CANADIAN AGRICULTURE & AGRI-FOOD

WORKFORCE ACTION PLAN

LABOUR TASK FORCE

AND THE

ALBERTA AGCOALITION

AGRICULTURE WORKFORCE MANAGEMENT
COMPARISON OF PROVINCIAL AGRICULTURE REGULATIONS
FOR

LABOUR RELATIONS
EMPLOYMENT STANDARDS INCLUDING REGULATED AGRICULTURAL
WAGE RATES
OCCUPATIONAL HEALTH AND SAFETY
WORKERS’ COMPENSATION

June 2016

Prepared By

CANADIAN AGRICULTURAL HUMAN RESOURCE COUNCIL
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Workforce Action Plan Contributing Partners:

Participating in the research
- Alberta AgCoalition
- AGRIcarrières
- Alberta Pork
- Alberta Canola Producers Commission
- Alberta Cattle Feeders’ Association
- Alberta Federation of Agriculture
- Alberta Wheat Commission
- British Columbia Agriculture Council
- Canadian Agricultural Human Resource Council
- Canadian Agricultural Safety Association (Employment Standards, OHS, WC)
- Canadian Federation of Agriculture
- Canadian Honey Council
- Dalhousie University
- Egg Farmers of Alberta
- Landscape Alberta
- Labour Issues Coordinating Committee of Ontario
- Mushrooms Canada
- Nova Scotia Federation of Agriculture
- Western Canadian Wheat Growers
SUMMARY

This research document presents a summary of an analysis of provincial labour legislation and regulations to provide clarification on the ways agriculture labour is managed in each province. The research has been a collective effort by participants noted in the acknowledgement section of the document.

The analysis includes an overview of educational health and safety programming that agriculture associations and farmers are currently participating in, Labour Task Force research explaining the unique issues affecting the agricultural workforce, an overview of occupational health and safety standards, and a summary comparison table capturing provincial regulations as well as exemptions and special rules provided to the agricultural industry in the four following areas:

1. Labour Relations,
2. Employment Standards Including Regulated Agricultural Wage Rates,
3. Workplace Health and Safety, and

FARM WORK AND THE AGRICULTURE INDUSTRY ARE UNIQUE

Food in the grocery store is grown by hard working farmers. With sustainable technological advancements, farmers and food processors are feeding Canadian consumers and the world. Canadians can be proud of our Canadian agriculture value chain which contributes $100 billion and close to 7 per cent GDP to Canada’s economy. The agriculture and agri-food system employs 2.3 million Canadians who produce more food than ever before, safely and securely. The agriculture industry is a powerful contributor to each individual provincial economy as demonstrated in Chart 1.

According to Farm Credit Canada, 98 percent of Canadian farms are family owned and operated. A sustainable agri-workforce with safe working conditions is vitally important to the future of the family farm and to keep Canada a world leader in food production.

Farmers and food processors deal with industry specific issues that no other industry faces. This work is crucial and necessary to enable the production of food for Canadian consumers, to allow farmers to remain globally competitive, and to ensure the security, safety and sustainability of food for Canadians, including the provision of local food products. The prices of agricultural products are set by international markets. Farmers have no way of passing on regulatory costs to the consumer.

Analyses of provincial labour legislation show that each and every provinces’ legislation, rules and regulations are different. Because of the unique nature of the industry, many provinces and jurisdictions either do not include agriculture in certain labour regulations and/or they provide regulatory exemptions in most areas. All Canadian provinces recognize there is a difference between the farm workplace and the manufacturing workplace; these special rules work to the advantage of both the employer and the worker and the unique workplace requirements of agricultural operations. The agricultural workplace is unique and the challenges associated with the workplace are different from any other industry or sector, which include:

- The handling of perishable products: related to live animals and plants that need timely and ongoing attention;
- Work that is weather dependant: requiring long hours of work when the weather permits;
- Work that can be seasonal: which means critical, time sensitive seasonal cycles that farmers and agriculture workers need to work during peak periods to avoid devastating losses which can be clearly identified through agricultural science;
• Crops that need to be harvested and picked when ready and that will be spoiled if deferred to the next day;
• Livestock and some greenhouses need 24/7/365 management to avoid animal welfare issues and to avoid devastating losses to farming operations;
• Livestock and crops do not take statutory holidays so farmers and agriculture workers can’t either;
• Necessary work that is crucial which extends to weekends or evenings for farmers and agriculture workers; and
• Agricultural work is located in rural areas.

The aforementioned workplace challenges and the work being rurally located are all contributing factors to a critical and pervasive agriculture worker shortage that is currently affecting the industry. Canadian Agricultural Human Resource Council’s Agriculture Labour Market Information released in March 2016 quantifies that primary agriculture has the highest job vacancy rate of any industry in Canada at seven percent and due to vacancies producers are losing $1.5 B or three per cent of the industry’s total value in sales and production nationally.

**LABOUR RELATIONS**

Labour Relations are an attempt to balance the power found in the employer-employee relationship. Sustainable labour legislation recognizes a balance among employers and workers interests. Most jurisdictions in Canada and the United States use the *Wagner Model* or approach of collective bargaining, which was developed during the Second World War for the manufacturing sector. It is perhaps the most confrontational approach to collective bargaining and results in the greatest amount of lost time. The seasonal nature, managing living organisms and the handling of highly perishable products can swing the balance of power in favour of the worker in the farming industry.

In the 1980’s the Canadian Charter of Rights and Freedoms guaranteed people the "rights of association," which extends to the workplace. It guarantees workers the right to bargain collectively, **but it does not define a specific model of collective bargaining.**


**Ontario:** Following a *Supreme Court of Canada ruling in the early 2000s*, Ontario created the Agricultural Employees Protection Act mirroring the rights of association and using a *collective bargaining model used by the United Nations' International Labour Organization*.


In 2011 the Supreme Court of Canada ruled in favour of the province of Ontario law stating, “What is protected is associational activity, **not a particular process or result**,” the majority said. “The Ontario legislature is not required to provide a particular form of collective bargaining rights to agricultural workers, in order to secure the effective exercise of their associational rights.”


**Ontario agriculture’s key exemptions include:**
• no duty to bargain,
• no exclusive representation,
• no obligation to pay fees deductible at source.
Saskatchewan: In January 2015, the Saskatchewan Federation of Labour challenged the constitutional validity of exemptions in their province’s labour code (which were similar to those of Alberta for agricultural workers, but was more focused on the public service). The court ruled that the exemptions were unconstitutional, as they failed to afford workers their basic right to association under section 2 (d). This case also saw the right to strike being cemented as a constitutional right under section 2 (d) of the constitution. [https://scc-csc.lexum.com/scc-csc/scs/csc/en/item/14610/index.do – SFL v. Sask (2015)]

Supreme Court ruled regarding farm workers in Saskatchewan, “In the case of farm workers, their exclusion from the Labour Relations Code fails to accord them even the narrowest level of protection under section 2(d), the constitutive freedom to belong to or form an association. The exclusion thus substantially interferes with their freedom of association. This conclusion is supported by international law and comparative law, and the Court’s decision in Saskatchewan Federation of Labour supports the reliance on a broad range of sources in this regard.” [http://ablawg.ca/2015/03/03/the-supreme-courts-new-constitutional-decisions-and-the-rights-of-farm-workers-in-alberta/]

The above statement that it is unconstitutional to exclude farm workers from Labour legislation is an opinion. While this argument can be made, it is important to note this is an opinion, not actually a legally binding decision from the Supreme Court of Canada.

Removal of the exemption in the Labour Relations Code would make it legal for farm and ranch workers to exercise their association rights afforded to them under section 2(d) of the constitution, but this does not guarantee them the right to collectively bargain in a particular format or process, nor exercise their right to association in a particular format or process.

**Employment Standards**

Most if not all of our worker protection legislation had their origins rooted in the industrial and manufacturing industries. The nature of work in the manufacturing setting is very different to the nature of work in farming. Most of the manufacturing characteristics that lead to the existing employment standards are not present in farming. For example a standard work day of 8 hours or a year defined as being 2,000 hours does not apply. Many seasonal farm workers achieve 2,000 hours in a much shorter period of time and then receive extended time off to compensate.

Since the inception of the Employment Standards Act, in most jurisdictions in both Canada and the United States including Saskatchewan, Manitoba, and also Ontario, agriculture functions under a number of exemptions and special rules that take into account the agriculture workplace’s unique nature. There are many Employment Standards categories, for the purpose of this report, the table is a comparison of Employment Standards from an agricultural perspective including: minimum wage, statutory holiday, overtime, hours of work, vacation pay, child employee restrictions [see table for details].

Alberta’s current employment standards can be found [here](http://ablawg.ca/2015/03/03/the-supreme-courts-new-constitutional-decisions-and-the-rights-of-farm-workers-in-alberta/). Note the current exemption for agriculture on pages 10-11 [S3.P1. (4)(a), (b)]. The basic standards for minimum wages, overtime, vacation/vacation pay, and hours of work/rest periods/days of rest are summarized as follows:

**Minimum wage:** Alberta’s current minimum wage is $11.20/hr for most workers. The NDP government has committed to raising this to $15/hr by 2018. As per the current exclusions, the minimum wage does not apply to agricultural workers, but there is no evidence any sector was paying below minimum wage. Considering that both the average ($19.93/hr) and median ($19.00/hr) wages for ‘general farm workers’ in Alberta are currently higher than $15/hr, it is likely that the inclusion of agriculture in minimum wage regulations would be sector specific. Those sectors that rely on the Seasonal Agricultural Workers Program (SAWP) or other TFWP options will see costs rise dramatically. Those sectors that pay at or near the proposed minimum wage will see labour costs rise accordingly with the impact evening out
above $25 per hour. (e.g. the person making $17 an hour today ($5.80 above minimum wage) will demand more via the labour market if minimum wage is $15)

Overtime/ Overtime pay: The current standard in Alberta is that employees are entitled to overtime pay (at least 1.5x their regular wage rate) for any hours worked in excess of 8 hours a day or 44 hours a week. Agriculture employees are currently exempt from these standards.

Vacation/ Vacation pay: The current standard in Alberta is that employees are entitled to vacations/vacation pay, with two weeks of pay for years 1-4 of employment with pay and three weeks after five consecutive years with pay, at a rate of 4% (1-4 yrs) or 6% (5+yrs) of earnings. Farms and ranches are currently exempt in lieu of a new employment standards code.

Hours of work/Rest Periods/Days of rest: The current standard in Alberta (non-farms and ranch) is that an employee can work a maximum of 12 hours in a day unless there is an unforeseeable emergency. Special permits can be issued to authorize work in excess of 12hr/day. An employee is entitled to at least 30 minutes of rest in a shift in excess of 5 hours. Employees are also entitled to minimum days of rest: 1 day/week; 2 consecutive days/2 weeks; 3 consecutive days/3 weeks; 4 consecutive days/4 weeks; 4 consecutive days/ 24 consecutive working days. Farm workers are currently exempt from these standards.

Exemptions and special rules in other provinces noted in the table reflect the recognition of the differences between the farm workplace and the manufacturing workplace; these special rules work to the advantage of both the employer and the worker and the unique workplace requirements of agricultural operations.

**OCCUPATIONAL HEALTH AND SAFETY**

Occupational Health and Safety (OHS) legislation is designed to bring OHS regulations to farms and ranches so as to ensure workers’ safety and to prevent and learn from farm incidents that result in injury or death.

**Overview of Occupational Health and Safety Regulations**

<table>
<thead>
<tr>
<th>The Canadian Centre for Occupational Health and Safety summarizes the responsibilities of employers, managers and employees under occupational health and safety legislation. This is a general overview; each province may have slightly different responsibilities in their legislation.</th>
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<tr>
<td><strong>Employers’ responsibilities include:</strong></td>
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<td>• Establishing and maintaining a health and safety committee which is generally based on employee numbers (see the section below on health and safety committees for further details), or requiring workers to select at least one health and safety representative</td>
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<tr>
<td>• Taking every reasonable precaution to ensure the workplace is safe</td>
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<td>• Training employees about potential hazards and how to safely use, handle, store and dispose of hazardous substances</td>
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<td>• Training employees on how to handle emergencies</td>
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<td>• Supplying personal protective equipment and ensuring workers know how to use the equipment properly</td>
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<tr>
<td>• Reporting all critical injuries to the government department responsible for occupational health and safety (visit your provincial / territorial occupational health and safety board for contact details).</td>
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<tr>
<td>• Assigning a competent supervisor to monitor the implementation of the safety plan</td>
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<td><strong>Managers / supervisors are responsible for:</strong></td>
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<td>• Ensuring that workers use prescribed protective equipment, clothing and devices</td>
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<tr>
<td>• Advising workers of potential and actual hazards</td>
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<tr>
<td>• Taking every reasonable precaution to protect workers</td>
</tr>
<tr>
<td><strong>Employees are responsible for:</strong></td>
</tr>
<tr>
<td>• Working in compliance with occupational health and safety acts and regulations</td>
</tr>
</tbody>
</table>
• Using personal protective equipment and clothing as directed by the employer
• Reporting workplace hazards and dangers
• Working in the manner required by the employer and using the prescribed safety equipment

Employees have the right to:
• Refuse unsafe work
• Participate in the workplace health and safety activities through a Joint Health and Safety Committee or as a worker health and safety representative (see below)
• Know, or be informed about, actual and potential dangers in the workplace

Refusing work: An employee can refuse work if the employee believes that the situation is unsafe to either himself/herself or co-workers. If a worker believes that work should be refused, then:
• The employee reports the refusal to work to his/her supervisor and state the reason why the situation is believed to be unsafe.
• The employee, the supervisor, and a health and safety committee member or employee representative investigates.
• If the situation is resolved with mutual agreement, the employee returns to work.
• If the situation is not resolved, a government health and safety inspector is called (visit your provincial / territorial occupational health and safety board for details on contacting an inspector in your jurisdiction).
• The inspector investigates the situation and issues a written decision.

Health and safety committees: A health and safety committee is an advisory group of management and worker representatives which is generally based on employee numbers. Health and safety committees have a variety of functions, including:
• Acting as an advisory body that provides input into the formation of health and safety policies and procedures
• Identifying and obtaining information about hazards
• Recommending corrective actions
• Assisting in resolving work-refusal cases
• Participating in accident investigations and workplace inspections
• Making recommendations to management regarding actions required to resolve health and safety concerns

Legislation in different jurisdictions sets guidelines for health and safety committees that cover the structure of the committee, meeting frequency, and the roles and responsibilities of committee members. Further information on these guidelines can be found in the section on Health and Safety Committees on the Canadian Centre for Occupational Health and Safety website.

Types of Potential Legal Action: The Canada FarmSafe Plan outlines the types of legal action you could face if a work-related injury or illness occurs on your farm:

Regulatory: In most provinces, occupational health and safety laws are based on the principle that you (as the employer) are responsible for the occurrence of an incident unless:
• You can prove that you took preventative measures and actions, but
• Circumstances beyond your control resulted in the incident occurring.

Civil: If you are not covered by workers' compensation, an injured party can take legal civil action against you if:
• They believe you were negligent in providing a safe work environment, or
• They believe you failed to fulfill your responsibilities in exercising due diligence in taking reasonable care to protect the people on your farm.

Criminal: 2004 legislation set new legal requirements for workplace health and safety and imposed penalties for violations that result in injuries or death. These new rules can attribute criminal liability to organizations, including corporations, their representatives, and those who direct the work of others. For further information, visit the overview prepared by the Canadian Centre for Occupational Health and Safety.

This OHS regulatory overview is brought to you by the Canadian Agricultural Human Resource Council (CAHRC). For more helpful ag labour information for producers and agricultural employers and to access agriculture labour source documents call CAHRC and ask for the AgriHR Toolkit: 613-745-7457
http://www.cahrc-ccrha.ca/resources/agricultural-hr-toolkit
Health and safety education, awareness and training are critical to the agriculture industry. Farmers and the agriculture industry take safety of their workers, their families and themselves on their farms very seriously. Farmers on a national and provincial level have been working together on safety issues and programming through shared learning and open communication, increased education, and training. This programming brings awareness and education to children, teenagers, agriculture workers, adults, farm owners and managers. A scan of safety associations across Alberta that farmers have developed and work with include:

- 4-H (integrated into programming)/national
- Alberta Farm Safety Centre/AB
- Alberta Farm Safe Plan/AB
- Agriculture Education & Training Branch, Farm Safety Program/AB
- Agricultural Health and Safety Network
- Agriculture for Life/AB
- Green Certificate (integrated into programming)/AB
- Farm Safety Association
- Safe Think Course/AB

Many agricultural associations are proactive in working with governments and agricultural employers, offering farm safety education information to their memberships. One example is when, “Farmers work with a safety professional in the industry to develop a system tailored to their farm based on a template similar to other industry occupational health and safety systems,” through the Alberta Farm Safety Programs and the Alberta Government Farmer Programs and Services division. Another example is the Egg Farmers of Alberta which are developing a list of dangerous tasks and a list of hazards and potential controls for each. They have a producer package on their website that includes Job Task Hazard Assessment checklists and 14 Standard Operating Procedures templates that farmers can customize to fit producers’ own operations.

Farm leaders are involved in many ongoing collaborative farm safety initiatives as well, working together with governments on improving farm safety. One such initiative was the Alberta Farm Safety Advisory Council which released a report in February 2012 entitled: Enhanced Farm Safety Education and Training. The report has several recommendations and states, “Farming in Alberta has a strong history. This council’s vision is that together we can forge an even stronger future, where our farms are free of serious injury and death. Not one parent, not one neighbour, not one child – our commitment starts today.”

Another safety initiative was the Alberta Agriculture Injury Prevention Working Group which was launched in January 2013. Participants in the work included: Alberta Agriculture and Rural Development (now Agriculture and Forestry); Safe Think Course; Alberta Centre for Injury Control & Research (ACICR); Alberta Farm Safety Centre; Alberta Health Services; Lifesaving Society Alberta & Northwest Territories; St John Ambulance; Population and Public Health; Agriculture for Life; United Farmers of Alberta; Alberta Association of Municipal Districts and Counties; Agriculture Service Board representative; County representatives; Commodity group representatives; and the Alberta Federation of Agriculture.

**NATIONAL AND OTHER PROVINCIAL FARM SAFETY EDUCATION INITIATIVES**

In 2013, Canadian Agricultural safety Association (CASA) and Canadian Agricultural Human Resource Council (CAHRC) developed a National Occupational Standard (NOS) for Agricultural Occupational Health and Safety Specialist.

In Ontario, the agriculture industry meets quarterly with OHSA policy, enforcement and prevention representatives to facilitate consistent and common interests of everyone involved. In 2015, CASA also developed safety materials for international agriculture workers in conjunction with Ontario’s Workplace Safety and Prevention Services.
In Nova Scotia there is a Farm Family Support Centre that is managed as a member assistance program by Morneau Shepell where registered farms have access to this service in Nova Scotia which provides 24/7/365 answering service providing counselling support for mental health, relationships, finances, legal and more.

More awareness is needed for the unique health and safety issues facing farmers and rural residents. Two examples identified by safety experts include the fact that farms are located in rural areas, while most health care personnel who are trained in disabilities and work related rehabilitation are located in urban areas i.e. occupational therapists and physiotherapists. And the other area highlighted by experts is that farmers and farm workers who become disabled as a result of farm injury find it difficult to obtain disability pensions without having to give up their family farm and other financial options available to them in event of disability injury or chronic disease i.e. cancer that makes them unable to work.

Examples of national and other health and safety programming include:

- Canadian Agricultural Safety Assoc./national
- Canadian Centre for Occupational Health and Safety/national
- Canadian Standards Assoc./national
- Canadian Safety Council/national
- Farm Family Support Centre/NS
- Farm Safety Nova Scotia/NS
- Farm and Ranch Safety and Health Association/BC
- Farm Stress Unit, Saskatchewan Agriculture/SK
- Manitoba Safety Council/MB
- New Brunswick Safety Council Inc./NB
- Saskatchewan Safety Council/SK
- Sask Alliance for Safety & Health in Agriculture/SK
- Service de prévention de l'UPA/QC
- Workplace Safety Prevention Services/ON
- Worker Safety Insurance Board Safety Group (Farming)/ON
- Service de prévention de l'Union des producteurs agricoles (UPA)/QC

**Workers’ Compensation and Private Insurance**

Workers’ Compensation programs set premiums for different industry rate groups every year in each province based on risk and claims made. Provincial legislation: employers agree to fund program and workers give up the right to sue employer for work related injuries. It provides benefits for lost wages, health care, vocational rehabilitation and other costs.

To be considered for compensation and accident may arise out of and occur in the course of employment. The Workers’ Compensation administration initiates queries to obtain evidence and adjudicates the eligibility of the claim based on the evidence of the worker, employer and medical provider.

**Premium rates per $100 of insurable earnings vary by province (See Table for agricultural WC rates).**

Currently there are three Canadian jurisdictions where Workers’ Compensation is optional for agricultural operations including: Nova Scotia, Prince Edward Island, and Saskatchewan. In these provinces WC is optional and so is private insurance. Some farms and workers do not carry insurance or WC, others chose one or the other for their workers and farm operations. Farms that use the Federal Government’s Temporary Foreign Worker Program’s Agriculture Stream or the Seasonal Agriculture Worker Program are required to have Workers’ Compensation coverage.

Since December 2015 recent legislation, Alberta is moving towards mandatory Workers’ Compensation. Previous to the legislation, similar to other provinces where WC is optional, agricultural employers used optional workers’ compensation as well as private insurance programming. In 2014 Alberta’s Workers’ Compensation Board reported, “1,380 farming employer accounts with voluntary coverage on about 3,800 workers.” Alberta industry reports that many Alberta farm employers also used private insurance, several industry associations report that private insurance offers more comprehensive coverage at better rates than provincial Workers’ Compensation.
Nova Scotia which has optional Workers’ Compensation and the Nova Scotia Federation of Agriculture association also offers a health benefit package. Participation in this programming is completely voluntary and all members of the NSFA are eligible to participate. Benefits offered include:

- Preferred health and dental group plan through Morneau Shepell. There are numerous benefits available under that plan including life, dismemberment and health care insurance, prescription drug coverage, vision care, paramedical practitioners’ coverage, dental and critical illness.
- Members can also participate in a Preferred Pharmacy Provider Program offered by Managed Health Care Services. This benefit can be used at drug stores owned by Sobeys and Lawtons. This provides a $2 deductible on prescriptions and special discounts on storefront items.

**TABLE: Agriculture Workplace Management: A Comparison of Labour Relations, Employment Standards including Regulated Agricultural Wage Rates, Occupational Health and Safety, Workers’ Compensation**

This research report and the following table present an important summary of the provincial data regarding labour relations, employment standards, employment standard exemptions, minimum wage and other wage rates, occupational health and safety standards and exemptions, and workers compensation and insurance regulations to provide a clearer picture of how agricultural workforce issues are supported in different regions of Canada.
# Agriculture Workplace Management: A Comparison of Labour Relations, Employment Standards Including Regulated Agricultural Wage Rates, Occupational Health and Safety, Workers’ Compensation

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<td>BC</td>
<td><strong>LABOUR RELATIONS:</strong> YES</td>
<td>Farm workers have the right to unionize and the right to collective bargaining.</td>
<td><strong>EMPLOYMENT STANDARDS</strong>: Farm workers in primary production of most crops, livestock and other farm products are covered by most sections of the act, however, exemptions include hours of work, overtime and statutory holidays. <a href="https://www.labour.gov.bc.ca/en/EMPLOYMENT/EMPLOYMENT-STANDARDS-INCLUDING-FARM/">https://www.labour.gov.bc.ca/en/EMPLOYMENT/EMPLOYMENT-STANDARDS-INCLUDING-FARM/</a></td>
<td><strong>EMPLOYMENT STANDARDS</strong>: WCB is responsible for enforcement of OHS and administration of WC.</td>
<td><strong>OHS YES:</strong> <a href="http://www2.worksafebc.com/Portals/Agriculture/RegulationAndGuidelines/">http://www2.worksafebc.com/Portals/Agriculture/RegulationAndGuidelines/</a></td>
<td><strong>OHS INSPECTIONS &amp; INVESTIGATIONS:</strong> Regular inspections are required on all BC workplaces including farms.</td>
<td><strong>WC MANDATORY:</strong> <a href="http://www.worksafebc.com">http://www.worksafebc.com</a></td>
<td><strong>WC EXEMPTIONS:</strong> Unpaid workers. Can be unlimited. Exempt from the $20 and family members performing chores.</td>
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<td><strong>MIN WAGE/SAT HOLIDAY/OVERT HRS:</strong> <a href="https://www.labour.gov.bc.ca/en/EMPLOYMENT/EMPLOYMENT-STANDARDS-INCLUDING-FARM/">https://www.labour.gov.bc.ca/en/EMPLOYMENT/EMPLOYMENT-STANDARDS-INCLUDING-FARM/</a></td>
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Employment Standards Standards Before Bill 6:

Employment Standards After Bill 6: December 2015

Employment Standards After Bill 6: December 2015

Employment Standards Exemptions: Although Bill 6 has been approved by Alberta’s legislature, operations will have no new obligations until an extensive consultation has been completed and new regulations have been approved.

Farmers and ranchers will be consulted to help government understand the unique aspects of the industry that need to be accommodated— for instance, hours of work during harvest and calving seasons.

Other industries in Alberta have other obligations or rules that vary from the standards set by the Employment Standards Code.

After the new regulations are developed and approved, Employment Standards rules will only apply in circumstances where an employment relationship exists.

EXEMPTION: While there are special rules for the employment of youth to protect their well-being and education, children doing chores on the farm or helping out around the home are not considered to be in an employment relationship or performing “work”.

Workers have an obligation to work safely and cooperate with their employer to keep the workplace safe.

Employer obligated to provide a safe and healthy work environment, and must investigate the situation and provide a solution that ensures the work can be performed safely. Worker’s job security is guaranteed.

Some of our officers already have extensive farming experience, while others will undergo training. Similar to other industries, experts can always be brought in to provide input and advice during investigations that follow a serious injury or fatality.

Mandated: WCB coverage has been extended to farm and ranch operations with non-family paid employees as of January 1, 2016. Rates are based on the risk and size of an operation. A large operation with many workers would pay higher premiums than a small farm.

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Workers’ Compensation Board (WCB)

As a general guideline, the typical rates would apply per $100 of insurable earnings.

$1.70 – Agri-tourism farms, greenhouses/market gardens, mushroom producers, bait farms

$1.75 – Aquaculture, fishing/fish or fur farms, goat/sheep producers, hog producers, poultry/egg producers

$2.25 – Forage & pear moss processing, hay/grain/crop farming, harvesting/baling custom

$2.97 – Beef producers, dairy farms, elk/bison producers, feed lots, livestock auctions/stockyards, farms/alpaca producers, riding academies/horse training

Funded through employer premiums not taxes.
**SK**

**LABOUR EXEMPTIONS**

**YES**

Farm workers have the right to unionize and the right to collective bargaining.

**LABOUR RELATIONS:**


Prior to SCC ruling: Part VI and VIII of the Saskatchewan Employment Act would apply to any agricultural operation that is unionized.

**EMPLOYMENT STANDARDS**

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<th>BC</th>
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<th>SK</th>
<th>AB</th>
<th>PEI</th>
<th>NL</th>
<th>ON</th>
<th>YT</th>
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<td>Holiday</td>
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</table>

**EMPLOYMENT STANDARDS EXEMPTIONS INCLUDE:**

- The Labour Standards Act (LSA) legislation outlines the relationship between employer and employee, including application of minimum wages, holidays and maternity leave.
- Applies to egg hatcheries, greenhouses and nurseries, feedlots, confined feeding, bush clearing operations, and 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.
- Youth workers must be 16 years old to operate powered mobile equipment on a worksite or to work in areas where they may be exposed to dangerous chemicals or biological substances.
- Ag employers are not exempted from requirements to pay wages and the Director of Employment Standards has the ability to assess and collect wages owing.


**OSH:**

[http://www.worksafeqs.ca/](http://www.worksafeqs.ca/)

Saskatchewan Occupational Health and Safety Act was passed in 1993 and Regulations were implemented in 1996 which apply to all workplaces, including farms.

The level of responsibility is based on authority and control. An employer has the most responsibility to ensure health and safety standards are met. Workers are given three basic health and safety rights:

- They have the right to know about the hazards of their job and how to deal with those hazards so they will not cause injury or harm.
- They have the right to participate in health and safety education in the workplace.
- They have the right to refuse work that they believe is unsafely dangerous to themselves or others in the workplace.

A self-employed person, such as a farmer, who does not employ others is considered to be his or her own employer. An employer must not interfere with a worker’s health and safety rights.

The LCSS will not be an officer’s only reasonable ground to believe that a worker’s health and safety is in danger, a stop work or stop-use order may be an officer’s only reasonable choice. OHS officers would consider the use of a stop-work order on a case-by-case basis. Officers are expected to act appropriately and not impede the normal activities on a farm or ranch. Once the danger is controlled, work can continue.

Appeals process:

An appeals process is in place if an operator doesn’t agree with the decision of an OHS officer. Issues that can be appealed before the OHS Council are:
- Orders issued by Occupational Health and Safety
- The cancellation or suspension of a licence or permit
- The issuance of an Administrative Penalty
- A ruling from a dismissal or disciplinary complaint investigation
- A ruling from an imminent danger complaint investigation

**WC:**


Farm and farm worker coverage is optional. Manages a compensation system for workplace injuries on behalf of workers and employers.

Section 3 of the Act exempts farming and ranching industry from mandatory coverage. This does not preclude an employer from being voluntarily covered by workers’ compensation.

→ 2016 premium rate for farming and ranching is $1.97/$100 of salary down from $2.33 in 2015.

**WC EXEMPTIONS INCLUDE:**

- Agriculture related areas including: dairy, demonstrating and exhibiting, feedlots, grazing co-ops, land clearing, fur farms, livestock brokers, mobile farm feed services or portable seed cleaning plants, pig farms, poultry farms, trapping and voluntary workers.
### Labour Relations

- **YES**

Farm workers have the right to unionize and the right to collective bargaining.

### Employment Standards

<table>
<thead>
<tr>
<th>Max Wkly</th>
<th>Not Working</th>
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<th>Min Wkly</th>
<th>Vac</th>
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<th>Child Employment</th>
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<td>Hours</td>
<td>Hours</td>
<td>Days</td>
<td>Hours</td>
<td>Days</td>
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</tr>
</tbody>
</table>

- Parts of the employment standards code covers farm workers, while others do not.
- Workers in climate controlled facilities are covered by all minimum employment standards.
- Non-family workers are regulated by minimum wage requirements, annual vacation and vacation allowance requirements, weekly day of rest requirements, work break requirements, unpaid leave requirements (maternity, compassionate care etc.), termination of employment requirements and employment of children requirements.


### Employment Standards Exemptions Include:

- There are different exemptions for paid farm workers with no relationship to the family that own or operates the farm and for family members being paid to work on the farm.
- Farm workers employed by family members are exempted except for promised rate of pay and equal pay for men and women.
- Other workers are covered by all standards except for reporting/call in pay, hours of work and overtime, and general holiday provisions.
- Most restrictions on child employment do not apply in the agricultural sector. However, children younger than 16 cannot work during school hours without a permit. Children younger than 15 may not get such a permit. However, children who are family members of farmers are exempt from this section of the code.

### OHS: YES

The Manitoba Workplace Safety and Health Act and Regulation came into effect in 1977 and apply to every employer, worker and self-employed person in MB. The act governs the relationship between employers and employees with regard to workplace safety and applies to all workplaces, including farms. Every employer must ensure the safety, health and welfare of all their workers. The act gives direction on how farmers should protect those who work on a farm as well as how workers are required to protect themselves and others.

### OHS Inspections & Investigations

- You must allow and officer into your workplace or farm if the officer has reason to believe there is a harmful or unsafe condition on the premises. OHS investigators can investigate incidents.

### WC Mandatory

- **http://www.wcb.mb.ca/**

The act applies to all employers and workers in all industries. It does exempt farmers and family members of farmers from WCB regulations. A farm can be owned by a farmer or can be a family farm corporation. Family members can be a spouse or common-law partner, child, parent, sibling and other relative and a person who the farmer considers to be a close relative, whether or not they are related by blood, adoption, marriage or a common-law relationship.

- **2016 WC average rate for crop production, livestock and harvesting is $2.09/$100 of assessable payroll.**
- **Hog and poultry rate is $1.61/$100**
- **Market Gardening $0.41/$100**

### WC Exemptions Include:

- Farmers, family members and neighbours to work together are exempt.

Farmers can voluntarily apply for coverage for themselves and their family members.
LABOUR RELATIONS: Special Rules in Ontario, farm workers can not collectively bargain.

Labour Relations: Supreme Court of Canada Ruling: 2002, Ontario created the Agricultural Employees Protection Act which is administered by the Ontario Ministry of Agriculture Food and Rural Affairs (OMAFRA) mirroring the rights of association and using a collective bargaining model used by the United Nations’ International Labour Organization.

Supreme Court of Canada Ruling 2011: ruled in favour of the province of Ontario law stating, “What is protected is associational activity, not a particular process or result,” the majority said. “The Ontario legislature is not required to provide a particular form of collective bargaining rights to agricultural workers, in order to secure the effective exercise of their associational rights.”

Key exemptions include: no duty to bargain, no exclusive representation, no obligation to pay fees deductible at source.


Labour Relations: Partial Exemption when “fewer than three workers are ordinarily and continuously employed” https://www.es.gov.on.ca/eng/laws/r_21_2006.pdf

Employment Standards:

Workers growing mushrooms are not exempt from minimum wage, vacation pay and other Employment Standards.

Termination and severance same as other industry sectors.

Farmers allowed to pay for piece work but it must equal the minimum hourly wage.


Labour Relations: Special Rules: In Ontario, farm workers are not protected by collective bargaining rights, including Farm Safety Association. Applicable since 2005.

Farming is part of the Workplace Safety and Prevention Services (WSIPS) with agriculture specific advisory committee.

After 3 years of negotiation the result was a “Farming Operations” regulation under the Ministry of Labour OHS Act. This is separate from industrial regulations and is more interpretive and less prescriptive than the industrial, construction and mining regulations. Farm Safety developed a series of 8 Guidelines that OSHA and WSIB agreed to accept.

An ongoing Technical Advisory Committee brings 1) agricultural employers, 2) OSHA (Ministry of Labour), 3) prevention (Farm Safety Assoc), 4) insurance (WSIB and, 5) OMAFRA to a common table to discuss ongoing issues.

The Technical Advisory Committee has a cooperative approach to OHS. Ontario’s MOH has agreed to industry friendly regulations. Issues such as harvesting broiler chickens, work platforms in greenhouses, arborist practices, all involve employer input, period implementation, and proactive inspection practices.


Employment Standards Exemptions include:

- 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 vacation with pay.
- 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.
- For seasonal workers in cropping, processing, packing or distributing fruits and vegetables overtime is paid after 50 hours per week.
- Child Employee: There is no age limit for work in agriculture or farming. Determination for age of work is actually covered under the School Act. There are some rules about working during school hours. It really comes down to parents’ assessment of age appropriateness and ability. Farmers are allowed to pay their kids an allowance for farm work. It does not classify them as a paid worker.
- Nursery/Sod/Landscape are given many exemptions including overtime, hours of work, rest periods, and vacation pay.
- Freelance writers are part of the Workplace Safety and Prevention Services. They also have to respond to and investigate complaints.

WSIB is currently restructuring to function more like an insurance company that will see premium rates change dramatically once the unfunded liability is reduced/eliminated.

Farming part of the Workplace Safety and Prevention Services.

Average rate in the province for all industries is $2.16/100 salary.

Agriculture 6 rate groups with premiums range from $2.84/$100 of wage to $7.09/$100 of wage.

WSIB does include no-fault insurance benefits, however, it has expanded to mental stress and latent long term injury

W.C. MANDATORY: Worker Safety Insurance Board (WSIB): http://www.wsib.on.ca/

W.C. EXEMPTIONS INCLUDE: Family members are exempt. Coverage can be purchased for family members if they are designated as a paid worker.

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Employment Standards:

Min Nig Alt. Holding Off Hrs of work Vacation Pay Child Employee Exempt?

TO 15 TO 15 TO 15 TO 15 TO 15

Milk $4.50 $9.00 $18.00 $36.00 $60.00

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.

OHS: YES: http://www.cstt.qc.ca/Pages/index.aspx

DHS INSPECTIONS & INVESTIGATIONS:

WC MANDATORY: Worker Safety Insurance Board (WSIB): http://www.wsib.on.ca/


MOL is currently restructuring to function more like an insurance company that will see premium rates change dramatically once the unfunded liability is reduced/eliminated.

MANDATORY: Farm part of the Workplace Safety and Prevention Services.

Average rate in the province for all industries is $2.16/100 salary.

Agriculture 6 rate groups with premiums range from $2.84/$100 of wage to $7.09/$100 of wage.

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W.C. EXEMPTIONS INCLUDE: Family members are exempt. Coverage can be purchased for family members if they are designated as a paid worker.
<table>
<thead>
<tr>
<th>NS</th>
<th>LABOUR RELATIONS:</th>
<th>YES</th>
<th>Farm workers have the right to unionize and the right to collective bargaining.</th>
<th>EMPLOYMENT STANDARDS</th>
<th>Employment Standards Exemptions Include:</th>
<th>Child Employment Restrictions:</th>
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<td></td>
<td>LABOUR RELATIONS:</td>
<td></td>
<td>“Farm workers are excluded from labour relations legislation and the right to organise and bargain collectively in the provinces of New Brunswick [at operations for five or fewer workers].”</td>
<td>Employment Standards Exemptions Include:</td>
<td>There are 5 areas of the Labour Standards Code where the rules are different for farm workers than most other workers:</td>
<td>Child Employment Restrictions:</td>
<td>Exemptions for overtime include those in remote or isolated areas or the James Bay area.</td>
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<td></td>
<td>1. The requirement to pay minimum wage for farm workers who are under 16 or who harvest fruit, vegetables or tobacco on a piecework basis;</td>
<td><a href="http://novascotia.ca/law/employmentrights/children.asp">http://novascotia.ca/law/employmentrights/children.asp</a></td>
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<td>5. Call in pay.</td>
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<td>Farm workers are defined as follows:</td>
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<td>→Persons engaged in work on a farm whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, Christmas wreaths, maple products, honey, tobacco, pigs, cattle, sheep, poultry or animal fur.</td>
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<tr>
<td>NB</td>
<td>LABOUR RELATIONS:</td>
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<td>Farm workers have the right to unionize and the right to collective bargaining, but only where more than five workers are employed regularly and continuously.</td>
<td>EMPLOYMENT STANDARDS</td>
<td>Exemptions for overtime include those in remote or isolated areas or the James Bay area.</td>
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</table>
### PEI

**Labour Relations:** Yes  
Farm workers have the right to unionize and the right to collective bargaining.

**Labour Relations:**  

<table>
<thead>
<tr>
<th>Employment Standards</th>
<th>Employment Standards Exemptions Include:</th>
<th>OHS: No</th>
<th>OHS Inspections &amp; Investigations:</th>
<th>WC Optional:</th>
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<td>Min.</td>
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<tr>
<td>8</td>
<td>10</td>
<td>0</td>
<td>3</td>
<td>Yes</td>
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</tbody>
</table>

Farm workers excluded from the Act except for promised rate of pay, unless they are in a "commercial undertaking".

### NL

**Labour Relations:** Yes  
Farm workers have the right to unionize and the right to collective bargaining.

**Labour Relations:**  

<table>
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<tr>
<th>Employment Standards</th>
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<td>8</td>
<td>10</td>
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<td>Yes</td>
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</table>

Workers in primary production of crops, livestock and other farm products excluded from hours of work and overtime except those in greenhouses, nurseries and raising livestock.

**OHS Inspections & Investigations:**  
http://www.servicenl.gov.nl.ca/OHS/
ENDNOTES: SUMMARY AND TABLE SOURCES


- Labour: http://www.alberta.ca/farm-and-ranch-labour-relations.cfm
- Workers’ Compensation: http://www.alberta.ca/farm-and-ranch-wcb.cfm


Alberta: Alberta WCB: Safe & Healthy Farms and Ranches Information Session, November 26, 2014

Alberta: Alberta Farm Safety Program: http://www1.agric.gov.ab.ca/general/progserv.nsf/All/pgmsrv430


Canadian Agricultural Human Resource Council [http://www.cahrc-ccrha.ca/]

Canadian Agricultural Human Resource Council’s AgriHR Toolkit: [http://www.cahrc-ccrha.ca/resources/agricultural-hr-toolkit]

Canadian Agricultural Safety Association [http://casa-acsa.ca/]

Canadian Centre for Occupation Health & Safety 
[http://www.ccohs.ca/oshanswers/legis/responsi.html]


Employment and Social Development Canada: Wages by agricultural commodity; 

Ontario: Agricultural Industry Exemption from the Ontario Employment Standards Act, Farm Safety Association, “Agricultural and Horticultural employees and employers are encouraged to try to resolve disputes with thin the workplace before seeking the assistance of the Ministry of Labour”
[https://fc.amdsb.ca/~DougWong/FOV1-00037FEE/S0475A0A4.7/chemical%20and%20physical%20summary.pdf]


Real Agriculture Comparison: How Does Bill 6 Compare with Farm Workplace Legislation in Other Provinces? By Real Agriculture News Team, December 14, 2016
[https://www.realagriculture.com/2015/12/bill-6-compare-farm-workplace-legislation-provinces/]

[https://www.realagriculture.com/2015/12/farm-labour-health-safety-ontario-works/]

Western Producer: What Other provinces are doing about farm worker safety by Mary MacArthur, December 4, 2015
[http://www.producer.com/2015/12/what-the-other-provinces-are-doing-about-farm-worker-safety/#.VmIit0ql4No.twitter]
LABOUR RELATIONS SOURCES:

Globe and Mail, April 2011: Farm workers have no right to unionize, top court rules:

Law of Work, January 30, 2015, A Constitutional Right to Strike Comes to Canada: http://lawofwork.ca/?p=7856


http://rankandfile.ca/2015/02/03/the-politics-of-the-constitutional-right-to-strike/

## Addendum: Regulated Agricultural Wage Rates

<table>
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<th>Province</th>
<th>Position</th>
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</tbody>
</table>


Labourer (NOC 8611) = Job duties include picking, sorting, loading and cleaning mushrooms.

Worker (NOC 8431) = Job duties include picking, sorting, loading and cleaning mushrooms, as well as planting, examining mushrooms for quality monitoring waterlines, airflow, humidity and temperature.

## *Addendum: Regulated Agricultural Wage Rates*

<table>
<thead>
<tr>
<th>Province</th>
<th>Position</th>
<th>Apiary</th>
<th>Provincial Min Wage</th>
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