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Labor in Your Farm or Ranch Business Plan



Partners in Tax Education

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About the Instructor

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She began her career as a California CPA, and later worked for the USDA.

She holds a Juris Doctor with a certificate in Food and Agricultural Law from Drake University Law School, and a BS in Agricultural Economics from the University of California at Davis.



Overview

1. How Many Hours in a Work Year?
2. What You Can and Cannot Outsource
3. Who is Protected By Labor Laws
4. The Significance of Control
5. Estimating Labor Needs and Costs



How Many Hours in a Work Year?



Time Constraints

- **You can borrow money - but you cannot borrow time.**
- With money you can:
 - Pay labor
 - Buy labor-saving equipment
 - Buy advisory services and office support
- **You can not outsource your role as the leader:**
 - Planning, strategizing, adjusting
 - Financial oversight



The nature of your work life

	Days	x	Hours /Day	Total Hours
Hours in a year	365	x	24	8,760
Less daily sleep	365	x	(8)	(2,920)
Less daily eating, bathing, etc.	365	x	(2)	(730)
Maximum discretionary hours	365	x	14	5,110
Less: Reserve for sick, emergency etc.	10	x	(14)	(140)
Less: Weekly rest	52	x	(14)	(728)
Less: Planned longer weekends, holidays, vacations, etc	15	x	(14)	(210)
Maximum possible work hours				4,032
Less: Hours for other paid work	100	x	8	(800)
Maximum hours for your business				3,232

One of the key functions of your business plan is to help you think about how you use time.



The nature of your work life

You are time-constrained.

Your business plan might not fit with your personal/family goals either because it does not earn enough money or because it takes too much time.

- Your business plan should help you figure out if your plan will work in time for you to make the necessary adjustments so it will work.

Office	hours per week	# of weeks or # of times	Total
Invoicing	4	24	96
Receiving Payments	1	24	24
Marketing calls	4	24	96
Monthly bank rec	4	6	24
Enter bills	4	24	96
Pay bills	1	24	24
Proper taxes	4	1	4
Income taxes	24	1	24
Organic certification	20	1	20
Grant applications	20	1	20
Grant billing and reporting	20	1	20
Loan application	16	1	16
Loan maintenance	1	12	12
Bookkeeping set up	20	1	20
Monthly bookkeeping review	2	12	24
Other	2	12	24

What You Can and Cannot Outsource



What Can Others Do?

- Planting
- Weeding
- Harvesting
- Packing
- Routine aspects of sales
 - Fulfillment
 - Direct sales such as at a farmers market
 - Social media marketing
- Bookkeeping
- Tax Preparation



What Must You Always Do?

You are always in charge of key management responsibilities - they cannot be delegated.

- Long-range planning
 - Key strategies, including assets
 - Financing long term assets
- Ensuring a safe and ethical workplace
- Protecting your assets by ensuring
 - Sufficient funds for timely payments
 - Adequate and appropriate insurance
 - Compliance with applicable laws



Who is Protected by Labor Laws



Before You Hire - Know the Law!

Few things add as much risk to a business as hiring labor - workers on payroll or independent contractors - without an appropriate plan to ensure that you and they are adequately protected.

Before you hire or contract for services

- Should they be on payroll?
- Should they be covered by workers compensation insurance ?
- What other protections need to be in place?



Understanding Labor Laws

Employers are defined broadly and an employment relationship is usually presumed.

- Anyone working for someone who meets the definition of an employer is **presumed to be an employee.**
- The **burden of proof is on the presumptive employer** to show that they are not an employer and the person working is not an employee.



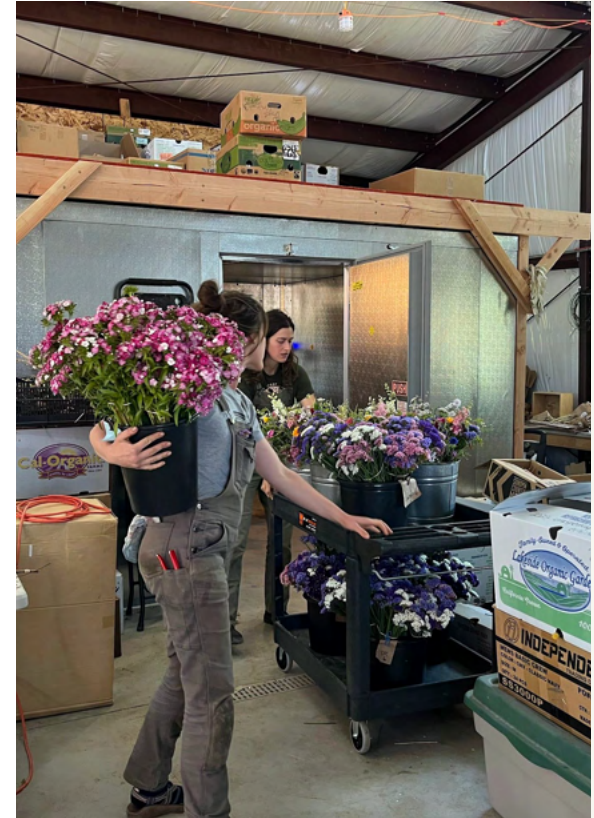
Who Do Labor Laws Protect?

Generally everyone who works in a business is protected by applicable labor laws. Two kinds of workers are exempt from most labor laws:

1. Owners, and their immediate family
2. Independent contractors

Each protection under Federal and state laws has a specific definition of family and independent contractors.

There are also limited exemptions from protections for qualified interns and agricultural and fishery workers and some special (lesser) protections.



Exemption #1 - Owners and Qualified Immediate Family

Owners and qualified immediate family are exempt from most labor law protections.

Owners:

- Have invested capital
- Share in profits and losses
- Often don't get paid

Owners can elect to be employees for certain purposes such as workers compensation coverage

- Just because you don't have to doesn't mean you shouldn't.
- S-corp owners have elected to be employees.



Exemption #1 - Family

**Exempt family members are an owner's spouse and children.
Exempt family members may work without pay or other labor protections.**

- Some states require workers compensation for everyone but owners and spouses.
- Parents are exempt in some but not all states - for example yes in California and no in New York.
- Siblings are generally **not** exempt, but are exempt under some circumstances in Texas.
- Not exempt family is everyone else: aunts and uncles, cousins, grandchildren, nieces and nephews (niblings)

*Minor children (**including the owner's children**) are covered by separate child labor law protections.*

Exemption #2 - Independent Contractors

Independent Contractors are exempt from labor protections ***only if*** the employer can demonstrate independent contractor status under applicable federal or state law.

- The most common form of employment enforcement actions and disputes relate to the distinction between an employee and an independent contractor.
- Employers have the burden of proof and usually lose.



Interns and Apprentices

Interns may be exempted from payroll tax and wage and hour requirements and from workers compensation requirements. They are not exempted from workplace safety protection requirements.

Internship must be primarily for the benefit of the intern NOT for the benefit of their labor.

An intern may be exempt from some or all state wage and payroll laws if they are employed related to:

- An accredited academic or other training program
- A state-sponsored apprenticeship program
- A program meeting other specific state requirements.
- This will usually require the assistance of an attorney.

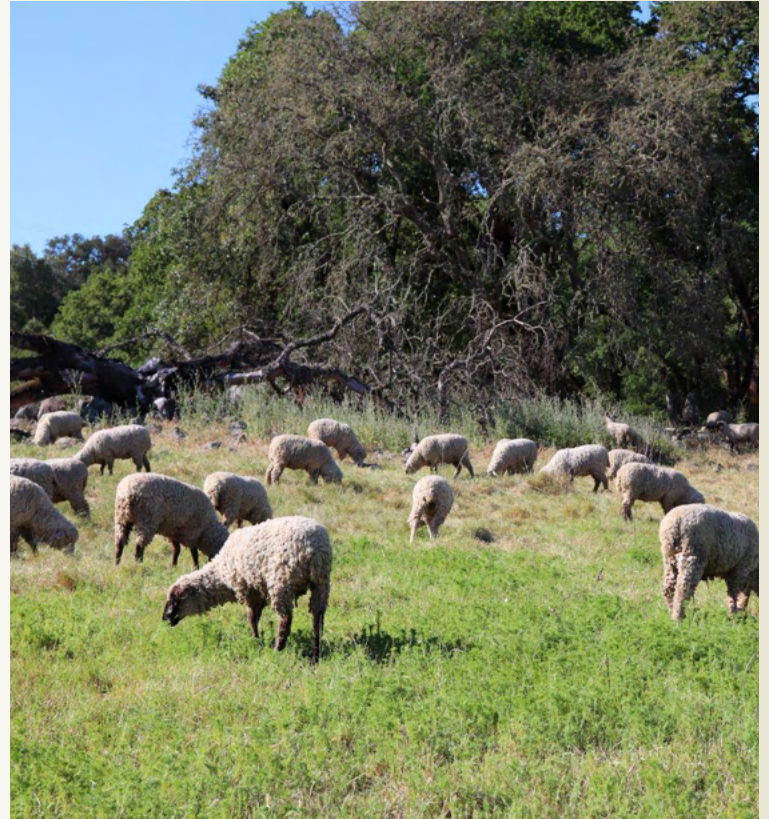
California allows employers to create qualifying programs but the requirements are substantial.

There is no exemption for “Volunteers”

A for-profit business cannot have volunteers.

- To be exempt from state and federal labor protections as a volunteer, the person must meet the legal definition of “volunteer” under state or federal law.
- The legal definition will specify it is for **work done for an organization granted tax-exempt status under state or federal law**, so there is no way to qualify a worker as a “volunteer” if you are a for-profit business.
- A common form of wage-theft is convincing someone to “volunteer” for a trial period with a promise of a paid job later if they do well.
- The consent of the worker is irrelevant, a person must pay wages when they receive the benefit of someone’s labor (and one of the three exemptions does not apply.)

The Significance of Control



Proving the Independent Contractor Exemption

Each state, and the IRS, use slightly different tests depending on which aspect of labor protection is at issue. So, there may be one test to determine if an employee is subject to federal payroll taxes, another to determine what breaks and overtime pay they must receive, and another to determine if they must be covered by workers compensation insurance.

But the tests are all pretty much the same and are either:

- A multi-factor test centered on employer control or
- A three prong “ABC” test centered on the importance of the work to the business



Multi-factor Test

The most significant consideration is the employer's right to control work details. Other considerations include:

- If the worker is engaged in a distinct occupation or business
- The skill required
- Who supplies the tools, and the place of work
- The length of time for which the services are to be performed
- If paid by the time or by the job
- If the work is a part of the regular business of the employer
- Whether or not the parties believe they are creating an employer-employee relationship may have some bearing, but is not determinative.

Used by IRS and most states for some aspect of labor law.

Used in CA for workers compensation requirements.

The ABC Test

To prove independent contractor status show:

- A.** The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; **and**
- B.** **The worker performs work that is outside the usual course of the hiring entity's business; and**
- C.** The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

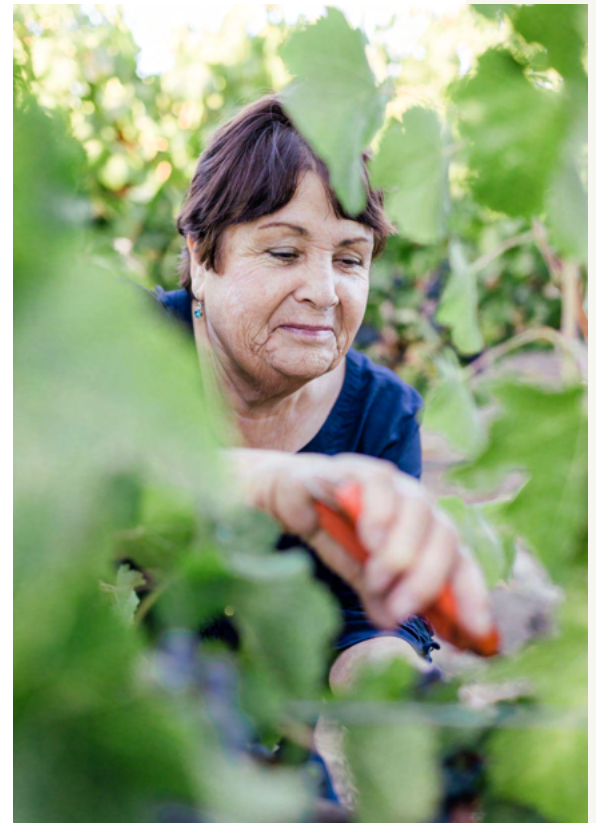


The ABC test is used in some variation by at least 25 states including California.

Application to Agriculture

What type of work is not under the control of the employer or is outside of the usual course of the hiring entity's business? **Arguably:**

- Skilled pruning
- Skilled tractor work with tractor provided
- Sheep shearing
- Veterinary services
- Crop advisors
- Engine maintenance
- Building and renovations



Things that will not pass these tests: Planting, weeding , harvesting, packing, making deliveries, and selling at market.

Estimating Labor Needs and Cost



Identify Tasks for Wage Labor

Hire first for work directly related to income so you have immediate cash flow to cover wages.

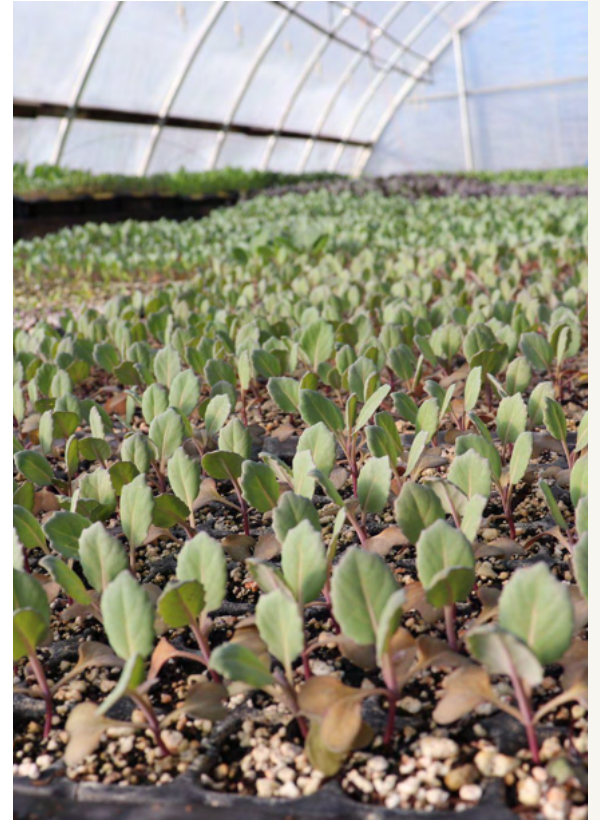
- Planting
- Weeding
- Harvesting
- Sales deliveries



Estimate Hours By Task

How do you estimate hours by task?

- Ask
- Do time trials
- Research university studies

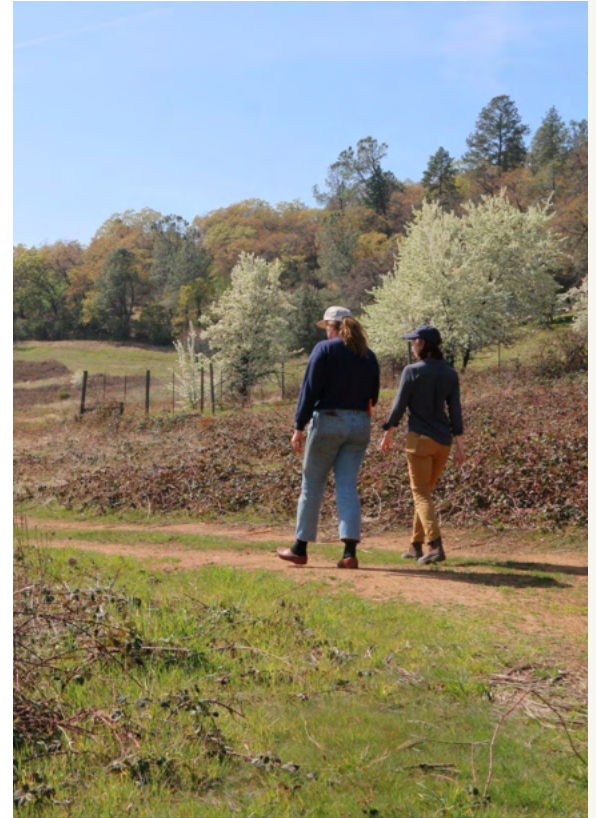


Estimate Total Cost/Hour

Cost/Hour includes:

- Hourly Wage
- 15% for FICA and Medi
- 5% for unemployment and other state taxes
- 5-10% for workers compensation insurance

Many businesses budget a standard 25% on top of hourly wages to factor in all costs including vacation and sick leave. 30% may be more realistic.



Planning to Manage Labor

Have a plan to keep and maintain:

- Basic employee records including I-9s

Have a plan for legally compliant payment practices including:

- Providing required notices to employees
- Tracking earned sick/vacation leave
- Making timely payroll tax deposits
- Filing timely W-2s
- Documenting hours worked and breaks taken



Planning to Manage Labor

Have a plan to create a safe and respectful workplace including:

- Policies and procedures covering physical safety, general conduct, discrimination, harassment, etc.
- Training **and documentation of training**

Have a plan to keep be prepared for audits, inspections, and raids

- Know your rights—and ensure your workers know theirs.
- Have all required documents easily accessible





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Questions?





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Thank you!

