

Farming and Workers Compensation

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December 31, 2013

Farming is one of the most hazardous occupations. If a farm employee gets injured on the job, it can put the entire farming operation in jeopardy. This article will discuss the ways to protect the employer and employee in a farming operation.

The worker's compensation statutes in Illinois require all employers to provide worker's compensation benefits to employees injured on the job. There is an exception for farming: "The worker's compensation law does not apply to an "agricultural enterprise" employing less than 400 working days of agricultural labor per quarter during the preceding calendar year, exclusive of working hours of the spouse or other immediate family members residing with him."

Example: If your employees work 6 days per week, it would take a little over 4.5 full-time employees to hit the 400 working days per quarter.

If you are over the 400 working days per quarter, you are required to provide worker's compensation benefits to your employees. If you are under the 400 working days of labor, you have two choices to address injuries to farm employees:

- 1) Purchase a work comp policy even though it's not required.
- 2) Farm liability policies have an option to add "liability to farm employees" coverage.

These two policies work very differently from each other. Work comp is the best coverage; it is also the most expensive.

With farm liability coverage to employees, the employee has to prove the injury was caused by your negligence. If it is determined to be caused by your negligence, the court system will decide how much to award the employee. Regardless of how high of liability limits you carry, there is always the possibility the courts could award the settlement in excess of your limits, in which case, the excess would come from your assets. If the injury occurred and there was no negligence on the employer's part, then the employee has no benefits under farm employee liability. The farm liability policy may provide nominal medical payments benefit however, other than this, the employee would be on his own. This could put a strain on the employer, employee relationship.

Worker's compensation coverage is no fault insurance. In other words, the employee is entitled to benefits if he is injured on the job. He does not have to prove negligence to collect. In addition, the work comp policy will pay the employee whatever he is entitled to. There is no maximum limit, with a work comp policy.

Another issue we see more and more is the blurring of the term "agricultural labor." Many farm operators are expanding into other areas of revenue. Although the exception

in the work comp act for agricultural labor is not defined, some examples of work that could fall outside the exception are:

- Trucking for hire
- Bulldozing for hire
- Seed corn sales
- Custom farming
- Repair/Maintenance of rental property
- Welding/machine repair for hire
- Construction of new farm buildings

In short, if a farm employee is performing duties other than farming, they could be entitled to work comp benefits. If you have liability coverage for farm employees, it will not apply if the duty is ruled to be a work comp claim. If you do not have a work comp policy, you would have to pay the benefits out of pocket.

The final determination as to whether the employee is entitled to work comp benefits rest with the Worker's Compensation Commission of the State.

To give you an example of how this can play out, we had a claim in our agency several years ago where a corn crib was blown over by a windstorm. The farmer had an employee help clean up the debris and the employee was injured. The employee hired an attorney who argued that demolition of a building is not part of an agricultural enterprise. Therefore the employee was entitled to work comp benefits. There wasn't a work comp policy, therefore, the employer paid out of pocket.

Another thing to consider is a farm injury to the farm owner himself. Some health insurance policies will cover work related injuries; some will not. You should check with your health insurance provider to see what your policy covers. If your policy does not provide coverage, you can buy a work comp policy on yourself.

To summarize, you must carry workers compensation if:

- You have 400 working days of labor per quarter, or
- Your employees are engaged in non-farm duties.

You may choose to carry workers compensation even though not required. The advantages of work comp over farm liability are:

- No limit on coverage
- Employees do not have to prove fault
- Better safety net if the employee does non-farm duties or falls outside the exemption for some reason.

The only disadvantage to work comp verses farm liability is cost. Liability to farm employees costs a few hundred dollars per year. Work comp will cost about 6-7% of payroll for grain operations and 10-12% for livestock.