

Kentucky Agricultural and Horticultural Employer Checklist

Compiled December 2005 by John Wargowsky, Executive Director of Mid American Ag and Hort Services, Inc. in partnership with the United States Department of Agriculture's Risk Management Agency.



Human Resource Management Practices

Human resource management is best viewed as a process that includes seven functions.

1. Job analysis and job description
2. Hiring
3. Orientation and training
4. Employer/employee interaction
5. Performance appraisal
6. Compensation
7. Discipline

Agricultural and horticultural employers need to be aware of the many rules and regulations that pertain to the employment process. Sometimes it is difficult to appreciate the need to comply with these rules and regulations. This is a necessary function of management and must be administered properly. A well designed and functional human resources program will save a business time and money involving compliance issues, and may lead to more productive employees through progressive human resources programs.

Effective workplace rules, procedures and employee policies help to provide a positive working environment in which employees and employers are most likely to succeed. Such practices also help employers avoid wrongful termination charges by employees.

Categories of links to many valuable articles, publications, web sites, documents and other resources that will help employers to implement effective human resource management practices in their businesses may be found in the on-line version of this checklist.

Using This Employer Checklist

This checklist includes six sections designed to assist employers performing tasks required by Kentucky and Federal labor laws and regulations. ***The on-line version, referenced in the footer of each page, includes live hyperlinks that will be updated regularly and assist you in locating necessary forms and information. Details on the printed version will become outdated over time.*** The details of finding links and phone numbers for requirements listed in Sections I to Section IV may be found in "Section V - References." Section VI is a table that provides guidance on the applicability of most Kentucky and Federal labor laws and regulations to a business.

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Section I – Before Hiring, Employers Must:

- ❑ Decide if Independent Contractor or Employee:
 - Whether an individual is an employee or an independent contractor is a question of fact and must be determined for each person. If an individual is an employee, then any costs of workers' compensation, social security, and applicable unemployment insurance, as well as federal income tax withholding and Kentucky income tax withholding are the responsibility of the employer. If an individual is an independent contractor, these costs and tax withholdings are the contractor's responsibility. *Links to guidelines for deciding are found in the reference section.*
- ❑ Get FEIN (Federal Employer Identification Number):
 - Fill out **IRS Form SS-4**; this form assigns a 9 digit FEIN to the employer.
 - IRS will send you the required preprinted deposit slips to begin making Social Security and Federal Tax Withholding deposits through your local bank.
- ❑ Kentucky "New Hire" Report:
 - Complete and send within 20 days of hiring or rehiring an employee.
- ❑ 10A100 (Kentucky Tax Registration Application):
 - This application is designed to allow a business to apply for applicable Withholding Tax, Corporation Income/License Tax, as well as Sales and Use Tax.
- ❑ Kentucky Local Occupational License Taxes:

Kentucky statute allow cities, counties, and school districts to levy local occupational license taxes. Determine if such local taxes apply to your business.
- ❑ W-4 and K-4, Federal and Kentucky (Employee's Withholding Exemption Certificate):

Employer is required to keep on file.

 - **W-4:** Employee's Federal Withholding Allowance Certificate.
 - **K-4:** Kentucky Withholding Exemption Certificate.
- ❑ Complete Kentucky Minor Labor Forms (employees under age 18):
 - Applicable for work other than farm labor and work done for parents or persons standing in place of parents.
 - Employers are required to maintain **proof of age** on file for each minor under 18 years of age. A copy of a birth certificate, a driver's license or school identification is acceptable.
 - **Parent/Guardian Statement of Consent** is required for 16 and 17-year who will work more than 30 but not more than 40 hours per week when school is in session.
- ❑ Obtain Workers' Compensation Insurance if required or elected:
 - Covers work related injuries and illnesses. Coverage is optional on farm employees.
 - Contact a private insurance carrier.
- ❑ Provide Worker Information, Terms and Conditions of Employment (disclosure):
 - For employers subject to Migrant & Seasonal Agricultural Worker Protection Act (see section VI).
- ❑ Develop and Implement a Hiring and Employment Process That Does Not Illegally Discriminate Against Job Applicants:
 - Primarily involves laws enforced by the Equal Employment Opportunity Commission and Kentucky Commission on Human Rights.
- ❑ Display Posters and Required Information:
 - Kentucky and federal laws require certain posters and information be prominently displayed for employees.
 - Visit www.midamservices.org, click on "Labor Laws" and then "Posting." View both the Federal and Kentucky sections to find poster compliance information, phone numbers to order and links to download.

Section II – After Hiring, Employers Must:

- ❑ Complete **I-9 Form** (Employment Eligibility and Identify Verification) after hiring and by third day of work: Employer is required to keep on file for three (3) years after the date of hire or for one (1) year after employment is terminated, **whichever is later**.
- ❑ Pay at least Minimum Wage (\$5.15/hour) with few exceptions.
- ❑ Withhold 6.2% (**Social Security, OASDI**) and 1.45% (**Medicare**) from each employee's gross paycheck - Total of 7.65% (see exceptions in Circular A, Pub. 51 and Circular E, Pub. 15).
- ❑ **Withhold Federal Income Tax (FITW)**, using tax table in Circular E, Publication 15.
- ❑ **Deposit** employee's share of Social Security and Medicare withheld PLUS matching employer's contribution (Total 15.3%) to local depositor bank with Form 8109 Coupon Book sent to you from the IRS. Include the employee's share of Federal income tax withheld in the deposit amount and check appropriate boxes.
- ❑ **Withhold Kentucky State Income Tax and applicable Local Occupational License Taxes** from employee's wages.
- ❑ **Deposit Kentucky state income taxes** withheld from employee's wages to the State of Kentucky using Form K-1. Quarterly, monthly or bimonthly deposit requirement depends upon amount of tax withheld from employees.
- ❑ **Deposit local occupational taxes** withheld from employee's wages as required by local entity.
- ❑ Make **Workers' Compensation premium payments** to private insurance carrier if coverage is required or elected.
- ❑ **Report work-related fatalities and catastrophes** (when three or more are hospitalized) to 1-800-321-OSHA (6742).
- ❑ **Pay Kentucky and Federal Unemployment if liable.**
 - **Agricultural employers** are liable if gross payroll in the business exceeds \$20,000 in a calendar quarter, or if 10 or more workers during any 20 weeks in a calendar year.
 - **For-profit non-agricultural employers** are liable if they pay \$1,500 in gross wages in a single calendar quarter or if they have at least one worker performing services in some part of a day in each of 20 weeks in a calendar year.
 - **Federal:** Deposit quarterly Using Form 8109 Coupon Book in any calendar quarter you have \$500 of FUTA Tax (including carryover from previous quarter).
 - **Kentucky:** Must complete Form UI-1 "Application for Unemployment Insurance Employer Reserve Account." Most employers file on Form UI-3, "Employer Quarterly Unemployment Wage and Tax Report," which is mailed employers with active accounts at the end of each quarter.

Section III – During Employment, Employers Must Provide to Employees:

- ❑ Detailed **statement of earnings** with paycheck which must include: Employee's name, address, SS#, hours worked, pay basis, pay period dates, current and cumulative earnings and withholdings, deductions and purpose, piece rate units and hours, employer's name, address and FEIN. Employers subject to MSPA (see compliance thresholds) must also include employee's permanent address.
- ❑ Employee must sign **agreement for any deductions** other than required by tax or court mandates.
- ❑ Employee's copies of annual **Kentucky K-2**, combined **W-2** wage statement by January 31 of the following year.

Section IV – Annually, Employers Must Complete:

- ❑ **IRS Form W-3** – Transmittal of all W-2 forms, due by 2/28.
- ❑ **IRS Form 940** - Employer's Annual Federal Unemployment Tax Return, due by 1/31.
- ❑ **IRS Form 943** – Summarizing all agricultural wages and Federal/SS deposits, due by 1/31.
- ❑ **Kentucky Form K-3** - Annual State Income Tax Reconciliation Form, due by 1/31.
- ❑ **OSHA Form 300A** - Summary of Work Related Injuries and Illnesses for employers of 11 or more. Must be posted in a conspicuous place February to April for the prior calendar year's injuries and illnesses.

Section V – References:

Forms and Publications - Web sites and phone numbers are subject to change. View the web version with live hyperlinks at www.midamservices.org by clicking on "Quick Ref" & "Checklists."

- ❑ **Independent Contractor or Employee?**
 - IRS Publication - <http://www.irs.gov/businesses/small/article/0,,id=99921,00.html>
 - Unemployment - <http://www.oet.ky.gov/des/ui/emguide/page02.asp#bCONTRACTLABOR>
 - Guidance from Kentucky Employers' Mutual Insurance on Workers Compensation-
http://www.kemi.com/pdf/forms/independent_contractor_ques.pdf
 - Employment Relationship Under the Fair Labor Standards Act (FLSA)
<http://www.dol.gov/esa/regs/compliance/whd/whdfs13.htm>
- ❑ **Kentucky Office of Employment and Training**, 1-502-564-3326 or <http://www.oet.ky.gov/des/ui/emguide/introduction.asp>
 - Form UI-1 - Application for Unemployment Insurance Employer Reserve Account
 - Form UI-3 - Employer Quarterly Unemployment Wage and Tax Report
- ❑ **Internal Revenue Service**, 1-800-829-3676 or <http://www.irs.gov/formspubs/>
 - IRS Publication 51 – Circular A, Agricultural Employer's Tax Guide
 - IRS Publication 15 – Circular E, Employer's Tax Guide
 - IRS Publication 225 – Farmer's Tax Guide
 - W-2 - Wage and Tax Statement
 - W-3 - Transmittal of all W-2 forms
 - W-4 - Employee's Withholding Allowance Certificate
 - SS-4 - Application for Federal Employer Identification Number
 - Form 940 - Employer's Annual Federal Unemployment Tax Return
 - Form 941 - Employer's Quarterly Federal Tax Return
 - Form 943 - Employer's Annual Federal Tax Return for Agricultural Employees
 - Form 8109B - Federal Tax Deposit Coupon (for informational use only)
- ❑ **Kentucky Department of Revenue**, 1-502-564-4581 or <http://revenue.ky.gov/business/whtax.htm> (Scroll down to find "Instructions for Employers")
 - 10A100 - Kentucky Tax Registration Application
 - K-1 - Employer's Return of Income Tax Withheld
 - Form K-3 - Annual State Income Tax Reconciliation Form
 - K-4 - Kentucky Employee Withholding Exemption Certificate
- ❑ **Kentucky New Hire Reporting Center**, 1-800-817-2262 or <http://www.newhire-usa.com/ky/>
 - Kentucky New Hire Reporting Form

- ❑ **U.S. Citizenship and Immigration Services**, 1-800-375-5283 or <http://uscis.gov/graphics/formsfee/forms/i-9.htm>
 - Form I-9 - Employment Eligibility Verification
- ❑ **Kentucky Office of Workers' Claims**, 1-502-564-5550 or <http://labor.ky.gov/dwc/>
 - Contact private carrier for coverage
- ❑ **Kentucky Department of Labor - Employment Standards for Child Labor**, 1-502-564-3070 or <http://www.labor.ky.gov/esat/childlab.htm> (farm work exempted)
 - Parental/Guardian Statement of Consent
 - Certificate of Satisfactory Academic Standing
- ❑ **U.S. Department of Labor**, 1-866-4-USWAGE or <http://www.dol.gov/library/forms/FormsByNum.asp>
 - Optional form WH-516 (English) or WH-516 (Spanish) - You may also create your own disclosure notice.
<http://www.dol.gov/esa/fact-sheets-index.htm>
 - Fact sheets of special relevance to agriculture include #12 (Ag Employers under the FLSA), #40 (Child Labor in Agriculture), #26 (H-2A), #s 35, 49 & 50 (Migrant and Seasonal Agricultural Worker Protection Act),
- ❑ **Kentucky Occupational Safety and Health Program (KY OSH)**, 1-502-564-3070 or <http://www.labor.ky.gov/osh/> or <http://www.osha.gov/recordkeeping/index.html>
 - OSHA Forms 300 and 300A Log
- ❑ **Equal Employment Opportunity Commission**, 1-800-669-4000 or <http://www.eeoc.gov/>
- ❑ **Kentucky Commission on Human Rights**, 1-800-292-5566 or <http://www.state.ky.us/agencies2/kchr/>
- ❑ **Kentucky Cabinet for Economic Development**, 1-800-626-2930
 - **Start Ups** - <http://www.thinkkentucky.com/kyedc/busstart.asp>
 - **Existing Businesses** - <http://www.thinkkentucky.com/kyedc/existbus.asp>
- ❑ **Mid American Ag and Hort Services, Inc.**
 - 614-246-8286, labor@ofbf.org, <http://www.midamservices.org>
 - This is a membership-based organization that builds productive working relationships with the governmental agencies responsible for administration and enforcement of labor laws and regulations by engaging in cooperative educational approaches to compliance.
 - The web site is a valuable resource with numerous links to government agencies and human resource articles.

Section VI – Labor Laws/Regulations Compliance Thresholds/Contacts:

The following table provides an overview of how many employees an employer must have to be covered by many Kentucky and federal laws and regulations. Coverage for some laws and regulations may depend on requirements other than the number of employees. Further exploration into the contacts will provide more information.

Web sites and phone numbers are subject to change. View the web version with live hyperlinks (including links to specified Kentucky law) at www.midamservices.org by clicking on "Quick Ref" and "Checklists." Employers will find that other parts of this web site contain valuable human resource and compliance information.

Number of Employees	State or Federal	Law/Regulation and Contacts
1	Federal	Consumer Credit Protection Act (Wage Garnishment) http://www.dol.gov/esa/whd/garnishment/index.htm or 1-866-4-USWAGE
1	Federal	Drug-Free Workplace Act of 1988 (federal contractors & grantees) http://www.dol.gov/elaws/asp/drugfree/screen4.htm or 202-693-5919
1	Federal	Electronic Communications Privacy Act of 1986 (ECPA) http://www.usia.org/legis/ecpa.html
1	Federal	Employee Polygraph Protection Act of 1988 http://www.dol.gov/dol/compliance/comp-eppa.htm or 1-866-4-USWAGE
1	Federal	Employee Retirement Income Security Act (ERISA) http://www.dol.gov/dol/topic/health-plans/erisa.htm or 1-866-444-3272
1	Federal	Employee Right-to-Know Laws (Hazardous Chemicals in Workplace) http://www.osha.gov/SLTC/hazardcommunications/index.html or 1-800-321-OSHA
1	Federal	Equal Pay Act (EPA) http://www.eeoc.gov/types/epa.html or call 1-800-669-4000
1	Federal	Executive Order 11246 (Affirmative Action) http://www.dol.gov/dol/topic/hiring/affirmativeact.htm or call 1-866-4-USA-DOL
1	Federal	Fair Credit Reporting Act (FCRA) http://www.ftc.gov/bcp/online/pubs/buspubs/credempl.htm or 202-326-2222
1	Federal	Fair Labor Standards Act of 1938 (FLSA) Covers minimum wage, overtime pay, record keeping, child labor standards http://www.dol.gov/esa/whd/flsa/index.htm or 1-866-4-USWAGE
1	Federal	Federal Income Tax Withholding www.irs.gov/pub/irs-pdf/fw4.pdf or 1-800-829-4933
1	Federal	Federal Insurance Contribution Act (FICA) http://www.ssa.gov/employer1.htm or 1-800-772-1213
1	Federal	Federal Unemployment Tax Act (FUTA) http://www.irs.gov/formspubs/ or 1-800-829-4933
1	Federal	Health Insurance Portability and Accountability Act of 1996 (HIPAA) http://www.dol.gov/dol/topic/health-plans/portability.htm or 1-866-444-3272
1	Federal	Immigration and Nationality Act http://uscis.gov/graphics/lawsregs/INA.htm or 1-800-375-5283
1	Federal	Immigration Reform and Control Act of 1986 (IRCA) 1-800-375-5283 or http://www.usda.gov/agency/oce/oce/labor-affairs/ircasumm.htm
1	Federal	National Labor Relations Act & Labor-Management Relations Act of 1947 http://www.nlr.gov/nlr/shared_files/brochures/basicguide.asp or 1-866-667-6572
1*	Federal & Kentucky	Occupational Safety and Health Act of 1970 (OSHA) (Kentucky operates a state program) http://www.labor.ky.gov/osh/ or http://www.osha.gov/ or 1-502-564-3070 (*Limited exemption for farms under 11 employees without temporary labor camps)
1	Federal & Kentucky	Occupational Safety and Health Administration Compliance Assistance Authorization Act of 1998 http://www.osha.gov/ or 1-800-321-OSHA http://www.labor.ky.gov/osh/ or 1-502-564-3070
1	Federal & Kentucky	Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and Kentucky New Hire Reporting Law http://www.newhire-usa.com/ky/ or 1-800-817-2262

Number of Employees	State or Federal	Law/Regulation and Contacts
1	Federal	Uniformed Services Employment and Re-Employment Rights Act of 1994 (USERRA) (also referred to as Military Leave) http://www.dol.gov/elaws/vets/userra/userra.asp or 1-866-4-USA-DOL
1	Federal	Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) http://www.dol.gov/esa/regs/compliance/ofccp/fsvevraa.htm or 1-866-4-USA-DOL
1	Federal	Worker Protection Standard (WPS) http://www.epa.gov/pesticides/health/worker.htm or 1-888-663-2155 (U.S. EPA) or 1-800-289-0001 (Kentucky Dept. of Agriculture, Division of Environmental Services)
1*	Kentucky	Child Labor Law (*Farm work exempted) http://www.labor.ky.gov/esat/childlab.htm or 1-502-564-3070
1	Kentucky	Family Medical Leave Law K.R.S. Title XXVII, Chapter 337
1	Kentucky	Holiday and Vacation Leave Law K.R.S. Title XXVII, Chapter 337
1	Kentucky	Job Reference Liability Law K.R.S. Title III, Chapter 17; K.R.S. Title XVIII, Chapter 216
1	Kentucky	Jury Duty Leave Law K.R.S. Title IV, Chapter 29A
1	Kentucky	Military Leave Law K.R.S. Title V, Chapter 38
1	Kentucky	Maximum Hours Law K.R.S. Title XXIV, Chapter 281; K.R.S. Title XXVII, Chapter 339
1	Kentucky	Meals and Rest Period Law http://www.labor.ky.gov/esat/wagehour.htm or 1-502-564-3070
1	Kentucky	Minimum Wage Law http://www.labor.ky.gov/esat/wagehour.htm or 1-502-564-3070
1*	Kentucky	Overtime Pay Law (*Seventh day overtime applies to agriculture) http://www.labor.ky.gov/esat/wagehour.htm or 1-502-564-3070
1	Kentucky	Pregnancy/Maternity Discrimination http://www.state.ky.us/agencies2/kchr/ or 1-800-292-5566
1	Kentucky	Religious Discrimination Law http://www.state.ky.us/agencies2/kchr/ or 1-800-292-5566
1	Kentucky	Unemployment Insurance Law 1-502-564-3326 or http://www.oet.ky.gov/des/ui/emguide/introduction.asp
1	Kentucky	Voting Leave Law K.R.S. Title X, Chapter 118
1	Kentucky	Wage Payment Law http://www.labor.ky.gov/esat/wagehour.htm or 1-502-564-3070
2	Kentucky	Equal Pay Law http://www.labor.ky.gov/esat/wagehour.htm or 1-502-564-3070
2	Federal	Mental Health Parity Act of 1996 (MPHA) http://www.dol.gov/dol/topic/health-plans/mental.htm or 1-866-275-7922
2	Federal	Newborns' and Mothers' Health Protection Act of 1996 (NMHPA) http://www.dol.gov/ebsa/newsroom/fsnmhafs.html or 1-866-275-7922
2	Federal	Pregnancy Discrimination Act (PDA) http://www.eeoc.gov/types/pregnancy.html or 1-800-669-4000
6-8 (500 man-day test)*	Federal	Migrant and Seasonal Agricultural Worker Protection Act (MSPA) http://www.dol.gov/esa/whd/mspa/index.htm or 1-866-4-USWAGE (*A "man day" is defined as any day during which an employee performs agricultural work for at least one hour. 500 in a calendar quarter meets the test for coverage.)
8	Kentucky	Age Discrimination Law http://www.state.ky.us/agencies2/kchr/ or 1-800-292-5566
8	Kentucky	Equal Opportunities Act http://www.state.ky.us/agencies2/kchr/ or 1-800-292-5566

Number of Employees	State or Federal	Law/Regulation and Contacts
8	Kentucky	Fair Employment Practices Law http://www.state.ky.us/agencies2/kchr/ or 1-800-292-5566
8	Kentucky	Whistleblower Protection Laws K.R.S. Title XVII, Chapter 207, Section 170 (1) K.R.S. Title XXVII, Chapter 338, Section 121 (3)
8	Kentucky	Smoking Discrimination Law http://www.state.ky.us/agencies2/kchr/ or 1-800-292-5566
15	Kentucky	Disability Discrimination Law http://www.state.ky.us/agencies2/kchr/ or 1-800-292-5566
15	Federal	Americans With Disability Act of 1990 (ADA) http://www.eeoc.gov/types/ada.html or 1-800-514-0301
15	Federal	Civil Rights Act of 1964 – Title VII- Equal Employment Opportunities http://www.eeoc.gov/policy/vii.html or 1-800-669-4000
15	Federal	Civil Rights Act of 1991 http://www.eeoc.gov/policy/cra91.html or 1-800-669-4000
20	Federal	Age Discrimination in Employment Act of 1967 (ADEA) http://www.eeoc.gov/types/age.html or 1-800-669-4000
20	Federal	Consolidation Omnibus Budget Reconciliation Act (COBRA) http://www.dol.gov/dol/topic/health-plans/cobra.htm or 1-866-275-7922
20	Federal	Older Workers Benefit Protection Act (OWBPA) http://www.eeoc.gov/abouteeoc/35th/thelaw/owbpa.html or 1-800-669-4000
50	Federal	Family and Medical Leave Act of 1993 (FMLA) http://www.dol.gov/esa/whd/fmla/ or 1-866-4-USWAGE
100	Federal	Worker Adjustment and Retraining Notification Act of 1989 (WARN) http://www.dol.gov/asp/programs/guide/layoffs.htm or 202-219-5577

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"Simplifying Labor Issues"

"Transforming Human Resources"

MAAHS Vision:

- Creating widespread human resource management strengths in Mid American agricultural and horticultural businesses.

MAAHS Mission:

- Helping MAAHS members respond to opportunities for human resource management success with their management teams, employees, potential employees and governmental agencies.
- Making MAAHS the known leader in identifying and dealing with human resource management issues for Mid American agricultural and horticultural businesses.
- Building productive working relationships with the governmental agencies responsible for administration and enforcement of labor laws and regulations by engaging in cooperative educational approaches to compliance.

United States Department of Agriculture Risk Management Agency

<http://www.rma.usda.gov>

RMA Vision - We serve America's agricultural producers through effective, market-based risk management solutions.

RMA Mission - RMA promotes, supports and regulates sound risk management solutions to preserve and strengthen the economic stability of America's agricultural producers.

Disclaimer: This publication contains information on the laws and regulations of concern for private Kentucky agricultural and horticultural employers. It is not an all-inclusive listing. It does not constitute a legal document and the publishers assume no liability for actions taken based on the information provided. It is a reference for general educational use. Information is taken from reliable sources as of December 2005. It is the employer's responsibility to keep abreast of current laws, regulations and changes.