

Farm Management

Think through how you hire

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EVERY farmer at some time will hire an employee or a contractor to perform work on his or her farm. While it might not seem an important distinction, whether the person performing the work is an employee or contractor has major implications regarding the liability exposure of the farmer. Generally, a farmer is liable for



Country Counsel

By ROBERT MOORE

the actions of an employee, but not for the actions of a contractor.

An employee is generally defined as someone under the control of the employer that is performing work in order to accomplish a task in the interest of the employer. The employer is liable for the actions of the employee as long as the employee is within his or her scope of employment for the farmer. For example, Employee is hired by Farmer to

do general farm work. Farmer instructs Employee to drive the farm's pickup truck to the nearby equipment dealer to pick up parts. While driving to the equipment dealer, Employee negligently collides with a car and injures the occupants of the car. Who is liable?

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Exposed to lawsuits

Employee is liable because he was driving the truck. The person causing the accident is always personally liable, thus the need to always have good liability insurance. Farmer is also liable because Employee is acting on behalf of Farmer. The injured occupants of the car can sue Employee, Farmer, either or both for their injuries.

If an employee is not working within his or her scope of employment when a liability incident occurs, the employee is likely not liable. For example, Employee borrows the farm pickup to drive home at the end of the day because his car is in the shop. While driving home, Employee negligently runs a stop sign and collides with a car. In this scenario, Farmer is probably not liable. Employee was not working for the farm when the accident happened, but was instead on his own personal time. Again, employers are only liable when the employee is within his or her scope of employment when the liability incident occurs.

Farmers also often hire contractors to perform work on the farm. Contractors are defined as a person who performs work for another, but who is able to determine the means and methods in performing the work. Also, contractors typically provide their own tools and/or equipment to provide services. A compare/contrast scenario is often the most effective means of describing a contractor.

For example, Farmer needs to fill his bunker with corn silage for his dairy operation. He tells Employee to take the farm's tractor, chopper and silage wagon to a nearby field and to begin harvesting the corn. Farmer accompanies Employee to the field to be sure the field is "opened up" properly and the driest corn is harvested first. This is clearly an employer/employee relationship.

Alternatively, Farmer calls Contractor to harvest the corn silage. Contractor brings his own harvesting equipment and is merely told to harvest the field and fill the bunker. Farmer leaves the specific details of harvesting the field to contractor and does not oversee or control Contractor's activities. Farmer pays Contractor for the harvesting of the corn silage, and their relationship is terminated until next harvest season. This is a classic example of a contractor. If a contractor has an accident while harvesting, the farmer will likely not be liable for the accident.

Employers are often tempted to classify an employee as a contractor so as to avoid withholding payroll taxes and paying workers compensation fees. This is a very bad idea. The misclassification of an employee can cause the employee to owe back taxes and penalties.