

Agricultural Labour – Meeting the Safety Requirements

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■ Background

There is a trend across Canada to implement and enforce occupational health and safety regulations in agricultural workplaces. Employer-employee relationships generally trigger enforcement; as a result, hog operations and mushroom farms seem to be targeted.

Temporary foreign workers are covered by labour legislation and have the same rights as Canadian workers. Ninety percent of occupations are provincially/territorially regulated and employment and labour standards for those occupations are the responsibility of the provincial/territorial governments. The other 10 percent of occupations are federally regulated and the employment and labour standards fall under the *Canada Labour Code* (http://www.hrsdc.gc.ca/en/workplaceskills/foreign_workers/ei_tfw/saw_tfw.shtml Retrieved September 24/08). It is important to note that standards vary among provinces/territories (**Table 1**). Please check with your ministry responsible for labour and employment standards. In addition, agricultural workers have different rights from other workers in many Canadian provinces/territories. (**Table 2**)

Bill C-45, a federal bill that arose from the Westray Mine explosion of 1992, was passed in March of 2004. This could have seen negligence charges laid under the Criminal Code of Canada. It seems that the Crown prosecutors are not pursuing cases; in fact the only company that has formally been charged and plead guilty is Transpavé, a Quebec company that manufactures concrete slabs and blocks. This was the first corporate conviction in Canada for a workplace-related incident. They were assessed a \$100,000 fine and a \$10,000 surcharge. The article in OHS Canada June 2008 states that “with due diligence, in line with health and safety law, a criminal conviction, even if pursued, is unlikely to prove successful” (Stelmakowich, 2008).

Table 1. Inter-jurisdictional summary: Employment standards for agricultural workers (Manitoba Labour and Immigration, 2008)

BC	Workers in primary production of most crops, livestock and other farm products exempt from hours of work, overtime and statutory holidays.
AB	Workers employed on a farm or ranch in primary production of agricultural products exempt from hours of work, overtime pay, general holiday pay, vacation pay, minimum wage and restrictions on employment of children.
SK	Workers employed in farming, ranching or market gardening exempt from the Act <u>except</u> those employed in the egg hatcheries, greenhouses and nurseries, and in "commercial hog operations" with six or more full time workers. In these hog operations overtime is payable after 10 hours a day or 80 hours in 2 consecutive weeks and there are special provisions for workers and employers to agree to an alternate day instead of a statutory holiday in the legislation.
MB	Workers in climate controlled facilities are covered by all minimum employment standards. Other workers are covered by all standards except for reporting/call in pay, hours of work and overtime, and general holiday provisions. Farm workers employed by family members are exempted except for promised rate of pay and equal pay for men and women.
ON	Workers in primary production of most crops, livestock and other farm products exempt from hours of work, daily rest periods, hours of work, overtime, minimum wage, public holidays and vacations with pay. However, those who harvest fruit, vegetables or tobacco receive minimum wage based on amount harvested, and vacation pay and public holidays after 13 weeks of employment. Workers growing mushrooms exempt from hours of work, overtime, daily rest periods and public holidays. For seasonal workers in canning, processing, packing or distributing fruits and vegetables overtime is paid after 50 hours per week.
PQ	Farm workers (not defined) exempt from hours of work provisions. The weekly day of rest can be postponed to the following week the worker consents. For fruit pickers minimum is based on amount picked.
NS	Workers in primary production of crops, livestock and other farm products exempt from hours of work, overtime and public holidays. In addition those under 16 exempt from minimum wage, call-in pay for working less than 3 hours, and overtime after 48 hours of work per week. However, such employees must be paid the minimum wage for hours worked in excess of 48 hours.
NB	Workers in primary production of crops, livestock and other farm products excluded from the Act <u>except</u> for provisions dealing with employment of children and in cases where there are 3 or fewer non-family employees.
PEI	Farm workers excluded from the Act except for promised rate of pay, unless they are in a "commercial undertaking".
NL	Workers in primary production of crops, livestock and other farm products excluded from hours of work and overtime <u>except</u> those in greenhouses, nurseries and raising livestock.

Table 2. Agricultural Workers and Employment Standards

	AB	BC ¹	SK ²	MB ³	ON ⁴	QC ⁵	NB ⁶	NS	PE ⁷	NL	YT ⁸	NU NT
Weekly rest	X	X	X	✓	X	✓	X	X	X	✓	X	✓
Meal breaks	X	X	X	✓	X	✓	X	X	X	✓	X	✓
Reporting / Call in pay	X	X	X	X	X	✓	X	X	X	✓	✓	✓
Parental leave	✓	✓	X	✓	✓	✓	X	✓	X	✓	✓	✓
Compassionate care	X	✓	X	✓	✓	✓	X	✓	X	✓	✓	✓
Bereavement leave	X	✓	X	✓	✓	✓	X	✓	X	✓	✓	X
Family / sick leave	X	✓	X	✓	✓	✓	X	✓	X	✓	✓	X
Child employ. restrictions	X	✓	X	✓	X	✓	✓	✓	✓	✓	✓	✓
Deductions	✓	✓	X	✓	✓	✓	X	✓	X	✓	✓	✓
Wage recovery	✓	✓	✓	✓	✓	✓	X	✓	✓	✓	✓	✓
Minimum wage	X	✓	X	✓	X	✓	X	✓	X	✓	✓	✓
Hours of work & overtime	X	X	X	X	X	X	X	X	X	X	X	✓
Paid general holidays	X	X	X	X	X	✓	X	X	X	✓	✓	✓
Paid vacation	X	✓	X	✓	X	✓	X	✓	X	✓	✓	✓
Maternity leave	✓	✓	X	✓	✓	✓	X	✓	X	✓	✓	✓
Termination notice	✓	✓	X	✓	✓	✓	X	✓	X	✓	✓	✓

¹ BC – There are separate minimum wage rates and vacation rules for fruit pickers based on volume picked (farm workers are not paid general rate).

² SK – “Farm workers” excluded from minimum standards; however, workers in egg hatcheries, greenhouses, nurseries, bush clearing, and commercial hog operations are not considered “farm workers.” Hog workers are entitled to overtime after 10 hours a day or 80 hours in 2 consecutive weeks and there are special provisions for workers and employers to agree to an alternate day instead of a statutory holiday in the legislation.

³ MB – Workers in climate controlled facilities have full employment standards coverage. Others are covered by all standards except for reporting/call in pay, hours of work and overtime, and paid general holidays. Farm workers employed by family members and who work directly in the production of agricultural products on that farm are exempted from employment standards provisions except for promised rate of pay and equal pay for men and women.

- ⁴ ON – There are separate categories of farm workers. For example, “farm related” workers including mushroom growers are entitled to minimum wage and vacations with pay while general farm labourers are excluded from those standards. Additionally, harvesters have special rates for minimum wage and are covered by public holidays and vacations with pay while general farm labourers are excluded from those standards.
- ⁵ QC – There are separate minimum wage rates for fruit pickers based on volume picked (farm workers are not paid general rate).
- ⁶ NB – Farm workers employed in operations that employ three or fewer non-family members over a substantial period of the year are excluded from most of the Act, with the exception of Child Employment Restrictions.
- ⁷ PE – Farm labourers are covered if they are considered to be employed in a commercial undertaking.
- ⁸ YK – landscape gardeners are not considered farm workers.

Most provinces approach agricultural compliance with education and compliance orders and rarely issue fines. The province of Ontario has been amongst the first province in assessing fines to agricultural workplaces. Since June of 2007, several fines of \$ 50,000 plus a 25% victim fine surcharge, have been issued to agricultural operations as a result of violations under the Occupational Health and Safety Act of Ontario.

■ The Business Case

Hog operations are competing for workers and must position themselves with other industries. The downtime, recruiting and training of a new worker due to a workplace incident can cost the equivalent of 20% of a workers’ salary. This does not include the liability risk or the direct costs of higher WCB assessments. Indirect costs such as poor employee morale and time spent with regulatory officials are difficult to measure.

Analyzing jobs, tasks and processes and equipment for hazards and risks can lead to improved efficiencies. Incorporating many of the processes as part of existing CQA, Environmental Plans and Job Descriptions makes compliance easier.

The goal of any Workplace Health and Safety plan should be to improve the performance of the farm and reduce time lost to injuries, all the while meeting the regulatory requirements of due diligence.

■ Next Steps

Once management has bought into the need to proceed, this must also be communicated to the workers. Responsibility for the process must be assigned.

One of the first steps is to identify the hazards in the workplace. This can be done a variety of ways:

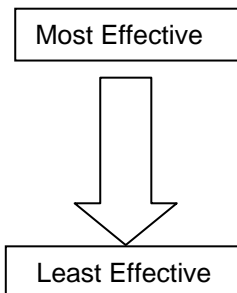
- As tasks are being performed
- Analyzing near misses
- Input from workers
- Incident investigations
- Looking at Health Hazards and Safety Hazards
- Worker illness or injury records

The hog operation can have hazards that are not normally found together. The following hazards may be present in your operation.

- Language barriers
- Animal Handling
- Disease transfer – Zoonoses
- Needle sticks
- Working alone
- Confined spaces
- Hearing, air quality, ergonomics
- Slips and falls
- Fire Hazard
- WHMIS
- Lockout procedures
- Electrical

Once the hazards have been identified it is much easier to put in controls that protect the workers.

Examples of Controls



- Elimination of the hazard
- Task or process modification
- Engineering Controls (improving ergonomics)
- Supervision, discipline
- Training of safe working practices
- Administrative Controls (communications, OHS roles defined, accountability)
- Personal Protective equipment

Probably the most difficult part of the process is how to prioritize and implement the controls. Once the hazards have been identified they should be scored according to the probability of occurrence, severity and ease of control.

■ Evaluate

The best protection is to be able to demonstrate due diligence on the part of the employer. The conditions for establishing due diligence includes several criteria (<http://www.ccohs.ca/oshanswers/legis/diligence.html> Retrieved October 1, 2008):

1. The employer must have in place written workplace safety and health policies, practices, and procedures. This would demonstrate that the employer:

- Identified hazardous practices and hazardous conditions and made the necessary changes to correct these conditions.
- Provided employees with information to enable them to work safely.

2. The employer must provide the appropriate training and education to the employees so that they understand and carry out their work according to the established policies, practices, and procedures.

3. The employer must train the supervisors to ensure they are competent, as defined by legislation.

4. The employer must monitor the workplace and ensure that employees are following the policies, practices and procedures.

- Written documentation of progressive disciplining for breaches of safety rules is considered due diligence.

5. The employer is required to have an accident investigation and reporting system in place.

- Employees should be encouraged to report "near misses" which should be investigated also.
- Incorporating information from these investigations into revised, improved policies, practices and procedures will also establish that the employer is practicing due diligence.

The employer should document, in writing, all of the above steps. This will give the employer a history of how the company's occupational health and safety program has progressed over time. It will also provide up-to-date

documentation that can be used as a defence to charges in case an accident occurs despite an employer's due diligence efforts.

There are obviously many requirements for employers, but workers also have responsibilities. They have a duty to take reasonable care to ensure their own personal safety and the safety of their co-workers, by following safe work practices and complying with regulations.

All elements of a Due Diligence Program must be in effect **before** any accident or injury occurs. If employers have questions about due diligence, they should seek legal advice for their jurisdiction to ensure that all appropriate due diligence requirements are in place.

■ Summary

Kim Anthony, the Human Resource Manager of Anthony Acres Ltd., stated in Better Farming - "...agricultural businesses need to be proactive in putting these practices into place. Farmers should look at it as an insurance plan to move their business forward, just as you would plan your agronomics for your crops every year. Don't wait for an accident to happen on your farm, get started on a health and safety program and be proactive in safety."

■ References

- Anthony, K. 2008. *Letter to the Editor*. "Be proactive about health and safety." Better Farming, May 2008
- Stelmakowich, A. 2008. "On the Books ", OHS Canada, June 2008, pg 24-29