverage is required. In other cases, employers may choose to purchase worker's compensation coverage as a risk management tool even if it is not required.

Some general information about the law may help value-added agriculture, direct marketing and agritourism entrepreneurs begin to investigate their situation and make more informed decisions as to their need for coverage. This fact sheet provides some generalized information on workers' compensation in Tennessee. Business owners should discuss their specific situations with an attorney and an experienced workers' compensation insurance provider.

Requirements for workers' compensation are determined by state law. In Tennessee, the Department of Labor and Workforce Development administers the Workers' Compensation system.

Generally, Tennessee employers with five (5) or more full or part-time employees at any one time are required to carry workers' compensation insurance on those employees. Workers' compensation is required for employers with one (1) or more employees, however, when in the construction or coal mining industry or when employees have construction responsibilities. As of March 28, 2011, the law will change for construction. At that time, workers' compensation must be acquired by owners for all subcontractors, workers and employees who work for them and on themselves. The exception will be for a sole proprietor or partner being paid directly by a residential property owner.¹

It is also important to consider who is considered an employee. In a corporation, the business itself is considered the employer. Owners/corporate officers considered employees are included in the count of total workers. Similarly, family members paid are also considered employees and are included in the count of total workers.

One exemption exists related to farm or agricultural laborers. Farm or agricultural laborers are not required to be covered by workers' compensation. For example, workers employed to milk cows or harvest vegetables may be excluded.

¹ State of Tennessee Department of Labor and Workforce Development. *Construction Law Notice*. Available online as of May 6, 2010 at http://www.tn.gov/labor-wfd/wc_ConstructionLawNotice.pdf.

Farm workers not employed purely for agricultural production are not included in this exemption, however. Workers employed to drive a truck, make apple butter or serve customers in an on-farm retail market, for example, are likely not included in this exemption and would be included in the count of total workers toward the five or more employee threshold where workers' compensation is then required.

The application of the law may get more complicated where workers' jobs cross industry boundaries or job responsibilities. For example, an employer may have two employees, whether they are farm or non-farm does not matter, and these employees may be involved in construction-type activities on occasion. Another example may be where a farm has five or more employees that do a portion of their work in pure production agriculture but may also drive a truck or help market the products at the farmers market. Daniel Starnes, workers' compensation defense attorney says,

In determining whether an employee falls within the category of a farm or agricultural laborer, the courts have indicated that the general business of the employer is not determinative in classifying the employee. Additionally, the task being performed by the employee at the time of the injury or the place where the job is being conducted is not conclusive in determining the status of the employee. Rather, the court will look to the whole character of the work the employee was hired to perform to determine if he or she was in fact a farm or agricultural worker.

Employers should keep accurate records of employees. According to Mr. Starnes, "Most of my more difficult cases involve smaller employers who do not have or fail to maintain employee records. A paper trail can be an employers' best friend in the unfortunate situation of a work related injury. Specifically, job descriptions, wages (both hourly and year to date), date of hire and policy and procedure for termination are great to have when litigation arises."

Employers not required to have workers' compensation, or employers who are uncertain if coverage is needed, may elect to obtain workers' compensation insurance as part of their risk management strategies. Minimum coverage can be obtained for \$750 per year. Workers' compensation covers specified costs of work-related injuries. The law limits what the injured worker can receive if they are covered by workers' compensation. If the employee is not covered, then the employee can seek damages from the employer based on common law, without the caps put in place for workers' compensation claims. Whether an employer has coverage on employees or not may also impact the type of legal defenses they can use in a lawsuit.

If it is determined at any point that workers' compensation is needed or desired, an insurance professional well versed in workers' compensation should be contacted. Once coverage is obtained, the insurance carrier will provide information about the business and coverage to the Tennessee Department of Labor and Workforce Development. If at any point the business does not need workers' compensation and would like to withdraw coverage (for example, the business no longer has five or more employees), the business owner should notify the department by submitting an I-3, Reduction in Workforce form (<http://www.state.tn.us/labor-wfd/forms/i-3.pdf>). If a business does not file the I-3, it is presumed that the employer has chosen to continue coverage. The notice of withdrawal (I-3) must be filed at least thirty (30) days before the accident for which workers' compensation benefits are being sought.

Mr. Starnes provides the following example:

An employer with six employees automatically becomes obligated to provide workers' compensation coverage and that obligation is not removed by the employer's subsequent lay-off of two employees, unless the employer provides notice to the Department of Labor that it has withdrawn coverage. Thus, the number of employees actually working on the day of an accident is irrelevant for the purpose of determining whether the employer was exempt from workers' compensation coverage. An injured employee who is working for an employer that has had more than five employees at any time may be entitled to workers' compensation benefits even though the employer may have only had four or fewer actual employees at the time of the injury.

If it is discovered that a business should have workers' compensation and does not, the state may levy a fine of up to two and a half (2.5) times what the coverage premium should have been. In addition, if a worker is injured or killed on the job, the employer may be liable for expenses and damages.

Requirements for workers' compensation may be difficult to understand as the law does not clearly specify every possible situation. Employers for which the workers' compensation law may apply should seek the advice of legal and insurance professionals and obtain coverage if necessary. Employers may consider obtaining coverage as a risk management strategy even if it is not required or in cases where the gray areas exist.

Additional Resources

The text of the Tennessee Worker's Compensation Law can be found on-line at www.michie.com under Title 50, Chapter 6 of the Tennessee Code.

Information from the Department of Labor and Workforce Development can be found on-line at <http://www.tn.gov/labor-wfd/wcomp.html>. Department staff can be contacted by calling 1-800-332-2667 or emailing wc.info@tn.gov.

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