

GUIDE

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Liability of Farm Employers

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Farm owners and operators who hire employees increase their potential liability. The farm employer may be held liable for the acts of employees, as well as for injuries to them. This guide discusses generally the farm employer's exposure to liability and steps that could be taken to protect against such liability.

A farm employer can be held liable for damages to third parties caused by the negligent acts of his or her employees on a strict liability basis, regardless of the innocence of the employer. Circumstances under which a farm employer may be liable for the acts of his employees are as follows:

- One of your farm workers kills a neighbor's cow with a rock in attempting to remove her from your corn field. Can you be required to reimburse your neighbor for the value of the cow?
- Assume you give your farm manager \$50 with instructions to buy two new tires from a local service station you have dealt with before. If he keeps the money and has the tires charged to your account, can the service station owner force you to pay this bill?
- You hire a pilot to spray your row crops with a weed and insect killer. If the drifting spray damages your neighbor's property, are you liable?

The employer's liability under these three cases is determined by the legal classification of the person employed. Such persons may be grouped into three categories: *servants*, *agents* or *independent contractors*. These legal classifications are defined as follows:

Servant. If the employer has the right to direct and control the physical manner by which the hired person performs his tasks, that hired person is a servant.

Agent. An agent is a person hired with authority either to (1) transact business or (2) manage certain affairs for his employer.

Independent Contractor. An independent contractor is a person contracted to do a certain job according to his own methods.

The purpose of this guide is to provide information regarding some of the farm employer's liabilities for persons in the legal categories as defined above. Since only the general legal concepts are cited, this publication is not intended to replace the services of a competent attorney when you are faced with a specific problem.

Potential Liability for Acts of Servants

A major factor affecting the legal classification of a hired person is the degree of control which an employer has over his employee. An employer has the greatest right of control over the *servant*. A general farmhand whose work is either supervised by the employer or completed by following the employer's detailed instructions may well be classified as a servant. The relationship here is legally referred to as a "master-servant" relationship.

Farm employers are legally responsible for the personal injuries or property damages caused by employees who are acting as servants. However, the servant must be acting *within the scope of his employment* at the time the injury occurs. This type of liability placed on the employer or "master" is referred to as vicarious liability. In the first case cited in the introduction of this guide, the farm worker who killed the neighbor's cow probably would be classified as a servant, and, therefore, the master (employer) would be held liable for the act of his servant.

It is important to point out that the employer in the first example may be held liable for the act of his employee even though he had not told his employee to drive cows from the fields by throwing rocks at them. In fact, he may have discouraged this practice. It is not necessary for the employer to have instructed his employee to do the very act that caused the injury. If this were the case, few employers would ever be held vicariously liable. It is only necessary to find that the servant was acting within the scope of his employment when the injury occurred in order to hold the master liable.

The issue of whether the employer is indeed a "servant," and whether the servant was acting within the scope of his employment at the time of the injury are both questions to be resolved by the jury during a trial. This is often a difficult task, and the determination of these issues may vary from case to case as the facts differ.

Potential Liability for Acts of Agents

An employer has a lesser degree of control over a person classified as an *agent*. An agent is a person with authority either to (1) transact business or (2) manage certain affairs for his employer. The employer-employee relationship, in the case of agents, is legally referred to as a "principal-agent" relationship. For example, a farm manager who makes business decisions for his employer could be classified as an agent.

An employer is responsible for his agent's acts committed while "within the scope of his authority." There are basically two distinct types of authority—actual authority and apparent authority. If the agent carries out express employer directions, then the employer is responsible for the agent's acts since they are within the scope of his actual authority. For example, if the employer instructs his agent to buy tires for him, the employer would be obligated to pay for them when the agent carries out these orders.

An example of apparent authority might be the second case cited in the introduction. The employee may have had authority to purchase tires on credit on several occasions. Even if the employee keeps the money on this occasion, it would probably reasonably appear to the tire dealer that your employee was authorized to make this credit transaction because of previous credit purchases. Since your agent appears to be within the scope of his authority, you may be liable for his acts regardless of whether he actually had been authorized to purchase the tires on credit.

To protect yourself in this situation, it would be necessary for you to contact the tire dealer, informing him that your agent no longer has the authority to buy tires on credit.

It may not be clear if a given transaction is made with "apparent" authority. The rule that "you deal with an agent at your own peril" is often stated, because apparent authority exists to the extent that it is *reasonable* for the person (in our example, the tire dealer) dealing with the agent to believe that the agent actually is authorized to conduct certain business. This means the tire dealer is dealing with the agent at his own risk.

Under this rule, if the agent does not have the purported authority, the tire dealer is the party who must stand the loss. Thus, the dealer has a duty to contact the employer if he is in doubt. Because of the complex nature of this area of the law, it is difficult to make generalizations. Specific questions should be directed to your attorney.

Under some circumstances a contract made by a person claiming to be your agent may be binding on you, even though the purported agent has no actual or apparent authority to make such a contract. In order to be bound, you must be *aware* of all material facts and, either by words or conduct, *ratify* the purported agent's act. This is another area where you should contact your attorney before completing any deal.

Potential Liability for Acts of Independent Contractors

The employer has the least amount of control over an *independent contractor*. As defined, the independent contractor is hired to do a certain job. In contrast with the servant, the employer has minimal control over the manner in which an independent contractor completes a job. As a general rule, an employer is *not responsible* for the acts of an independent contractor.

There are important exceptions to this general rule which make the employer liable for the acts of independent contractors. These exceptions are:

- negligently selecting an independent contractor;
- furnishing the contractor with faulty plans or specifications; or
- hiring a contractor to perform a task which is *inherently dangerous*.

The first exception flows from general negligence law. Selecting a known incompetent as an independent contractor increases the chances that someone may be injured during the course of the job. Therefore, an employer remains directly responsible to those injured if he hires an incompetent contractor.

Secondly, if your building collapses, then you are liable for

injuries to third persons if you gave the contractor deficient specifications which caused the building to collapse.

The third exception recognizes that some tasks are simply inherently dangerous. An employer is not allowed to avoid liability for injury or damage by delegating such tasks to a contractor. Rather, the employer remains fully liable, unless an agreement is made with the independent contractor whereby he knowingly agrees to accept all responsibility for harm done, and to indemnify the employer for all losses. An example of an inherently dangerous task might be the aerial spraying situation set out in the third case at the beginning of this guide.

Of course, an employer also remains responsible for *his own negligent acts* which cause injury to others during the time an independent contractor is completing his task. For example, if the employer in our aerial spraying example had *negligently* failed to warn the pilot of special hazards or dangers like power lines across the field and the pilot was injured as a result of this lack of knowledge, the employer might be directly responsible for the contractor's injuries and the damages he caused.

Where the Ultimate Liability May Fall

Even if you as an employer should be held liable for an employee's conduct, the *ultimate liability* for the damage or injury is upon the employee. The wrongdoing employee must indemnify (repay) the employer for any payments made for damages and injuries.

However, an employee may be "judgment proof." That is, he has few or no assets with which to pay a judgment rendered against him. Therefore, the aggrieved party may sue the employer because he has "deeper pockets." Quite often an employer may have sufficient assets to pay a judgment where his employee does not.

If you are sued as an employer in a "master-servant" relationship situation, you can bring your servant or employee into the suit as a "third-party" defendant. Since the employee is also a party to the lawsuit, a determination that you are responsible for his act also will require the conclusion that the employee is ultimately liable. Thus, if the employee later acquires money, he could be required to reimburse you for your expenses.

Employee Classification Can Change

The legal classifications for employer-employee relationships can change quite often. It is possible that you may have *one person* who serves in the capacity of a servant, an agent and an independent contractor all in the same day. Thus, the factor determining liability for an employee's conduct is the legal classification existing *at the time* of damage or injury.

Injuries to Employees

Every farm employer also has a responsibility to see that his employees are free from physical harm in the performance of their duties. For example, suppose your employee is plowing with a tractor which has a defective lift. The plow falls on his foot, causing severe injuries. In this case, you knew that the lift was defective and even had promised to repair it. Are you liable for his injuries? An Illinois court said *yes* in the case of *Fox vs. Beall*, 314 Ill. App. 144(1942).

The rules which determine responsibility for your employee's injuries fall into two distinct categories: (1) coverage by worker's compensation insurance and (2) no such coverage.

Who is Required to Carry Worker's Compensation?

Missouri amended its worker's compensation laws as they affect farm labor in 1978. Before this amendment, employers of farm labor were required to carry the insurance if they had more than five employees and a total annual payroll in excess of \$2,500. *The 1978 law exempts employers of farm labor from carrying worker's compensation insurance.* Employers of non-farm labor are required to carry worker's compensation insurance if they have five or more employees. If laborers work more than 5½ consecutive work days per year, then each counts as an employee. Family labor, including minors, may be counted.

What are the Pros and Cons of Coverage?

The Farmer-Employer. By voluntarily choosing to carry worker's compensation insurance, farmers are offering their employees the fringe benefit of assured compensation for farm accidents.

In times when good hired labor is difficult to find, worker's compensation coverage is another attraction to offer laborers. At the same time, farmers are limiting their liability for farm accidents to the coverage under the insurance policies—no further action can be taken against the farmer-employer. However, if the employee's injury or death is caused by the employer's failure to comply with any safety statute, then the compensation or death benefits may be increased by 15 percent.

Although cost to the employer is a negative aspect of worker's compensation insurance, the cost for such insurance is an income tax deduction.

The Employee. Under worker's compensation insurance, the primary disadvantage to the employee is that compensation is limited to the maximum set out by the policy. But this is offset by the advantage to the employee of usually assured compensation for job injury. However, if the employee *willfully* inflicts injury or commits suicide, compensation will be *denied*. Also, if the employee's injury is caused by his or her willful failure to use safety devices provided by the employer or by his or her failure to obey work rules that the employer has posted conspicuously, the compensation or death benefits will be reduced by 15 percent.

The premiums for the insurance must be paid by the employer. The statute forbids the employer from charging employees for any part of the insurance premiums. The premiums are approximately 4 to 6 percent of the total payroll.

For example, consider the employer with one full-time employee and four part-time helpers who qualify as employees (work more than 5½ consecutive work days per year). If the premium rate were \$5.33 per \$100 annual payroll, a total payroll of \$15,000 would cost the employer about \$800 in premiums. In light of the liability protection for the employer, this cost may be reasonable. Thus, employers may want to consider voluntary coverage by worker's compensation insurance.

No Worker's Compensation Coverage

If you do not carry worker's compensation, your legal responsibilities to employees who are injured while working for you are governed by the general court-made law of the state. Basically, you can be held liable when the injury of your employee is caused by your negligence. The negligence can be either an affirmative act that a reasonable person would not have taken in the same or similar circumstances; or, a failure

to take an action that a reasonable person would have taken in the same or similar circumstances.

The common law outlined certain duties that an employer must take for the protection of employees. These protective measures included:

- the duty to provide a safe place to work;
- providing safe appliances, tools and equipment;
- the duty to give warnings of dangers about which the employee might reasonably not know; and
- the duty to make and enforce rules for the conduct of employees which would tend to make the work safer.

Without coverage under worker's compensation, the employee *may not* recover damages for an injury simply because it occurred as a result of a work-related accident. The employee must prove that the injury was caused directly by the negligence of the employer. It is also important that the employee did not contribute through his or her own negligence to the accident which caused the injury. Nor can the employee recover if the jury finds that he or she "assumed the risk" of the injury-causing activity.

However, the farm employer should be aware that, unlike coverage under worker's compensation insurance, the damages a jury may award to an injured employee not under worker's compensation are not limited by a statutory schedule of benefits. Rather, the amount of damages to be awarded to an injured employee are assessed by the particular jury deciding the case. Because these jury awards may be very high, it is important for the farm employer to carry some type of liability insurance to cover injuries to employees.

Although at first glance it may seem difficult for employees to prove that the negligence of their employer caused their injury, employees often do recover large money judgments against negligent employers. The farm employer should consider this important factor before deciding against worker's compensation coverage.

Summary

There are circumstances under which you are responsible for the acts of your employees. Your liability varies depending on whether you and your employee have created a master-servant, principal-agent, or an employer-independent contractor relationship.

The master-servant relationship usually exists when an employee performs a task requiring no particular training. Here the employer has a high degree of control over the worker's activities and is responsible for employee-inflicted injuries when they occur within the scope of the servant's employment.

The principal-agent relationship usually exists when you hire someone to transact business on your behalf or otherwise represent you in your affairs. You are liable for contract damages or losses suffered because of your agent's acts if he or she acts within the scope of actual or apparent authority.

The employer-independent contractor relationship exists when you hire someone who has full control over the physical manner in which the work is done. As a general rule, you are not liable for the acts of an independent contractor. However, you may be liable for injuries he or she inflicts on others if (1) you are negligent in the selection of the independent contractor; (2) you furnish faulty plans or specifications; or (3) you hire an independent contractor to perform an inherently dangerous task.

You also may be responsible for injuries suffered by employees. The extent of your personal liability depends on whether you carry worker's compensation insurance. If you are not under the protection afforded by worker's compensation insurance, your actions are governed by the rules of the common law. It is necessary, therefore, for you to carry some

type of liability insurance to cover the injuries of your employees to protect yourself from possible high damage awards set by a jury.

Other Information

The material contained here is only a general statement of the law. Therefore, if you have specific questions, you should discuss them with your attorney. This guide discusses only

liability for the acts of your employees and for injuries suffered by your employees. If you have questions about injuries suffered by "guests" while on your property, see UMC Guide 452. Information about your liability for personal injuries or property damages caused by your domestic animals is contained in UMC Guide 453. Guide 460 provides more information about worker's compensation insurance for farmers and their employees. You may get these guides at county UM Extension Centers.