



Developing Proactive Legal Strategies for Handling Protesters and Hiring Employees to Limit Legal Issues on Your Farm

AREC | DECEMBER 2021 | FS-1163

By Paul Goeringer and Ellen Pearson

UNIVERSITY OF
MARYLAND
EXTENSION



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**



COLLEGE OF
AGRICULTURE &
NATURAL RESOURCES

DEPARTMENT OF AGRICULTURAL AND
RESOURCE ECONOMICS

Agricultural operations work in a different environment than they did even ten years ago. Operators face ongoing challenges from changes in consumer preferences to increased needs to meet environmental goals. These changes put more pressure on an operator to skillfully manage potential legal risks to their operation. Managing legal risks can mean following a well-thought out process to hire new employees, correctly training new employees, allowing them additional training to stay current on the most recent chemical application and animal welfare practices, and developing other proactive strategies to limit legal challenges impacting a farm operation.

A number of other available strategies will help limit liability associated with owning an agricultural business. Operations can develop security plans to include installing locks on parts of the farm, setting up security cameras, and other steps. A list of resources to assist operations with these plans is provided at the end of this fact sheet. For additional resources, check with groups such as the Animal Agriculture Alliance and other organizations.

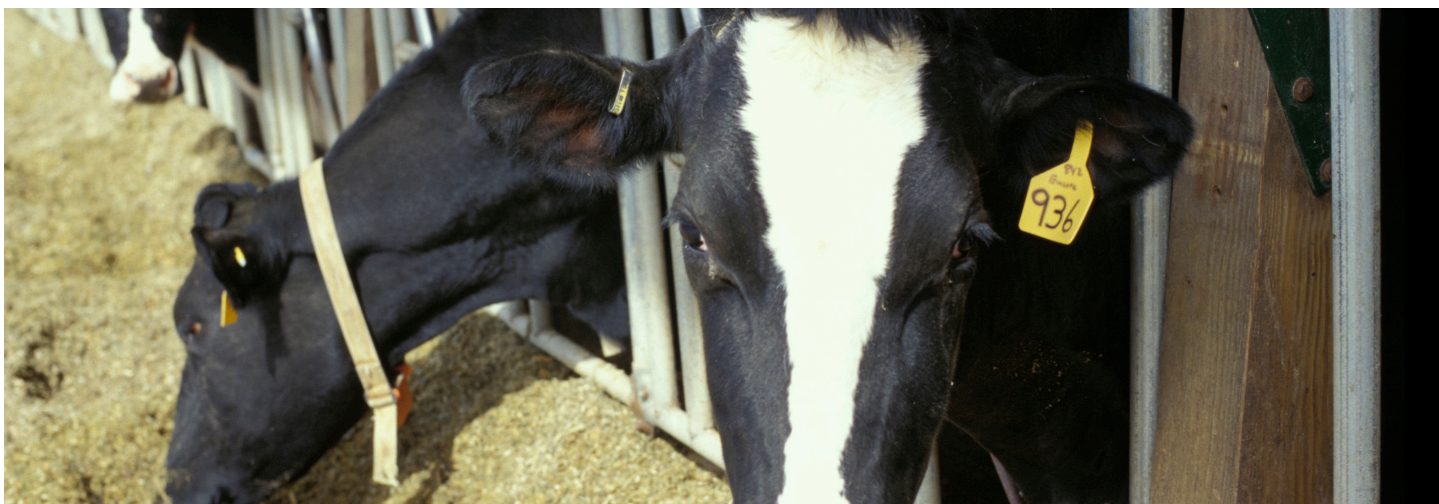
Understanding how your state's right-to-farm law operates is also important for managing legal risks. Right-to-farm laws provide a defense to claims that an agricultural operation is a nuisance. To learn more about how this law works in Maryland, see [Understanding Agricultural Liability: Maryland's Right-to-Farm Law Can Limit Liability for Maryland Farm.](#)

[Commercial Fishing, and Seafood Operators](#) (UME, 2017). For more general information on how to manage other potential legal risks in your operation, see [Understanding Agricultural Liability: Legal Risk Management Considerations](#) (UME, 2015).

This fact sheet focuses on a farm landowner's rights when faced with protesters. It will also highlight some hiring and employment issues which can lead to bigger problems if not properly handled. Finally, we will look at how the farm operation can and should be proactive, and the importance of developing good records to equip the operation for any possible litigation.

Know Your Rights and Protesters Rights Near a Farm

Freedom of assembly in any form is a constitutionally protected and time-honored right in this country. This freedom must be considered when dealing with protesters near your farm. While protesters have the freedom to assemble, that assembly must take place at the right time, location, and in the correct form. The government may place reasonable restrictions on the freedom of assembly, limiting where and when groups can assemble to protest.



While protesters have the freedom to assemble, that assembly must take place at the right time, location, and in the correct form.

IF PROTESTERS ARE ON YOUR PROPERTY, NEVER TAKE MATTERS INTO YOUR OWN HANDS; INSTEAD, CALL THE APPROPRIATE LAW ENFORCEMENT AGENCY.

Consider posting your property with “No Trespassing” signs. Protesting on private property marked with “No Trespassing” signs or paint is a misdemeanor (Md. Code Ann., Crim. Law § 6-402). [See this checklist](#) to determine how many no trespassing signs you should post.

If protesters are on your property, never take matters into your own hands; instead, call the appropriate law enforcement agency, such as the county police department. Exercising self-help in these instances could go wrong and cause potential legal problems for you and your farming operation.

Protesters Have a Protected Right to Express Views Through Peaceful Protests

Protesters may use traditional public forums, such as streets, sidewalks, rights-of-way, or public parking lots. While this right is constitutionally protected, it can also be reasonably restricted. In Maryland, it is illegal for a person to disturb the peace by **“willfully and without lawful purpose”** impeding passage on public spaces (Md. Code Ann., Crim. Law § 10-201). For example, protesters cannot legally block others from using the public right-of-way near your farm. Protesting on public property typically depends on what the demonstrators plan to protest. Counties may require licenses in certain areas to allow protesting which does not impede passage in public spaces.

Protesting on private property requires permission from the landowner. Without it, protestors would be trespassing. If the property is posted with “No Trespassing” signs, this could potentially be a criminal violation.

Post “No Trespassing” Signs to Deter Protesters

If protesters are trespassing on your property or a neighboring one without permission, you may ask the protesters to leave. You should call local law enforcement to handle the situation if the protestors fail to do so.

If the protesting takes place in a public space but is impeding access to your property, contact local law enforcement. Do not directly confront the protesters. Everyone has a camera phone and any interaction might end up on social media. Any video going viral can make a bad situation worse.

Do Your Homework Before Conducting a Farm Employee Interview

Hiring qualified employees is probably the most important step you can take to protect your farm. Eliminating unqualified applicants can be time consuming but doing so early on can prevent problems. A good hiring process includes reviewing the existing needs of your operation, developing a list of required skills, weeding out the unqualified, finding qualified applicants, hiring the right applicant, and training the employee to work successfully on your farm.

One important area not covered in this publication is developing the skills that will make you an effective manager of people. This is not easy to learn and may require you to take training to help retain and develop good talent for your farm (Anderson and McCorkle, 2009).

First, Assess Your Operation’s Employment Needs

What type and quantity of work to you need to hire? For example, you could be looking for someone with experience handling livestock and/or farm machinery. Identifying the needs and types of skills you are looking for in an employee will help narrow the qualified applicant pool.

Determining the needs of the farm allows you to develop job descriptions for positions, which will include a general description, duties and tasks, working conditions, and compensation. For example:

THE FIRST STEP OF THE APPLICATION PROCESS IS USUALLY A WRITTEN APPLICATION WHICH GATHERS INFORMATION ABOUT APPLICANTS AND DEMONSTRATES THEIR READING AND WRITING SKILLS.

XYZ Farms is looking for a motivated individual to work as a general farmworker on their diversified grain operation. This position requires a general understanding of agricultural practices and a high school diploma. This position will report to Tyler XYZ, the owner of the farm. Typical hours are 40 hours a week, and more during harvest and planting seasons. This position will be eligible for two weeks of vacation annually. This position will require:

1. Using farm equipment, such as a tractor, sprayer, planter, combine, and other general farm equipment.
2. Recording information related to pesticide and fertilizer applications to maintain compliance with applicable regulations.
3. Loading agricultural products on to trucks and driving trucks to market or storage facilities.
4. Setting up and operating irrigation equipment.
5. Informing farmers or farm managers of crop progress.
6. All other duties as assigned by supervisor.

For more information on how to develop a job description, please see Melissa O'Rourke, *Farm Employee Management: Assembly of Farm Job Descriptions* (Iowa State Extension C1-73, 2014).

Attracting Qualified Candidates Can Be the Hardest Part of the Process

One way to improve your chances of making a successful hire is to offer bonuses to current employees to refer potential qualified applicants who are hired and stay with the farm for a stated period (Fogleman, Anderson, McCorkle, 2009). Local colleges and universities with agricultural programs can be a source of qualified applicants. Consider running ads in newspapers or on your farm's social media accounts. Think about the kind of candidate you are looking for and where that

candidate might access information. Would he/she look at local want ads? Social media? Or other sources? Using a variety of places to advertise can help expand your candidate pool (Fogleman, Anderson, McCorkle, 2009). At the same time, make sure that your farm is the type of business where people want to work. You should have a reputation for valuing employees who consistently do good work (Fogleman, Anderson, McCorkle, 2009).

In addition to deciding where to place ads, you should develop a system for determining the most qualified applicants. The first step of the process is usually a written application which gathers information about applicants and demonstrates their reading and writing skills. The application also allows the potential employee to list the type and length of previous jobs, which shows their stability, reliability, and work ethic.



A good hiring process includes reviewing the existing needs of your operation, developing a list of required skills, weeding out the unqualified, finding qualified applicants, hiring the right applicant, and training the employee to work successfully on your farm.

During the written application process, you should not ask an applicant's marital status, education dates, disabilities, workers compensation claims, nationality or native language, membership in organizations unrelated to the position, or homeownership status. Such questions could be used in claims of discrimination in the hiring process because they are not related to the applicant's skills or the job. Candidates should complete an application which covers, at a minimum, name, address, past work experiences, and references, plus any additional information needed for the position, such as status of any licenses or necessary skills. Compare each application to the job description you put together earlier to determine which applicants have the necessary qualifications.

It is usually easy to decide which candidate is qualified based on his/her application. Some seemingly unqualified candidates, however, may have skills which translate well to what you are looking for, perhaps making it worth conducting an interview.

Consider checking references for the applicants who make the cut at this point. While this can also be done later in the process, it is a step that should **never** be skipped.



Depending on the position, you might ask candidates to take a written or computer-based exam in the form of multiple-choice or short-answer questions to test their technical knowledge.

Why Interview Candidates to Work on Your Farm?

Having a thorough evaluation process for potential employees is important in ensuring you hire the right person for the job. Focus on a thorough process combining multiple types of evaluations to get a more complete understanding of each applicant.

After reviewing the applications to determine the best candidates, invite them in for the next step in the process. Interviews are a good way to further determine an applicant's qualifications. An interview can benefit both applicant and potential employers, allowing both parties to ask questions, discuss ideas, exchange information, and evaluate the potential for establishing a good working relationship.

Interviews can be serious or casual, depending on the employer and type of job. Employers can ask open-ended questions. The questions can be aimed at behavioral or situational-based responses. Interviews are most useful when combined with a written test to determine knowledge and communication skills.

Conducting an interview in combination with other forms of evaluation is important because a qualified candidate could be nervous and miss his/her opportunity to perform well during an interview. At the same time, the interview may help expose the candidate who is an excellent talker but falls short on technical skills. Some examples of useful interview questions are: "Tell me about your biggest weakness," "Tell me about a time when you failed at something," or "What do people most criticize you for?"

Depending on the position, you might ask candidates to take a written or computer-based exam in the form of multiple-choice or short-answer questions. Taking assessments on a computer can be especially important for testing an applicant's technical knowledge. Tests requiring essay responses can be useful if writing is an extensive part of the job. The assessment test, for example, could include a scenario about proper handling of machinery and/or livestock.

Oral tests can allow the candidate to demonstrate communication and technical skills when working with others. Employers may ask hypothetical questions to gauge what the candidate would do in a typical work situation. The candidate could be asked, for example, how to mix certain chemicals when using a sprayer to control weeds. Such questions help to not only test a candidate's knowledge but also how well he/she communicates.

You may want to know if an applicant has a criminal record. However, you should be very careful asking about an applicant's past criminal convictions, a practice discouraged and even banned in some states. Maryland law currently allows you to ask an applicant about possible past criminal convictions in the **second** in-person interview (Md. Code Ann., Lab. and Empl. § 3-1503). Any such question before that second in-person interview is illegal under current law. While this law applies only to employers with 15 or more employees, smaller employers should consider following it as well (Md. Code Ann., Lab. and Empl. §3-1501(c)). Delaware has no comparable law preventing private employers from inquiring early in the process about past criminal convictions. If you do ask about past criminal convictions at the appropriate time according to the state's law, you must ask this question of **all** applicants.

Now Is the Time to Determine Who to Hire

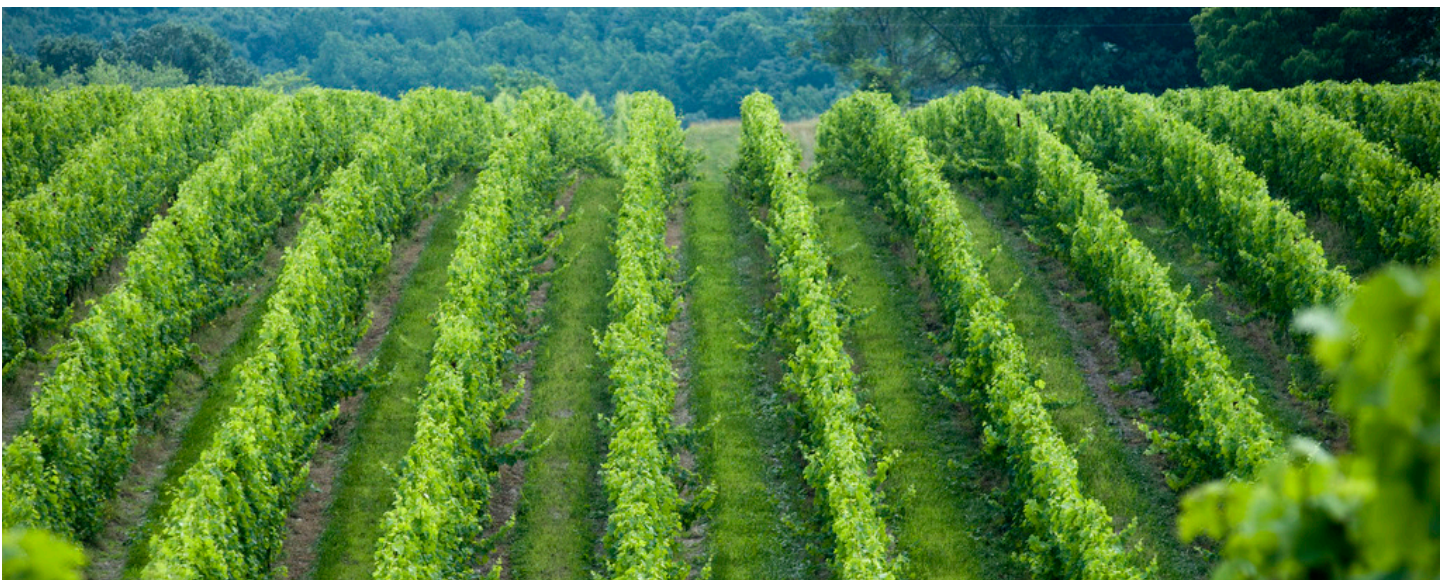
Do any candidates meet your criteria? If not, consider reopening the search process. You may want to hire someone temporarily to see how they do on the job before deciding to offer a permanent position. Be sure the potential employee clearly understands the terms of the trial period and that it is not a guarantee of an offer of permanent employment. If a candidate meets your criteria, start the hiring process.

Conduct Onboarding and Training to Help New Employees Succeed

Effective onboarding and training each take time, and you may be in a hurry to hire new employees during busy seasons of the year. Investing time and effort in training and onboarding, however, could save you from significant problems later. Training enables the new employee to engage in the operation and understand expectations of their position. Onboarding refers to the process of providing new employees with the necessary knowledge, skills, and behaviors to become effective contributors to the organization.

Employee turnover can be the costly result of poor training, from the time and expense associated with searching for new employees to existing employees taking on additional roles which might take time away from their normal duties. Starting with the appropriate training will help the new employee understand how the operation runs, their own role, and how to do their job safely.

Decide who will do the onboarding or training: will it be you or another trusted employee? The trainer should stay focused and engaged during the process. Turn off or mute cell phones and set aside dedicated time for a training session. Staying positive during the training is important and might be the first opportunity to make a good impression on a new hire.



Employee turnover can be the costly result of poor training, from the time and expense associated with searching for new employees to existing employees taking on additional roles which might take time away from their normal duties.

Walk the new employee through safety practices on the operation. Develop a glossary of terms for the operation, including common names for equipment, etc. Every operation has a jargon and a new employee might not understand your lingo. Introduce the new employee to any staff he/she might be working with on the job. Explain your expectations for the position and how you evaluate employees.

Rigorous training and onboarding can help create a safer workplace and reduce potential legal claims. Improper training and onboarding could lead to a claim of **negligent entrustment**, when the equipment owner allows a second party to use the equipment, and an accident occurs involving a third party. Under this scenario, the owner knew or should have known that the second party's youth, inexperience, recklessness, or other reason would result in injury. In this case, the owner could be sued along with the second party. For example, Charlie hires Stephanie to operate a combine. Charlie knows that Stephanie has never operated this type of combine before but does not have time to train her. While moving the combine to a new field, Stephanie loses control and crashes the combine into an oncoming car. In this example, Charlie could potentially be sued along with Stephanie under the theory of negligent entrustment.

Be Proactive in Your Operation

What should you be doing to better protect your farm business from a potential lawsuit or claim of not following a required permit? Begin to think proactively, not just in hiring, but create a proactive strategy to demonstrate you are following all applicable laws in your operation.

Develop Detailed Policies, Procedures, and Checklists

Written policies and procedures for handling regular work are always recommended for a farm operation. Create checklists to help you and your employees identify what needs to be done to complete work on the farm. If you have permits for some

WRITTEN POLICIES AND PROCEDURES FOR HANDLING REGULAR WORK ARE ALWAYS RECOMMENDED FOR A FARM OPERATION.

aspects of your operation, ensure these policies, procedures, and checklists align with the permit. Once these written policies are developed, make sure you use and follow them.

For example, let's consider you own a poultry business which includes a cropping operation with soybeans and corn. If poultry litter will be applied on the cropland, develop policies and procedures for land applications which are in line with state permits. Create checklists to keep long-term and new employees, and even yourself, informed of what steps to take each time litter is applied to land.

Keep Good Written Records

State law likely requires you to keep records of nutrient applications. In a lawsuit, written records help a jury understand what you did on the operation. Written records can often prove you are following the law, nutrient management plan, or permit, and help you build a stronger case that your operation is not a nuisance. Lack of records, especially in those states which do not require them, could cause a jury or others to believe you have something to hide, such as over-applying nutrients or not following your established practices.

Consider New Technology

Keeping up with the latest technology is one of the most significant ways you can help your operation. Technology costs money, however, so think about what will work best for your business. What are the existing issues or problems in your operation? For example, if you are concerned about neighbors complaining about odors from your farm, consider researching what technology could be utilized and why it may or may not work for you. Keep records of your decisions regarding technology; such records will allow you to demonstrate your decision-making process.

Talk to Your Neighbors

Reach out to your neighbors and ask them to contact you if they have concerns. If farm odors are an issue, for example, let your neighbors know which days you will apply nutrients in case they have a family gathering planned. If your neighbors have other issues with your farm, utilize information from Extension or the appropriate state agencies to show that the operation is operating within the law.

References

Anderson, David and Dean McCorkle, *Managing Your Farm and Ranch Operation*. AgriLife Extension, E-576 (2009).

Fogleman, Sarah, David Anderson, and Dean McCorkle, *Human Resource Management: Employee Attraction and Selection Guide*. AgriLife Extension, E-554 (2009).

Goeringer, Paul, *How Many "No Trespassing" Signs Do You Need? Checklist*. Univ. of Maryland (2014).

Md. Code Ann., Crim. Law § 6-402 (West, 2020).

Md. Code Ann., Crim. Law § 10-201 (West, 2020).

O'Rourke, Melissa, *Farm Employee Management: Assembly of Farm Job Descriptions*. Iowa State Extension C1-73 (2014).