

Don't be caught unaware. Check out this expert advice on seven critical employment issues.

STORY BY JAMES M. ALLEN /// PHOTOS BY JAMIE COLE

WHEN IT COMES TO MANAGING EMPLOYMENT ISSUES, most businesses have plenty of regulatory hoops to jump through. Farmers, however, have their own special maze of regulations to navigate.

While it's not a complete review of each regulatory category, we offer the following employment checkup as a project—a primer of sorts—on the statutes that follow. We've also included a few online resources from which you can gather more information, which includes select Canadian regulations.

Please keep in mind, however, that your state or province may have its own specific laws and regulations that set additional standards. When in doubt, consult a human resources expert or legal counsel.

While compliance can involve bureaucratic obstacles, there are reasons for each of these regulations. Still, they can require employers to devote considerable time and other resources to their implementation. They can also cut both ways. Dave Fussell, owner of Duplin Winery in North Carolina, found this out the hard way.

“Several years ago, we had some folks who we caught stealing some stuff from us. Once we let those folks go, they brought up issues that weren't true.”

The former employees brought discrimination claims, but eventually the winery prevailed. Fussell credits proper documentation that supported his action.

“I'm sure there are things that we don't do right, but we have a very good team of people who do their very best. The folks working with us are just as important as our customers, because they're the ones who have gotten us where we are today.”

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For more information, we've listed a number of resources at myFarmLife.com/hiring, as well as information on several Canadian employment regulations impacting agricultural operations.



Audits are typically performed on a random basis, but can eliminate workers' eligibility, putting farm operations in a bind, especially if the audit takes place at critical times, such as planting or harvest. Even worse, says Clarke, “There is really no avenue to correct the status.”

E-VERIFY. E-Verify is an Internet-based system that compares information from an employee's Form I-9, Employment Eligibility Verification, to data from U.S. Department of Homeland Security and Social Security Administration records to confirm eligibility.

H-2A. Allowing a foreign national entry into the U.S. for temporary or seasonal agricultural work, the H-2A program, administered by DOL, is the primary foreign guest worker program for agricultural employers. “People still use it because they don't have a choice, because they can't get domestic workers, and so they're forced to try to work with the program,” says Ray Prewett, president of NCAE. “But it is very, very cumbersome.”

To qualify for the H-2A program, an employer must show it has open positions of a temporary or seasonal nature for which there are not sufficient U.S. workers available who are willing and able to do the work. The employer must also show that this employment will not adversely affect the conditions or wages of U.S. workers.

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)

USERRA protects the jobs of veterans returning from active military service. An employee who leaves his or her position to perform military service is entitled to return to the position and its benefits. That means if the employee would have received a raise or a promotion, he or she is entitled to that upon return. Administered by DOL, USERRA also prohibits discrimination for military service.

Anti-Discrimination Laws

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, Amendments Act (ADAAA), and the Age Discrimination in Employment Act (ADEA) are the trinity of federal laws that prohibit discrimination against an employee. More specifically, Title VII prevents discrimination based on gender, race, color, national origin or religion, or retaliation for filing a claim or voicing opposition to perceived discrimination. The ADAAA provides essentially the same protections for individuals with a disability and entitles qualified individuals with a disability to a reasonable accommodation. The ADEA protects employees over the age of 40 from discrimination, harassment and retaliation. **FL**