

Agricultural Employment Agricultural Labor as Defined in Section 511, Subdivision 6 of the New York State Unemployment Insurance Law

Effective January 1, 2020, the Agricultural Employment law changed:

- When employers of agricultural workers become liable for unemployment contributions
- Reporting requirements for non-immigrant individuals in the USA temporarily to perform agricultural services under an H-2A Visa
- When employers of agricultural workers cease to be liable for unemployment contributions

Agricultural Labor

a) The term “agricultural labor” includes all service performed:

- (1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals, and wildlife.
- (2) In the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.
- (3) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed in the employ of an operator of a farm (i) as an incident to farming operations or, (ii) in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not apply to service performed in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

b) As used in this subdivision, the term “farm” includes stock, dairy, poultry, fur-bearing animal, fruit, and truck farms, plantations, nurseries, greenhouses or other similar structures, used primarily for the raising of agricultural or horticultural commodities, and orchards.

Coverage Requirements

Liability

Employers of agricultural workers become liable for unemployment insurance contributions: as of the first day of the calendar quarter in which they pay total remuneration of \$300 or more, or as of the date they purchase the business of another liable employer or otherwise become successor to that employer.

Payments to individuals performing services under an H-2A Visa are excluded from coverage and would not be considered remuneration.

A **farm labor crew leader** would also become liable if any of the conditions above are met and:

- (1) The leader is not the employee of the farm operator; and
- (2) The leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, or substantially all of the crew operate or maintain mechanized equipment which the crew leader provides.

Voluntary Coverage

The Unemployment Insurance Law permits an employer who is not liable for contributions to cover their employees on a voluntary basis. Liability begins the first day of the calendar quarter in which an approved application is filed and continues at least until the end of the following year.

Partial coverage is not permitted. The election must include all employees except persons in certain types of employment excluded by law whose services cannot be covered by voluntary election such as:

- a) Independent contractors
- b) The spouse or children (under 21 years of age) of an individual proprietor
- c) Non-immigrant individuals in the USA temporarily to perform agricultural services under an H-2A Visa

Termination of Coverage

An employer shall cease to be liable as of the first day of the calendar quarter that follows the calendar quarter in which a written application is filed with the Department. This is provided that the employer:

- Has paid wages of less than \$300 for four consecutive calendar quarters preceding the day on which a request to terminate liability is submitted.