

Employment of Family Members*

*C. Robert Holcomb, Extension Educator
Agricultural Business Management, University of Minnesota Extension*

Introduction

The use of family labor in the farm or ranch operation can pose several challenges for farm managers as they try to sort through the vast quantity of regulations. While the day-to-day human-relations components of managing family members in the farm/ranch operation will differ substantially from that of non-family labor, the focus of this fact sheet will address only the income tax and regulatory aspects of employing family members.

Generally, the wages you pay to family members who are also your employees are subject to social security (FICA) and Medicare taxes, federal income tax withholding, and, under certain circumstances, federal and state unemployment (FUTA/SUTA).¹ Certain exemptions may apply to your child, spouse, or parent.² In addition, employers who pay less than \$150 to one individual per year, or employers who pay less than \$2,500 to all employees in one year, may be exempt, but there are exceptions to this rule. It is vital that you understand these exceptions, as noted in IRS Publication 51.

*** This material is based upon work supported by the U.S. Department of Agriculture, under agreement number FSA21CPT0012032. Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Agriculture. In addition, any reference to specific brands or types of products or services does not constitute or imply an endorsement by the U.S. Department of Agriculture for those products or services.**

¹ Internal Revenue Service. Publication 51. Agricultural Employer's Tax Guide. 2023. <https://www.irs.gov/pub/irs-pdf/p51.pdf>. p. 11.

² Ibid. p. 10.

Becoming an Employer

If you have hired labor, you must issue a Form W-2 to each employee, withhold payroll taxes, and deposit payroll taxes in a timely manner. While qualifying family members may be excluded from certain payroll taxes, all employees (family and non-family) must be issued a Form W-2. To perform the tasks mentioned above, the employer must have an employer identification number (EIN). An EIN may be acquired by completing the online application for an employer identification number.

The application for an employer identification number is located in the "*How can we help you?*" section of the IRS homepage (www.irs.gov).

In some jurisdictions, you may be required to register the farm business with your state Department of Revenue.

State vs. Federal Regulations

One major issue of confusion regarding labor laws is the inconsistencies between State and Federal regulatory authorities. In many locations, state and federal regulations are de-coupled. In general, if your state regulations differ from federal regulations, the employer must apply the law(s) that offer the most benefit to the employee. Federal labor law will refer to this practice as "implementing the most protective standard." Check with both agencies to clarify which rules are "in force."

Children and Child Labor Laws

Concerning minor dependent children working in the farming operation, the current United States Department of Labor regulations provide parental exemptions from most child labor laws. When employing children other than your own, you should consult the existing child labor regulations issued by the United States Department of Labor and the Department of Labor for the state where you reside. It is not uncommon for differences to exist when comparing state and federal regulations. It is the responsibility of the employer to check both Federal and State child labor laws to ensure compliance with both agencies.

FICA/Medicare/FUTA/SUTA

Children under age 18 working for parent-owned unincorporated businesses are exempt from FICA and Medicare. Children under age 21 working for parent-owned unincorporated businesses are exempt from FUTA.³ Children under age 18 working for a partnership are exempt from FICA and Medicare withholding, providing that all partners are parents of the employed children.⁴ Payments

³ Internal Revenue Website. <https://www.irs.gov/businesses/small-businesses-self-employed/family-help>

⁴ Ibid.

are subject to income tax withholding regardless of the child's age.

A parent employed by a child or a spouse employed by a spouse is exempt from FUTA, but is still subject to FICA and Medicare withholding.⁵

A dependent child working in the farm business must be a bona-fide employee of the parent-owned business. This means that child must actually perform legitimate services as an employee of the business, the child must be compensated for those services, and the compensation must be reasonable in relation to the services performed.⁶ The above rules do not apply to siblings and other relatives. You have the same payroll tax obligations for these family members as you have for employees unrelated to you.

Documentation (I-9 and W-4)

All new employees, including family members, must complete and sign a Form I-9 (Employment Eligibility Verification) form. Form I-9 must be completed within three days of hire.

Employees (including family members) must also complete a Form W-4. The Form W-4 is used to communicate to the employer how much Federal and/or State income tax to withhold from the employee's paycheck. In some cases, individuals may need to fill out a Form W-4 more than once as their situation changes (single – married– married with dependents). It is important to encourage family members to keep track of this and the amount of taxes withheld from the paycheck each year.

Family members are not exempt from the requirement to complete both Form I-9 and Form W-4. While these forms are not required to be filed with the IRS, they must be made available to state and/or federal agencies upon request.

Workers' Compensation

Workers' Compensation statutes are intended to provide wage replacement and compensation for employees who suffer work-related injuries or illnesses. Every state has a workers' compensation system under which employer participation is mandatory. Participation is not mandatory in Texas unless a private employer contracts with a government entity. Although each state determines specific aspects of its workers' compensation system, such as employee eligibility requirements and payment schedules, the basic program features are similar from state to state.

Regarding participation, agricultural employers have different requirements from that of non-farm employers. Additionally, farms have the option to choose to cover family members who work on the

⁵ Ibid.

⁶ The Tax Book. Web Library Edition. 2024. Tax Materials, Inc. pp. 5-20 to 5-21.

farm or serve as corporate officers in a family farm corporation.

IRS Publications

To access IRS Publications, go to [ww.irs.gov](http://www.irs.gov) and click "*Find forms and instructions.*" You can either type the form number into the search box, scan the forms listed at the bottom of the page, or click on "*List All Current Forms and Instructions*" to access the particular document.

- **IRS Publication 225, Farmer's Tax Guide.** Chapter 4 discusses labor hired. Chapter 13 discusses family employees.
- **IRS Publication 51, Agricultural Employers Tax Guide.** Section 12 discusses the employment of family members and associated exemptions from payroll taxes. Publication 51, Agricultural Employer's Tax Guide, will no longer be available after 2023. Instead, information specific to agricultural employers will be included in Pub. 15, Employer's Tax Guide, beginning with the Pub. 15 for use in 2024.

Additional Topics

This fact sheet was written as part of Rural Tax Education, a national effort including Cooperative Extension programs at participating land-grant universities to provide income tax education materials to farmers, ranchers, and other agricultural producers. For a list of universities involved, other fact sheets, and additional information related to agricultural income tax, please see RuralTax.org.

Additionally, many states and universities have a guide or checklist for starting a business. These guides often include both state and federal guidelines. Check with your individual state department of revenue, your University Extension Service, and the IRS.

This information is intended for educational purposes only. You are encouraged to seek the advice of your tax or legal advisor, or other authoritative sources, regarding the application of these general tax principles to your individual circumstances. Pursuant to Treasury Department (IRS) Circular 230 Regulations, any federal tax advice contained here is not intended or written to be used, and may not be used, for the purpose of avoiding tax-related penalties or promoting, marketing or recommending to another party any tax-related matters addressed herein.

USDA is an equal opportunity provider, employer, and lender. Rural Tax Education is part of the National Farm Income Tax Extension Committee. The land-grant universities involved in Rural Tax Education are affirmative action/equal opportunity institutions.