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# **NORTH DAKOTA FARM LABOR LAWS**

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## PREFACE

This report presents a general overview of labor laws that apply to North Dakota farmers and ranchers. Its purpose is to make farmers aware of various labor laws. Individuals desiring more specific information are encouraged to seek competent legal advice.

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## NORTH DAKOTA FARM LABOR LAWS

Timothy A. Priebe, David M. Saxowsky, Owen L. Anderson,  
and Jerome E. Johnson\*

Agriculture, like many other industries, has been subjected to additional legal requirements as it became more technical and complex. Agricultural labor was an exception, however, in that it was excluded from numerous state and federal regulations. The difficulty of enforcing laws for agricultural workers and the uniqueness of the industry were two justifications for the exclusion.

The exception for agricultural labor has diminished in recent years and agricultural employers are increasingly subject to labor laws. This report examines select state and federal labor laws that are relevant to the farm and ranch industry in North Dakota. These include minimum wage, maximum hour, child labor, workmen's compensation, occupational safety and health, as well as employment and unemployment taxes.

### Minimum Wage and Maximum Hour Provisions

Both state and federal governments have enacted minimum wage and maximum hour laws. These provisions prohibit employers from paying less than a minimum wage and from requiring employees to work more than a specified number of hours per week without added compensation or overtime. Both the maximum wage rate and maximum work week are established by legislation.

The Fair Labor Standards Act of 1938 established the federal minimum wage and maximum hour. Agriculture was exempt from both requirements due to Congressional recognition of its uniqueness and the difficulty of applying these provisions to the industry. Employees work 40 hours per week year round in most industries whereas labor required for a typical farm is seasonal. Farm laborers often work twice the normal 40 hours during certain periods of the year such as planting, harvesting, or calving. At other times, farm laborers work few hours and may be unemployed for several months during the winter. Consequently, agricultural employers are excluded from federal maximum hour laws and are not required to pay overtime to their workers under federal law.

A 1966 amendment continued the exception for maximum hours but eliminated the minimum wage exception for agricultural workers. Instead, Congress identified five categories of agricultural employees who would not have to be paid the minimum wage. These five classes generally apply to smaller farms.

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### Man-day

The first agricultural exemption is the "man-day" exemption which excludes most small farms from minimum wage requirements. An agricultural employer who does not use more than 500 man-days of agricultural labor during any calendar quarter of the preceding calendar year is within this exemption. A man-day is defined as any day during which an employer performs agricultural labor for at least one hour. Members of an employer's immediate family are not considered employees in calculating man-days.

Example. A farmer employs five persons for every day during a calendar quarter (90 days). The employer will have used 450 man-days (five employees x 90 man-days/employee). Since the employer has used less than 500 man-days, he is not subject to the minimum wage requirement.

### Family Members

Agricultural workers who are members of the employer's immediate family are not encompassed by the minimum wage provision. Consequently, a farm operator who hires a parent, child, or spouse is not required to pay them the minimum wage.

### Piece-Rate Employees

Commuting hand-harvest laborers are excluded from minimum wage provisions when the employee (1) is paid on a piece-rate basis in an operation that is generally recognized as paying on a piece-rate basis, (2) commutes daily from his permanent residence to the farm where he is employed, and (3) was employed during the preceding calendar year for less than 13 weeks.

### Employees Under 17 Years of Age

Certain hand-harvest laborers who are under the age of 17 also are excluded from minimum wage provisions. These laborers must be (1) 16 years of age or younger, (2) paid on a piece-rate basis in an operation that is generally recognized as paying on a piece-rate basis, (3) employed on the same farm as a parent or person standing in place of a parent, and (4) paid the same piece rate as employees over the age of 16.

### Range Livestock

Agricultural employers who employ persons principally for the range production of livestock are not subject to minimum wage provisions. Factors considered in determining whether a person is employed in range

production of livestock include the nature of the work, difficulty of keeping track of the employee's hours, and terrain where cattle are grazed. The fact that employees work with cattle that graze on a range is not determinative of whether they are employed in the range production of livestock. A court will weigh these factors and if employees are not considered in the range production of livestock, they may be subject to the minimum wage requirement.

These exemptions exclude most small farms in North Dakota from minimum wage provisions. The man-day exemption is the most far-reaching because approximately only 1,800 North Dakota farms (out of a total of approximately 36,000) employed over five workers in 1982. Even larger farms using more than 500 man-days of agricultural labor may be excluded from minimum wage coverage by one of the other exceptions.

A word of caution. If the employment does not relate to or involve agriculture, the five exceptions explained in the preceding paragraphs do not apply. Nonagricultural workers, even though employed by a farmer, must be paid the minimum wage and adhere to the maximum hour requirements.

Most states, including North Dakota, also have passed state minimum wage and maximum hour laws. North Dakota law gives the Commissioner of Labor the power to direct wage orders at specific industries. The Commissioner can (1) investigate the wages and conditions of employees in different occupations within the state, (2) prescribe standards regulating hours and wages, and (3) make rules to enforce these standards.

The Commissioner has not directed a minimum wage or a maximum hour order at the agricultural industry. Therefore, agricultural employers in North Dakota remain exempt from state minimum wage and maximum hour provisions.

### Child Labor Laws

Minors are commonly employed on North Dakota farms. The most common arrangement is a son or daughter working for a parent on a family farm. However, it also is common for farmers to employ minors other than their children.

Both federal and state governments have passed child labor laws to promote the health and welfare of minors. These laws were designed to protect children (persons under the age of 16 years) from harmful labor and to protect adult employees from competition by minors who usually can be hired for less pay. The federal law not only generally prohibits employment of children but also prohibits interstate shipment of goods produced by oppressive child labor. Agricultural employers, however, are broadly exempted from most child labor laws at both the federal and state level.

Federal child labor law does not pertain to persons over the age of 15 employed in agriculture. Restated, unless the employee is less than 16 years of age, federal law will not apply. Furthermore, persons who have

not yet reached the age of 16 may work in agriculture as long as the employment is not during school hours. However, they are prohibited from performing activities considered hazardous which include

1. Operating a tractor of over 20 PTO horsepower;
2. Operating or assisting operation of a corn picker, cotton picker, grain combine, hay baler, potato digger, pea viner, feed grinder, crop dryer, forage blower, auger conveyer, nongravity self-unloading wagon, power post-hole digger or driver, and nonwalking rotary tiller;
3. Operating or assisting in operation of a trencher, earth mover, forklift, potato combine, and power saws;
4. Working in stall, pen, or yard with a bull, boar, stud horse, sow with suckling pigs, or cow with newborn calf;
5. Felling, buckling, skidding, loading, or unloading timber with butt diameter of more than 6 inches;
6. Working on ladder or scaffold at heights greater than 20 feet;
7. Driving bus, truck, or automobile when transporting passengers, or riding on tractor as helper or passenger;
8. Working in (a) a grain bin, silo, or other storage building designed to be oxygen deficient; (b) an upright silo filled during the past two weeks or with a top unloading device in place; or (c) a manure pit, and packing in a trench silo;
9. Handling or applying agricultural chemicals or acting as a flagman for aircraft that is applying agricultural chemical;
10. Handling or using a blasting agent; and
11. Transporting, transferring, or applying anhydrous ammonia.

Federal law includes an exception, however, that permits persons less than 16 to perform hazardous activities as long as they are employed by their parents and are working on a farm owned or operated by their parents. Persons employed by someone other than their parents may perform some of the hazardous activities if the child is over the age of 14 and has completed an acceptable training program such as vocational agriculture or 4-H tractor or machinery operation.

In addition to not working during school hours nor performing hazardous work, persons under 14 must work only for their parents or with their parent's consent. Persons under the age of 12 can work for someone other than their parents only if the parents consent and there are no employees receiving the minimum wage because the employer uses less than 500 man-days of agricultural labor during the calendar year.



North Dakota statutes governing employment of minors apply to activities wholly within the state of North Dakota. Agricultural laborers are excluded from all state provisions except that farmers are prohibited from employing minors under the age of 14 during the hours when public schools in the district where the minors reside are in session.

### Workmen's Compensation

Agriculture is one of the most dangerous occupations in terms of injuries on the job. Employers can be held liable for their employees' injuries that result from an employer's negligence. A serious injury could result in hundreds of thousands of dollars of liability.

To protect employees from judgment proof employers, and employers against catastrophic losses, most employers in North Dakota are required to carry workmen's compensation insurance. These employers pay a premium into the state workmen's compensation fund from which an injured employee will be compensated. The injured employee cannot seek damages from the employer, but must accept the limited compensation from the state fund. Consequently, an employer is protected from a lawsuit brought by an employee by paying a premium into the state workmen's compensation fund.

Agricultural employers historically have been exempt from mandatory workmen's compensation insurance. This exemption pertains only to agricultural employment; it does not apply simply because the employer was a farmer. For example, a North Dakota court decision ruled that a carpenter hired by a farmer to dismantle a barn and build a garage on the farm is not performing agricultural service. Accordingly, the employer was not exempted from acquiring workmen's compensation.

Employers of agricultural employees may elect, however, to come under the provisions of the workmen's compensation law. This offers farmers an alternative to carrying liability insurance to protect themselves against damages resulting from employees' injuries. Both liability insurance and workmen's compensation provide protection for agricultural employers although there are significant differences between them.

Workmen's compensation covers all occupational injuries. An employee that is injured while acting within the scope of his employment will be compensated from the state fund. This relieves the employer from all liability to the employee. The employer will not be liable for any damage resulting from the injury, regardless whose fault the injury may have been.

Coverage under liability insurance depends on the terms of the insurance policy. The policy is a contract and the insurance company provides coverage only in accordance with terms and conditions of the policy. An employer is liable for damages that exceed the limits of the insurance policy. For example, if the policy insures against damage claims up to \$100,000 and a court determines damages to be \$150,000, an employer will be responsible for the additional \$50,000. Thus, a farm employer should be certain to have sufficient coverage.

World's largest state government employees' union activities within the state of North Dakota. Activities are excluded from all state agencies and all state schools in the district which are in receipt of federal aid.

Workers' Compensation

Agriculture is one of the most numerous occupations in terms of injuries on the job. Employees can be held liable for their own injuries and those from an employer's negligence. A serious injury could result in a loss of thousands of dollars of productivity.

To protect employees from lawsuits from employers and employees' representatives, a workers' compensation act was enacted in North Dakota. This act provides a system of workers' compensation for employees. In this system, employees pay a premium for the state's workers' compensation fund which in turn provides for injured employees. The employer, in turn, cannot seek damages from the employee, but must accept the state's compensation for the employee. Compensation for an employee is provided from a fund provided by the employee by paying a premium into the state workers' compensation fund.

Agricultural employees historically have been exempt from workers' compensation. This exemption was based on the fact that agricultural employees did not work in a fixed location. However, the fact that a farmer's work is done on a farm and that a farmer's work is done in a fixed location is not sufficient to exempt him from workers' compensation. Accordingly, the legislature has enacted laws providing for workers' compensation.

Employees of agricultural employees are also, however, to be included in the workers' compensation law. This law provides for a system of workers' compensation for agricultural employees. It does not simply exempt the agricultural employee, but provides a workers' compensation system for agricultural employees. Agricultural employees are distinguished from other employees by the fact that they work in a fixed location and their work is done on a farm. Agricultural employees are distinguished from other employees by the fact that they work in a fixed location and their work is done on a farm.

Workers' compensation covers all occupational injuries, including those which occur within the scope of the employee's duties. This relief will be provided from the state fund. This relief will not be provided for injuries which occur outside the scope of the employee's duties. This relief will not be provided for injuries which occur outside the scope of the employee's duties.

Governmental workers' compensation is provided for employees of the state. This law provides for a system of workers' compensation for employees of the state. It does not simply exempt the employees of the state, but provides a workers' compensation system for employees of the state. Agricultural employees are distinguished from other employees by the fact that they work in a fixed location and their work is done on a farm.

Workmen's compensation permits an injured employee to recover lost wages in addition to recovering medical, surgical, and hospital expenses. Recovery for lost wages is determined by schedules set by the legislature. If the injury causes a temporary or permanent disability, employees receive two-thirds of their weekly wage for the period of disability. Employees receive additional compensation of \$60 per week if they suffer a permanent injury. The length of time which an employee receives \$60 per week is determined by the severity of the injury.

If an employee is not under workmen's compensation, damages are determined in court. There are no damage schedules, so the judge or jury can set damages as they see fit. Damages could potentially be much greater if the matter goes to court rather than settled under the workmen's compensation law. A farmer should keep this in mind when deciding how much insurance coverage to procure.

Liability insurance for agricultural employers usually is much cheaper than carrying workmen's compensation. Agricultural rates for workmen's compensation in 1985 were \$8.55 per \$100 of wages paid to each employee per year, to a maximum of \$3,600 wages paid. Therefore, the most an employer would have to pay annually is \$307.80 per employee.

Rates for private liability insurance depend largely on the coverage a farmer elects, the size of the farm, number of employees, and whether the employee works full-time or part-time. Rates for a full-time employee typically range from \$21.00 for \$15,000 of coverage, to \$35.00 for \$500,000 of coverage. Rates are slightly lower for part-time employees. Some insurance companies will insure against employees' injuries only if the farmer has a comprehensive farm policy with their company.

Farmers should adequately insure themselves against employees' injuries. About 700 farmers in North Dakota have elected to come under workmen's compensation coverage. The balance have either purchased insurance, or, unwisely, have no coverage.

#### OSHA

The Williams-Steiger Occupational Safety and Health Act was passed in 1970, creating the Occupational Safety and Health Administration (OSHA). The purpose of this act was to provide a safe and healthy work environment for all employees in the United States. Some mechanisms used for achieving a safer work environment include encouraging employers to promote safety, researching the area of occupational safety and health, and encouraging the use of training programs. However, the emphasis of the Act is on regulation of safety in the workplace.

The Act regulates workplace safety in two ways. It contains a general duty clause which imposes a general duty on employers to provide a safe and healthy work environment and specifies sanctions if these provisions are violated. The Act also authorizes the Secretary of Labor to promulgate specific standards for particular jobs. The Secretary of Labor has established numerous industrial standards, but only a few pertain to agriculture.

## General Duty Clause

The general duty clause requires each employer (1) to furnish employment and a place of employment which are free from recognized hazards that cause or are likely to cause death or serious physical harm to workers, and (2) to comply with occupational safety and health standards.

Agricultural employers are included in the definition of employer and, thereby, subject to the Act's provisions. Members of a farmer's immediate family are not considered employees under OSHA. A farmer who employs one or more nonrelatives, however, is subject to the general duty clause and other provisions that are specifically directed at agriculture.

## Specific Sections Directed at Agriculture

The Secretary of Labor has promulgated certain standards directed at agricultural workers. These include providing roll-over protective structures for tractors and guards on farm field equipment, farmstead equipment, and cotton gins. Certain general industrial standards also are applicable to agriculture. These regulate temporary labor camps, storage and handling of anhydrous ammonia, pulpwood logging, and slow-moving vehicles.

### Roll-Over Protective Structures

A farm employer must provide a roll-over protective structure (ROPS) for all tractors manufactured after October 25, 1976 which are operated by an employee. This provision was enacted to lessen the severity and frequency of injuries caused by accidental overturning of tractors. An agricultural tractor is defined as

"A two- or four-wheel drive vehicle, or track vehicle, of more than 20 engine horsepower, designed to furnish the power to pull, carry, propel, or drive implements that are designed for agriculture. All self-propelled implements are excluded."

The farmer must provide a ROPS on all tractors used by employees. The ROPS must meet certain performance tests and requirements. When a ROPS is required, a farmer also is required to furnish the tractor with a seatbelt and insure that the employee uses the seatbelt when the tractor is moving.

Farmers are required to take other steps to prevent injury in the event of an accidental overturning of a tractor. They must locate and seal batteries, fuel tanks, oil reservoirs, and cooling systems to assure that they will not spill if the tractor overturns. The employer also must provide protection from sharp surfaces that may injure an employee.

Certain uses of tractors are exempt from the ROPS requirement. The three classes of exempted uses are as follows:

1. Low-profile tractors, such as those used in orchards and vineyards, if a ROPS would substantially interfere with the normal operation of the tractor.
2. Low-profile tractors when used inside a farm building or greenhouse when the clearance is insufficient to allow a tractor with a ROPS.
3. Tractors which are equipped with mounted equipment, such as a corn picker, that would be incompatible with a ROPS.

A tractor not within one of these exemptions, when used by an employee, must be equipped with a ROPS.

### Safety for Agricultural Equipment

A farm employer is required to take steps to insure the safety of employees when working with agricultural equipment. These provisions apply to all farm field equipment, farmstead equipment, and cotton gins manufactured after October 24, 1976. Certain provisions also apply to equipment manufactured before this date.

Farm field equipment means tractors or implements, including self-propelled implements, or any combination thereof used in agricultural operations. Farmstead equipment means agricultural equipment normally used in a stationary manner. This includes, but is not limited to, materials handling equipment and accessories for such equipment whether or not the equipment is an integral part of the building.

This section has general requirements which pertain to all covered equipment as well as imposing specific requirements for farm field equipment and farmstead equipment.

An employer is required to instruct his employees as to safe operation and maintenance of the machine and to protect the employee from coming into contact with moving parts by the use of guards, shields, and railings. An employer is required to instruct an employee at time of initial assignment and at least annually thereafter as to the safe operation and servicing of all equipment the employee is or will be involved with. This includes requiring that guards remain in place during operation; that no riders are permitted; that the engine must fully stop (or the power be disconnected) and the machine must come to a complete halt before servicing, adjusting, or cleaning; and that the operator is certain everyone is clear of the machine before starting operation.

Devices that are required to have shields or guards include power take-off drives, conveying augers, straw spreaders and choppers, rotary beaters, and other equipment that is likely to cause injury if left unguarded. The guards must be constructed so to prevent an employee from contacting a moving part. Likewise, railings are required to prevent an employee from inadvertently entering a hazardous area.

### Anhydrous Ammonia

Farmers are subject to general industrial standards covering storage and handling of anhydrous ammonia. These standards apply to the design, construction, location, installation, and operation of anhydrous ammonia systems. Since the use of anhydrous ammonia is widespread in North Dakota, farm employers hiring persons to handle anhydrous ammonia should be aware of these standards.

Farm operators are required to assure that a container holding ammonia is securely mounted and will not dislodge if the vehicle is suddenly stopped. The design of the equipment must minimize metal to metal friction, be equipped with proper gauges and valves, and have a metal box or rigid guard to protect the fittings. The container must be marked as transporting ammonia, trailers must be securely attached to the towing vehicle (including a safety chain), and there must be five gallons of water available to rinse someone should they be exposed to ammonia.

### Temporary Labor Camps

All temporary labor camps for agricultural workers are subject to OSHA provisions. These provisions regulate such things as sanitation, shelter, water supply, laundry and bathing facilities, sewage disposal, kitchen facilities, and insect and rodent control. Although temporary labor camps are not widespread in North Dakota, there are labor camps that are subject to these provisions.

### Slow-Moving Vehicles

Agricultural employers are required to comply with the slow-moving vehicle emblem standard. All vehicles designed to travel 25 miles per hour or less are required to display the slow-moving vehicle emblem. The emblem consists of a yellow-orange fluorescent triangle with a dark red reflective border. The emblem is to be used solely for slow-moving vehicles.

North Dakota law requires persons to display the slow moving vehicle emblem. The triangular emblem or a flashing amber light must be displayed on any vehicle designed to travel at a speed of not more than 25 miles per hour along any county, state, or federal road or city street. The penalty for a violation is \$20 for each offense.

### Penalties and Enforcement

Violation of OSHA provisions may result in various criminal and civil penalties. Employers can be penalized for violating the general duty clause or orders directed at specific industries. Violations are divided into the following classes:

1. An employer who willfully or repeatedly violates the general duty clause, specific orders, or other regulations is subject to a civil penalty of not more than \$10,000 for each violation.
2. An employer who receives a citation for a serious violation of any standard or order shall be assessed a civil penalty of up to \$1,000 for each violation. A serious violation exists when there is a substantial probability that death or serious physical harm could result from an existing condition or practices that are in use, unless the employer could, with reasonable diligence, know of the violation.
3. An employer who receives a citation for a nonserious violation of an order or standard may be assessed a civil penalty of up to \$1,000 for each violation.
4. An employer who willfully violates a standard, the violation of which causes death to an employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or imprisonment of not more than six months, or both. If it is the employer's second conviction, he can be fined up to \$20,000 or imprisoned for up to one year, or both.
5. Any person who gives an advance notice of an inspection to an employer shall be punished, upon conviction, with a fine of not more than \$1,000 or imprisonment of not more than six months, or both.
6. Any person that knowingly makes a false statement or representation on any application, record, plan, or other document that is maintained pursuant to OSHA provisions shall upon conviction be assessed a fine of up to \$10,000 or imprisonment of up to six months, or both.
7. If a citation has been issued to an employer giving him a certain number of days to correct a problem and the employer has not corrected the problem within this time period, the employer may be assessed a civil penalty of up to \$1,000 for each day the violation continues.
8. An employer who violates the posting requirements may be assessed a civil penalty of up to \$1,000 for each violation.

Penalties for violations apply to agricultural employers. However, Congress has not appropriated any funds to administer or enforce these standards for persons engaged in farming operations who do not maintain

temporary labor camps or who employ ten or fewer employees. Therefore, sanctions will not be imposed against farm employers until Congress appropriates funds for their enforcement.

Although sanctions will not be used against small farmers who violate OSHA provisions, it is a good practice to follow these standards. Voluntary compliance will help reduce agricultural injuries and show that the farm employer is attempting to promote safety for his employees.

### Unemployment

Congress passed the Social Security Act in 1935. As part of this act, unemployment insurance provisions were provided to ease the hardship of temporary unemployment for hired workers. Employers are required to pay a federal unemployment tax. The funds generated by this tax are used to pay benefits to workers during periods of temporary unemployment and to administer the program.

The unemployment system is designed to be managed at the state level. Accordingly, most states have enacted unemployment taxes. If the state tax provisions meet federal requirements, employers obtain a credit for up to 90 percent of the federal tax thereby allowing most of the tax to remain in the state fund.

Agricultural employers were originally exempt from the unemployment tax but recent legislative changes require some large agricultural employers to pay unemployment taxes. North Dakota provisions are very similar to the federal provisions regarding which agricultural employers are subject to the tax. Under both systems, there are two classes of agricultural employers subject to the taxes.

1. Employers that pay wages of over \$20,000 for agricultural labor during any calendar quarter during the present or preceding calendar year must pay the tax. In North Dakota, the \$20,000 must be cash wages, while the federal statute does not require the entire amount to be cash wages.
2. An employer who employed at least ten persons for some portion of the day on each of some 20 days, each of which is in a different calendar week, during the present or preceding calendar year is subject to the tax.

A farm employer who fits within one of these classes is required to pay unemployment tax.

These provisions still exempt most small agricultural employers from the tax. Few farms are required to pay on the basis of their wages paid. The average payroll for North Dakota farms that hired labor in 1982 was approximately \$5,500 per year, far less than the \$20,000 per quarter required to fit in the first class. Similarly, few farms in North Dakota are required to pay unemployment insurance taxes under the second class. In 1982, only 519 farms (out of 36,431) employed 10 or more workers during the year.



FICA Taxes

A tax is imposed on wages for old-age, survivors, disability, and hospital insurance. Together these taxes are known as Federal Insurance Contributions Act (FICA) taxes. Liability for these taxes are shared by the employer and employee with the employer responsible for submitting the tax payment. Employers are required to withhold FICA taxes from their employees' wages. The employer also is liable for a tax on the wages he pays to employees. An employer who fails to deduct the FICA tax from his employees' wages can be held liable for the employees' share.

Most agricultural employers are subject to this tax and required to pay FICA taxes. Employers collect a percentage of an employee's wage to pay the employee's portion of the FICA tax. Wages for agricultural labor do not include remuneration paid in any medium other than cash. Likewise, cash wages are not subject to FICA if (1) the employer has not paid over \$150 in wages to the employee during the calendar year, or (2) the employee has not performed agricultural labor for 20 days or more for this employer during the calendar year. Therefore, agricultural employers who pay \$150 or more in wages or employ a person for 20 days or more in a calendar year must deduct FICA taxes from the employee's cash wages. The employer must also pay FICA taxes on these wages.

There is no further tax obligation after an employer has paid the employee wages which exceed the wage base. The maximum amount of an agricultural employer's wages subject to FICA taxes in 1985 was \$39,600.

The rates for FICA taxes are established by Congress. Current rates are set forth in Table 1. This table shows the amounts that must be withheld from the employee's wages for the FICA tax. The employer must pay FICA taxes at these same rates. Although the employee and employer's rates are identical for these years, they may be different in subsequent years.

TABLE 1. FEDERAL INSURANCE CONTRIBUTIONS ACT TAX RATES

Year	Old Age, Survivors and Disability Insurance Tax	Hospital Insurance Tax	Total FICA Tax
	-----percent-----		
1985	5.70	1.35	7.05
1986	5.70	1.45	7.15
1987	5.70	1.45	7.15
1988	6.06	1.45	7.51
1989	6.06	1.45	7.51
1990	6.20	1.45	7.65

SOURCE: 26 U.S.C. §§ 1401, 3101, 3111.

Example: In 1985, a farmer employed a person to perform agricultural labor. The employee was paid \$10,000 for his services. The employer would be required to withhold 7.05 percent, or \$705, from the employee's wages for FICA taxes. The employer would be liable for an additional \$705, since he is required to match the employee's share. Therefore, the employer will pay \$1,410 for FICA taxes. If he fails to deduct \$705 from his employee's wages, he may be personally liable for the entire \$1,410.

#### Withholding Income Tax

All employers are required to deduct and withhold federal income tax on payments of wages to employees. If an employer pays wages, he is required to deduct the federal income tax from the employee's wages. Remuneration paid for agricultural labor is specifically excluded from the definition of wages under this provision. Therefore, farm employers are not required to withhold federal income tax from wages paid to their employees.

Although farm employers are not required to withhold the tax from their employees' wages, employer and employee can voluntarily agree to have it withheld. The agreement is effective for a term the length of which the employer and the employee agree and can be terminated upon written notice of either.

#### Conclusion

Farm employers in North Dakota must be aware of the various labor laws. Although they are exempt from many of the provisions, farm labor is becoming increasingly regulated. This report has presented an overview of the various labor provisions an agricultural employer in North Dakota may be subject to. Farmers that may be subject to these provisions should seek further details from an attorney to insure that they are complying with the laws.