

# What Do I Need to Know Before Considering Interns as a Source of Labor for My Farm Business?

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*Joshua B. Ferrell, Candidate for Juris Doctor, 2021  
University of Tennessee College of Law*

*Margarita Velandia, Professor  
Christopher D. Clark, Professor and Department Head  
Department of Agricultural and Resource Economics*

*Annette Wszelaki, Professor  
Department of Plant Sciences*

*Liz Eckelkamp, Assistant Professor  
Department of Animal Science*



## Introduction

Finding workers is a challenge for many Tennessee farmers. For example, about 70 percent of respondents to a recent survey of Tennessee fruit and vegetable growers indicated they did not have enough labor in 2019. The majority of these respondents considered the inability to find reliable and productive employees to be the most critical labor-related challenge they face. Similarly, results from another survey of Tennessee dairy farmers conducted in 2019 indicated 83 percent of respondents considered farm labor as a moderate, high or severe cause of stress.

One strategy for addressing this challenge is the use of interns. However, the use of interns is not common among Tennessee farmers, and familiarity with this practice is likely to be limited. When asked what information the University of Tennessee could provide to help them address their labor challenges, more than half of the respondents to the fruit and vegetable grower survey indicated they wanted information about the use of interns. Thus, in this publication, we present general considerations farmers should take into account when hosting interns on their farming operations.

### **What Is an Internship, and How Is it Different from Employment?**

An internship is a form of experiential learning, where a student has the opportunity to gain experience that can assist the student in his or her career. In internships, student interns have the opportunity to integrate knowledge and theory learned in the classroom with practical applications in a professional setting (National Association of Colleges and Employers, 2018). Internships may be paid or unpaid. Since employees often undergo training of one sort or another, the distinction between an internship and employment is not always straightforward. However, it is important, as employer-employee relationships are governed by the Fair Labor Standards Act (FLSA), while internships are not. The FLSA imposes a number of requirements on employer-employee relationships, including that employees be paid at least the federal minimum wage (U.S. Department of Labor, 2016). When considering the implications of employment versus internship in the context of farm labor, it is important to keep in mind that the FLSA exempts agriculture from a number of its requirements, including overtime payments for work in excess of 40 hours per week (U.S. Department of Labor, 2016). "[Cultivating Compliance: An Agricultural Guide to Federal Labor Law](#)" describes FLSA requirements in the context of agricultural employment. In the next section, we discuss specific differences between an intern and an employee.

## When Is an Individual Considered an Intern and Not an Employee?

The U.S. Department of Labor provides guidelines to help employers distinguish between when they are hiring an intern and when they are hiring an employee for purposes of the FLSA (U.S. Department of Labor, 2018). Specifically, the U.S. Department of Labor provides guidelines regarding the “primary beneficiary test” that courts have used to determine whether an intern is considered an employee under FLSA. This test has allowed courts to define who is the primary beneficiary of the intern-employer relationship. This test bases the distinction on which party “received the primary benefit of the work performed.” Under this test, the relationship will be construed as an educational program or internship only if the students or interns are the primary beneficiaries of the work performed. The student or intern is the primary beneficiary when the value of the work as training for the student or intern outweighs the value of the work to the entity or individual supervising the work.

According to the U.S. Department of Labor, there are seven factors that courts have identified as part of this test, including:

- Employer and intern level of understanding that there is no expectation of compensation.
- The extent to which the internship offers an educational environment similar to the one provided in an educational institution.
- The level of integration between the internship and the intern’s formal education program through integration of course work or the receipt of academic credit.
- The accommodation of the internship to the intern’s academic commitments.
- The extent to which the duration of the internship is tailored to the period of time in which the internship provides the intern with beneficial learning.
- The extent to which the work performed by interns complements rather than displaces the work of paid employees.
- The extent to which interns understand they are not entitled to a job at the conclusion of the training period (U.S. Department of Labor, 2018).

When presented with the task of distinguishing between employment and educational programs, courts in Tennessee have also applied the “primary beneficiary test.” The two court cases that illustrate this approach are *Marshall v. Baptist Hospital, Inc.*<sup>1</sup> and *Solis v. Laurelbrook Sanitarium and School, Inc.*<sup>2</sup> In both cases, the court had to determine whether student training programs constituted

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<sup>1</sup> Marshall v. Baptist Hospital, Inc., 668 F.2d 234 (6<sup>th</sup> Cir. 1981).

<sup>2</sup> Solis v. Laurelbrook Sanitarium and School, Inc., 642 F.3d 518, 525 (6<sup>th</sup> Cir. 2011).

employment or not.<sup>3</sup> The court ruled that the student trainees in the Baptist Hospital program were employees and entitled to FLSA protections, while the students in the Laurelbrook program were not. In the *Baptist Hospital, Inc.* case, the court deemed the training to be deficient because the trainees were not adequately supervised. In addition, the court noted that had the work not been performed by the students, the hospital would have had to hire more employees or require its existing employees to work overtime. Thus, the hospital received a clear benefit, but the students did not as their training was not deemed “educationally sound.”

In the *Laurelbrook Sanitarium and School, Inc.* case, the court held that both Laurelbrook and the students benefitted from the work. Thus, the question, in this case, was who benefitted the most? While Laurelbrook obtained a financial benefit by charging others for the services performed and goods produced by the students, the court considered the benefits received by the students to outweigh this financial benefit. The court cited three factors in making this determination. First, the students did not “displace compensated workers as Laurelbrook was adequately staffed and would have been able to provide the same services without the student workers.” Second, the time spent supervising the students prevented Laurelbrook staff from performing “productive work.” Lastly, the students obtained “tangible and intangible benefits” from the work performed. In terms of tangible benefits, the court noted that the students were “provided with hands-on training comparable to training provided in public school vocational courses, allowing them to be competitive in various vocations upon graduation. Students learn to operate tools normally used in the trades they are learning while being supervised by instructors. Students engage in courses of study that have been considered and approved of by the state accrediting agency.” In terms of intangible benefits, the court cited evidence suggesting the participation in the program contributed to “a strong work ethic, leadership skills and other practical skills that a graduate of other vocational programs lack.”

There are no recorded court opinions in Tennessee deciding whether an internship should be considered employment and, thus, subject to the FLSA.<sup>4</sup> However, the *Laurelbrook* and *Baptist Hospital* frameworks would almost certainly be used by a court to decide whether an intern in Tennessee is entitled to the protections given to employees by the FLSA.<sup>5</sup> Under this framework, the court will apply the “primary beneficiary test” and look to the overall nature of the relationship to determine which of the parties benefit the most from the relationship.<sup>6</sup> The court’s reasoning in the

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<sup>3</sup> *Solis v. Laurelbrook Sanitarium and School, Inc.*, 642 F.3d 518, 524–25 (6th Cir. 2011).

<sup>4</sup> *Eberline v. Douglas J. Holdings, Inc.*, No. 14-cv-10887, 2019 U.S. Dist. LEXIS 32811, at \*5 (E.D. Mich. March 1, 2019).

<sup>5</sup> See generally *In re Douglas J. Holdings, Inc.*, No. 19-0104, 2019 U.S. App. LEXIS 21308 (6th Cir. July 17, 2019) (granting appeal to defendant, Douglas J. Holdings, Inc., for the Sixth Circuit to review Eastern District of Michigan’s decision to use Eleventh Circuit’s test along with Sixth Circuit’s *Laurelbrook* Framework).

<sup>6</sup> *Solis v. Laurelbrook Sanitarium and School, Inc.*, 642 F.3d 518, 529 (6th Cir. 2011).

#### 4 What Do I Need to Know Before Considering Interns as a Source of Labor for My Farm?

*Laurelbrook* and *Baptist Hospital* cases provide insight into the factors courts will consider in evaluating these benefits. Thus, farmers in Tennessee who want to establish internships on their farm should ensure that the work performed by the interns: (a) provides “hands-on training comparable to the training provided in public school vocational courses” that is of real value to the students; and (b) does not confer benefits on the farmer that exceed the value of the benefits gained by the students. Given the difficulty in directly comparing these benefits, courts will likely focus on the quality and value of the program to the interns and the extent to which the work performed by the interns reduced the labor needs of the operation.

### **How Can I Ensure that the Benefits Derived By an Intern Outweigh Those I Derive from the Intern's Work?**

The interns would benefit most by hands-on instruction from the farmer and by allowing them to help with all facets of running the farm. For example, student interns of the University of Tennessee's Volunteer Supported Agriculture (VSA) program (VSA, 2020), an on-campus Community Supported Agriculture (CSA) program, gain a wide range of experience through its summer internship program. The student interns spend the spring semester, prior to their summer internship, attending classes that help them prepare for the upcoming, hands-on summer activities. Through the summer, student interns work in all aspects of running the VSA program, including crop planning; planting and harvesting crops; assisting in pest, weed and disease control; postharvest handling and food safety; and business planning and marketing (Wszelaki, 2020). Allowing interns to gain firsthand knowledge of how the farmer runs the farm as a business gives them experience in how to manage their own farm and interact with their community and its members. Additionally, this firsthand knowledge could help interns establish realistic expectations about expected revenue and profitability of a farm business. Interns who observe and assist in the performance of other more business-oriented tasks on the farm are likely to benefit more from the experience than interns who only experience fieldwork. Likewise, the farmer can help the intern benefit from the arrangement more by asking which operations of the farm the intern is most interested in learning and then helping the intern focus on these operations during their internship experience.

In an internship program, it is expected that farmers and/or farm employees act as instructors and provide supervision to interns. In the *Baptist Hospital* case, one of the key factors that led the court to conclude that the students were employees was the absence of adequate supervision of the student work. A farmer who chooses to take interns would need to instruct and monitor them closely to ensure the work performed provides educational benefits for the interns. The level of supervision would also need to be tailored to the interns' knowledge and skill levels. For example,

while interns who are part of an agricultural education program would likely have useful knowledge and skills, nonstudent interns may have little or no experience or knowledge of agriculture. The level of supervision and instruction provided by the farmer would be greater for those with limited experience or knowledge. In either case, farmers should be prepared to interrupt their normal routines and spend the time and effort needed to provide the amount of monitoring and instruction needed to ensure that the interns gain useful knowledge and skills from the work they perform. The farmer who wants to host interns must be prepared to pass their knowledge and experience to the next generation of farmers.

Another important element of the educational training is the content. Perhaps the safest way to ensure appropriate content is to work with the interns to incorporate relevant classes into their formal academic studies, so that the internship provides the hands-on component for a broader educational program. Interns can gain knowledge of the scientific side of farming through courses focusing on biology, sustainable agriculture and local food systems. Additionally, many schools require students to complete a certain number of internship hours as part of their degree program. At the farm, these same students could expand their horizons through hands-on work by experiencing the day-to-day operations of a farm. Some agriculture students in college programs are looking to start farms of their own or continue family farms once they graduate, so hands-on experience with a local farmer could be invaluable to these students. Likewise, by working closely with their college, an arrangement could be made where the time spent learning on the farm could count towards class credits for the intern's college program, further benefiting the students.

Although helping interns incorporate relevant classes into their formal academic studies would be a safe approach for the farmer to prove that the hands-on experience is complementing the formal education they are receiving at school, the farmer still needs to provide an educational experience on the farm. Examples of ways farmers can incorporate an educational experience that complements the hands-on work the intern is performing on the farm include:

- Special demonstrations of particular tasks such as the operation of a piece of equipment, methods for using tools and equipment or care or safety around cattle.
- Providing materials (hard or electronic copies) related to the science of farming, sustainable production practices, business planning, etc.
- Tours of other farms in the area to learn different production and management practices.
- Opportunities to participate in seminars and workshops organized by universities, other farms, producer organizations and nonprofit organizations.

- Involving interns in special projects such as growing a new crop or incorporating a new production practice on the farm (Jones, 2011).

At the end of this publication, we provide additional resources to help develop a curriculum that could help validate an internship program as an educational experience for the intern.

*In summary, what do you need to know if you are interested in employing interns in your farm business?*

To recap, in Tennessee, the “primary beneficiary” test is used to determine whether an individual is considered an intern or an employee. Though the farmer can receive some benefit in hiring the intern, the program must primarily benefit the intern. The elements below can be instructive guidelines for farmers wanting to start an internship program in Tennessee.

- The internship should offer an educational environment similar to the one provided in an educational institution.
- Interns should do not displace regular employees, rather complement the work of paid employees.

If a farmer is considering hiring interns, she/he must be prepared to take on the role of a mentor and an educator. The farmer must take the time to instruct and teach the interns, even if it slows or impedes the operation of the farm. Farmers that allow interns to gain experience in other aspects of running a farm outside of fieldwork and those that take the time to nurture the interns’ growth in these areas of interest are more likely to benefit interns. With enough time and care spent training their interns, the farmers themselves will begin to reap the harvest of the seeds of knowledge they have sown, and all parties involved will benefit. It is important to acknowledge that setting up an internship program has a learning curve for the farmer. The greatest investment is in the first year. In subsequent years, the program can be fine-tuned to best meet the interns’ needs, while mutually benefitting the farmer.

### **Other Things to Consider When Employing Interns**

While Tennessee does not require farmers to inform workers of wages prior to beginning work,<sup>7</sup> it is best for farmers working with interns to be up front with them concerning their compensation. Whether or not the farmer chooses to compensate the interns, the interns should be informed prior to beginning the internship program. The interns will then be able to make an informed decision whether or not to join the program. This way, both the farmer and the intern will reach an understanding before

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<sup>7</sup> Tennessee Code Annotated § 50-2-101(a)-(b) (2020).



the program begins. In this circumstance, an intern cannot argue that they were not informed of compensation, thus limiting the farmer's liability if an issue were to arise.

To ensure that your internship program maximizes benefits for the interns and your farm business, and reduces legal risks, you should also:

- Keep records of the training curriculum used in your internship program.
- Keep records of the hours worked and tasks performed by interns. (At the end of this publication you will find examples of forms you can use to keep track of intern hours and tasks.)
- File all required reports and paperwork with any institutions providing course credit for the internship (if your internship is affiliated with an educational institution).
- Have the intern sign an agreement prior to the start of the internship, acknowledging they are a nonemployee intern and specifying the amount of wages, if any, they are to receive.
- Get insurance that will cover potential injuries on the farm.

On this last point, although the state of Tennessee does not require farmers to carry workers' compensation insurance for interns,<sup>8</sup> it is recommended that farmers carry insurance that will cover intern injuries related to farm work. Farming can be dangerous, and if an intern gets injured while working on your farm, you may be subject to legal liability for those injuries.

Although carrying workers' compensation for interns could reduce farmer liability, an intern is allowed to seek recovery for injuries suffered during the internship through a civil lawsuit against the farmer, even if the farmer carries workers' compensation insurance. However, the outcomes of civil suits are uncertain, and an injured intern might see filing a claim with the farmer's workers' compensation insurer as a more definite way of recovery. Thus, workers' compensation insurance can serve as a deterrent to a negligence suit. A farmer who chooses to hire interns can limit liability further by conducting and documenting safety training, informing the intern of known dangers on the farmer's property and monitoring the intern(s) to ensure they are being safe. By taking these extra steps, a farmer will have a stronger defense to a negligence lawsuit by an intern, making it less likely that such a suit would be filed or be successful if filed.

Finally, it is advised that farmers be aware of and attempt to comply with all applicable regulations of the Tennessee Occupational Safety and Health Act

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<sup>8</sup> See Tennessee Code Annotated § 50-6-106(4) (2020).



(TOSHA).<sup>9</sup> TOSHA adopts the federal Occupational Safety and Health Act's (OSHA) standards for agriculture. It is best for a farmer to approach any safety regulation outlined in the agricultural section<sup>10</sup> with caution and instruct any interns as though they were employees to better ensure the interns' safety while working with dangerous equipment on the farm.<sup>11</sup>

### **Additional Resources**

Below is a list of resources, by topic, that may be useful for farmers that are interested in employing interns on their farm:

#### *Best Practices for On-farm Internship Programs*

- “Managing Risks of Interns and Volunteers in Pennsylvania.” Available online at <https://farmcommons.org/resources/managing-risks-interns-and-volunteers-pennsylvania>
- “Internships in Sustainable Farming: A Handbook for Farmers.” Available online at <https://www.mofga.org/Portals/2/Files/internshiphandbook.pdf>
- “Ag Apprenticeship Toolkit: A Guide to Developing or Improving an Ag Apprenticeship Training Program on Your Farm or Ranch.” Available online at [https://nesfp.org/sites/default/files/resources/ag\\_apprenticeship\\_toolkit\\_final.pdf](https://nesfp.org/sites/default/files/resources/ag_apprenticeship_toolkit_final.pdf)
- “Western SARE Farm Internship Handbook.” Available online at <https://nesfp.org/resources/western-sare-farm-internship-handbook>
- The New England Small Farm Institute's Farm Mentor Project. Available online at [http://www.smallfarm.org/main/for\\_on\\_farm\\_mentors/](http://www.smallfarm.org/main/for_on_farm_mentors/)
- “Internships in Sustainable Farming: A Handbook for Farmers.” Available online at <https://bit.ly/2YimRMa>

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<sup>9</sup> Differences in TOSHA and federal (OSHA) standards, Tennessee Department of Labor and Workforce Development, <https://lwdsupport.tn.gov/hc/en-us/articles/115013202707-Differences-in-TOSHA-and-Federal-OSHA-Standards> (last visited July 7, 2020).

<sup>10</sup> 29 C.F.R. § 1928 (2020).

<sup>11</sup> See, e.g., 29 C.F.R. §§ 1928.51(d) (2020); 1928.57(a)(6)(i)-(v) (2020).

### *Tennessee Occupational Safety and Health Act (TOSHA)*

- TOSHA compliance, Tennessee Department of Labor and Workforce Development. Available online at <https://www.tn.gov/workforce/employees/safety-health/tosha-redirect/compliance.html>
- “Rules of Tennessee Department of Labor and Workforce Development Division of Occupational Safety and Health.” Available online at <https://publications.tnsosfiles.com/rules/0800/0800-01/0800-01-03.20200303.pdf>

### **References**

Jones, D. 2011. “Internships in Sustainable Farming: A Handbook for Farmers.” Available online at <https://bit.ly/2YimRMa>

National Association of Colleges and Employers. 2018. “A Definition and Criteria to Assess Opportunities and Determine the Implications for Compensation.” Available online at <https://bit.ly/3gr2t1E>

U.S. Department of Labor, Wage and Hour Division. 2016. Handy Reference Guide to the Fair Labor Standards Act. Available online at <https://bit.ly/32oLYhQ>

U.S. Department of Labor, Wage and Hour Division. 2018. “Fact Sheet #71: Internship Programs Under the Fair Labor Standards Act.” Available online at <https://bit.ly/2FN8SYI>

Volunteer Supported Agriculture. 2020. Available online at <https://vsa.tennessee.edu/>

Wszelaki, A.L. 2020. Commercial Vegetable Extension Specialist, University of Tennessee Institute of Agriculture. June 25, 2020.

## APPENDIX

**Form B**

**DEPARTMENT OF PLANT SCIENCES  
INTERN ACTIVITY REPORT**

Report by (Intern's name) \_\_\_\_\_ for the period of \_\_\_\_\_ 20 \_\_\_\_\_  
to \_\_\_\_\_ 20 \_\_\_\_\_ Name of Company \_\_\_\_\_  
Company Address \_\_\_\_\_ Phone \_\_\_\_\_

### WORK EXPERIENCE

Breakdown of jobs performed (Be specific) (NOTE: Student Intern Completes This Section)	Approx. Number of hours on each job reporting period
Total Number of Hours worked	

Skills Learned (Employer)	Proficiency			Personal conference between Manager/Supervisor and Intern (Employer)
	Some	Average	High	
				Number:
				Subjects:

Comments: \_\_\_\_\_

*At the end of each month, complete one form and mail to STUDENT RECORDS SECRETARY.*

Submitted by: \_\_\_\_\_ Verified by: \_\_\_\_\_  
Student Intern
Employer

Return to: STUDENT RECORDS SECRETARY, Internship Activity Report, Dept. Plant Sciences, 252 Ellington Plant Science Building,  
Knoxville, TN 37996-4561  
Phone: (865) 974-7324 Fax: (865) 974-1947

## Form B

DEPARTMENT OF PLANT SCIENCES  
INTERNSHIP ACTIVITY REPORT

Report by (Intern's name) [REDACTED] for the period of May 11 20 20  
 to June 12 20 20 Name of Company Organic Farm Internship  
 Company Address 1315 Government Farm rd Phone 865-719-9913

## WORK EXPERIENCE

Breakdown of jobs performed (Be specific) (NOTE: Student Intern Completes This Section)	Approx. Number of hours on each job reporting period
Pickup/Delivery	6
Weeding	10
Harvesting/Packing	30
Cleaning	25
Planting/seed starting	40
Field Prep (irrigation, fabrics, stakes)	40
Florida Weave Tomatoes & Peppers	5
Pest Control	10
Fertilizing	5
General Farm Tasks	4.5
Total Number of Hours worked	<del>195</del> 195.5

Skills Learned (Employer)	Proficiency			Personal conference between Manager/Supervisor and Intern (Employer)
	Some	Average	High	
Harvesting		✓		Number: 2
equipment operation	✓			Subjects: projects on
transplanting			✓	Farm, schedule
packing/sanitization			✓	
fertilizing	✓			
Weed/pest Control		✓		

Comments:

At the end of each month, complete one form and mail to STUDENT RECORDS SECRETARY.

Submitted by [REDACTED]

Verified by:

Jamentha Flowers  
Employer

Return to: STUDENT RECORDS SECRETARY, Internship Activity Report, Dept. Plant Sciences, 252 Ellington Plant Science Building,  
 Knoxville, TN 37996-4561  
 Phone: (865) 974-7324 Fax: (865) 974-1947

Date	Day of Week	Time in	Time out	Time in	Time out	Total hours	Tasks/Comments/Notes
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Name \_\_\_\_\_

Date	Day of Week	Time in	Time out	Time in	Time out	Total hours	Tasks/Comments/Notes
5/11	M	7:00	12:00	12:30	3:45		seed starting, berry pickin weed onions
5/12	T	7:00	12:00	12:30	3:30	8	plant cucurbits, lay fabric lay drip tape, burn holes, plant lettuce
5/13	W	7:00	12:10	12:40	3:30	8	lay tom. fabric, plant peas, lay tom drip tape plant toms
5/14	TR	7:00	12:00	12:30	3:30	8	lay tom fabric + drip, plant toms
5/15	F	7:00	12:00	12:30	3:30	8	pick berries brassical scouting plant lettuce weed onions thin peas clean bathroom
5/18	M	7:00	12:00	12:30	3:30	8	thin carrots fix drip tape lay fab + drip tape, plant cukes + squash, brush off potatoes
5/19	T	7:00	12:00	12:30	3:30	8	plant lettuce thin m, DS beans + such, weed HT 4-1
5/20	W	7:00	12:00	12:30	3:30	8	transplant flowers + herbs
5/21	TR	7:00	12:00	12:30	3:30	8	pick berries, + posts weed HT DS carrots
5/22	F	7:00	12:00	12:30	3:30	8	plant sweet potatoes, clean + sanitize P.H.
5/23	T	7:00	11:45	12:15	3:30	8	harvest beets, clean PH clean BR lay drip
5/27	W	7:00	11:40	12:10	3:30	8	pack boxes, clean PH start seed
5/28	TR	7:00	12:00	12:30	6:45	11:45	fertilize toms, plant onions burn holes, plant + lay herbs, shell
5/29	F	7:00	12:20	12:50	3:15	8	harvest + pack, clean PH P-nuts shade sweet pot scout drop box
6/1	M	7:00	12	12:30	3:30	8	hoe HT transplant, DS drip line garlic scapes
6/2	T	7:00	12	12:30	3:30	8	pack boxes, newsletter, plant squash spray surround
6/3	W	7:00	12	12:30	3:30	8	weed HT, lay fabric + DT plant squash + melon, fix drip
6/4	TR	7:00	11:40	12:10	3:30	8	plant, weed, trellis
6/5	F	7:00	11:50	12:20	3:30	8	harvest, clean PH, newsletter plant corn + peanut -> DT and
							weed HT 7, plant, DS clean GH



[UTIA.TENNESSEE.EDU](http://UTIA.TENNESSEE.EDU)

W 942 9/20 Programs in agriculture and natural resources, 4-H youth development, family and consumer sciences, and resource development. University of Tennessee Institute of Agriculture, U.S. Department of Agriculture and county governments cooperating. UT Extension provides equal opportunities in programs and employment.

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