

The legalities of hiring or firing an employee on the farm

The laws surrounding hiring and firing farm employees are complex, which leads to a great deal of misunderstanding among employers about what they can and should do when in these situations. What type of investigation should an employer conduct into a potential hire?

What forms should a new employee complete? When can an employer fire an employee? How does an employer avoid being sued? These are all common, and important, questions facing agricultural employers. This article will offer a very brief overview about legal considerations to keep in mind when hiring or firing an employee.

- *Conduct a thorough investigation into potential hires.* It is important an employer does his or her homework before extending a job offer to a potential employee. In addition to conducting an interview, employers should also seek a list of references. Then, employers should take the time to confirm the references given are accurate. For example, an employer might want to confirm the phone number listed with a particular reference is, indeed, the phone number to the listed company.

Unfortunately, sometimes applicants will provide false references. Once references are confirmed, take the time to contact each reference listed to ask about the employee. Another fairly easy step to take is to search the applicant's name on Google and various social media sites, such as Facebook or Twitter, just to see if there is any information that might shine negative light on the person. Finally, employers may want to consider hiring someone to conduct background checks on the applicant to search for any prior criminal convictions.

- *Ask only appropriate interview questions.* During the interview, employers should be careful to ask proper questions and avoid questions that may be illegal. For example, any question related to an employee's ability to perform the job is allowable.

Questions that may indicate a bias or discrimination, however, are not. Therefore, someone hiring a farm hand could certainly ask about the applicant's ability to lift a 50-pound bag of feed or experience driving a tractor but could not inquire into the applicant's marital status or religious preferences.

- *Paperwork is to be completed upon hiring.* Once an offer is made and accepted, all employees are required to complete an I-9 Form. This form essentially verifies the employee is who they say they are and they are eligible for employment in the U.S.

The form describes the information and documents which must be provided by the applicant. An employer must retain I-9 Forms for all employees for the longer of three years after hiring or one year after termination. This form is extremely important for an employer in the event he or she has to defend against a claim of having knowingly hired an employee not licensed to work in the U.S. More detailed information on this may be found at the U.S. Custom and Immigration Service website.

Additionally, new employees should be required to review any employment handbooks or policies and procedures, and to sign a document indicating they have read and understand these documents. Finally, employers should consult with their accountant to determine the proper IRS forms that should be completed by a new hire depending on their status as an employee or independent contractor.

- *Know the law regarding employment termination.* Employment laws differ by state, so it is important for an employer to understand the law in his or her own state when it comes to terminating an employee. All U.S. states generally recognize the concept of “at-will employment,” meaning an employer may fire an employee at any time for any reason, or for no reason at all, so long as doing so is not against the state law.

For example, in most states, an employer could fire an employee for doing a poor job, but the employer could not fire an employee due to his or her race or national origin. Additionally, in many states, the at-will doctrine may be modified by contract or even by an implied agreement. There are additional exceptions to the at-will employment rule in various states, so it is advisable for an employer to contact an attorney licensed to practice in the jurisdiction of the employer’s operation to confirm what may and may not be done.

- *Treat all potential hires and employees the same to avoid litigation.* If there is one “golden rule” when it comes to employment law, it is this: Treat everyone the same. This is good advice any time an employer is dealing with an employee, including during hiring and firing.

For example, if an employer has additional tasks or paperwork he or she makes Hispanic employees complete which Caucasian employees are not required to do, this is an example of discrimination that could lead to litigation. Similarly, if a female applicant is asked about her intent to have a child during employment and is then not hired, that could appear as though she may have been discriminated against.