

2009 Handbook of Employment Regulations Affecting Florida Farm Employers and Workers: Unemployment Compensation [Federal and State]¹

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Purpose

This program is intended to benefit persons unemployed through no fault of their own.

Who Must Comply

Any employer of farmworkers, including seasonal and migrant workers, who has in the current calendar year or in the preceding calendar year:

- A payroll of at least \$10,000 in any calendar quarter.
- Five or more employees for some portion of a day in twenty or more weeks during the year.

Responsible Employer

Depending on the circumstances, the farm operator or labor contractor may be the employer. The factors used to determine whether or not an individual is an independent contractor (i.e., the employer) include:

- What is the extent of control which the business may exercise over the details of the work?
- Is the worker in a distinct occupation or business?
- Is this type of work usually done under the direction of the employer or by a specialist without supervision?

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- Is the skill required?
- Who supplies the place of work, tools, and materials?
- What is the length of time employed?
- What is the method of payment?
- Do the parties believe it is an independent relationship?
- The work part of the regular business of the employer?
- Is the principal in business?

The *FARM OPERATOR* is the employer under these circumstances:

- The worker is an employee of the farm operator under master/servant common law rules.
- The worker is furnished by the labor contractor but is not treated as an employee of the labor contractor (i.e., the labor contractor is acting on behalf of the farm operator rather than as an employer).
- The labor contractor has entered into a written agreement with the farm operator under which the labor contractor is designated as an employee of the farm operator.

The *LABOR CONTRACTOR* is the employer under these circumstances:

- The labor contractor holds valid certification of registration under the Migrant and Seasonal Agricultural Worker Protection Act of 1983.
- Substantially all crew members operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or other mechanized equipment provided by the labor contractor.
- The worker is not an employee of any person under master/servant common law rules.

Farm Related Exempt Employment:

- Farmworker for an exempt employer (See *Who Must Comply.*)

- Certain students working for credit on a program combining academic instruction with work experience (work-study program).
- Service performed for a son, daughter, or spouse or by a child under age eighteen for his or her father or mother. When the employing unit is a partnership, the exempt relationship must exist with all partners.
- Work performed on a fishing vessel under ten net tons.
- Work performed by temporary H-2A workers (unless workers apply for and are granted a different alien registration status).

Employers Must

Pay unemployment compensation tax on the first \$7,000 of annual payroll earnings for each employee. There are two parts to the tax: federal and state.

The effective *FEDERAL* tax is 0.8 percent of the first \$7,000 of annual payroll of each employee. (The actual federal tax is 6.2 percent less a credit of 5.4 percent if the employer pays the state tax by January 31st of the following year.)

The *STATE* tax will vary depending on the experience rating of the individual farm employer and the timeliness of tax payments. New farm employers will pay 2.7 percent of the first \$7,000 of the annual payroll of each employee. At the end of the tenth calendar quarter, an experience rating will be completed and taxes paid in the eleventh quarter and subsequent quarters will be based on that rating.

Experience ratings are recalculated annually thereafter. Annual rate notices are mailed to all employers on or before March 15th of the applicable year. The current maximum tax rate payable in Florida is 5.4 percent and the minimum tax rate is 0.1 percent.

Posting Requirements

Employers must display, in a place where all employees can see it, the poster *To Employees* (LES Form BUC-83 in English or LES Form BUC-83S in Spanish).

Record-Keeping Requirement

Employers must have records available for inspection at any reasonable hour during the business day and maintain records for a period of five calendar years.

Employee Eligibility

In addition to being unemployed, able and available for work, and not subject to any of the disqualifications listed below, a claimant must have the necessary wage credits during the base period.

Base period. The base period is the first four of the last five completed calendar quarters prior to the quarter in which a claim is filed.

Wage credits. An individual must have wages in two or more calendar quarters during the base period, which is the first four of the last five completed calendar quarters prior to the effective date of the claim. The total base period wages must be at least \$3,400. Also, the total base period wages must be at least 1.5 times the wages in the quarter with the highest earnings.

Weekly Benefits

The weekly benefit amount to which a claimant is entitled is one-half the average weekly wage but not more than \$275 for benefit years beginning January 1, 1998. The maximum benefit amount can only be changed by the Legislature.

Employee Claims

Employees do not pay for unemployment insurance. This cost is borne by the employer. Eligible unemployed farmworkers may file for benefits at the local office of the Division of Unemployment Compensation. (See *Responsible Agency*.)

A farmworker may not be eligible for benefits if it is found that he or she:

- Voluntarily quits his or her job without good cause attributable to his or her employer.

- Was discharged for misconduct connected with his or her work, including drug use as evidenced by a positive, confirmed drug test.
- Fails to apply for or accept suitable work.
- Is unemployed due to participation in a labor dispute.
- Fails to disclose required information on a benefit claim. Willful misrepresentation is also cause for fines and imprisonment.
- Is receiving or is eligible to receive a retirement income from a base period employer.
- Is receiving or is seeking employment benefits under an unemployment compensation law of another state or the United States.
- Is an illegal alien.
- Was terminated from employment for violation of any criminal law punishable by imprisonment.
- Was terminated for unsatisfactory work performance during an established probationary period of employment.

Additional Information

- LES UC Bulletin 1, Unemployment Insurance for Workers Under Florida Unemployment Compensation Law (Revised 4/88)
- LES UC Bulletin 2, Florida Employer, Information on the Florida Unemployment Compensation Law (Revised 8/90)
- Division of Unemployment Compensation, Florida Unemployment Compensation, Employer Handbook (Revised 8/90)

Other Information

- Labor Bulletin No. 364, Florida Fruit and Vegetable Association, October 1977
- Labor Bulletin No. 413, Florida Fruit and Vegetable Association, March 1983
- Chapter 443, Florida Statutes

Responsible Agency

For employer tax information, contact

Florida Department of Revenue

Tax Information Services

5050 West Tennessee Street

Tallahassee, FL 32399-0100

(850) 922-4825 or 1(800) 482-8293

<http://sun6.dms.state.fl.us/dor/contact.html>

For employee information about unemployment compensation, contact

Florida Agency for Workforce Innovation

Unemployment Compensation

Post Office Drawer 5350

Tallahassee, FL 32314-5350

(850) 921-3372

<http://www.floridajobs.org/unemployment/>

Local Unemployment Compensation offices are located in Clearwater, Cocoa, Daytona Beach, Fort Lauderdale, Fort Myers, Fort Pierce, Gainesville, Homestead, Hudson, Jacksonville, Lakeland, Miami, North Dade, South Dade, Naples, Ocala, Orlando, Panama City, Pensacola, Sarasota, South Orlando, St. Petersburg, Tallahassee, Tampa and West Palm Beach.