



Workers' Compensation Board

Department of Agriculture and Markets

Workers' compensation insurance

All businesses with one or more employees are required to have workers' compensation insurance in place from day one. Businesses with one or more employees must have New York State (NYS) statutory disability and Paid Family Leave benefits insurance in place four weeks after the employees' 30th day of employment. The 30 days do not need to be consecutive — but must be within one calendar year. If you're an existing business with employees, you should already have disability benefits and Paid Family Leave insurance. Typically, a business buys a disability benefits policy and includes Paid Family Leave as a rider.

Anyone providing any services to a for-profit business can be determined to be an employee of that business if a workers' compensation claim should arise.

Farm labor contractor (FLC)

NYS Compensation Law §2 states that if a farm labor contractor recruits or supplies farm laborers for work on a farm, such farm laborers shall, for the purposes of this chapter, be deemed to be employees of the owner or lessee of such farm. This means that it is the responsibility of the farm to provide coverage for these laborers. The purpose behind this provision is to clarify who a laborer was working for on the date of accident and comports with the traditional concepts of supervision, direction, and control in determining who is the true employer.

Therefore, farm laborers recruited or supplied by FLCs are considered employees of the owner or lessee of the farm.

- FLCs **DO NOT** need to secure coverage for farm laborers they supply to farms.
- Farmers **DO** need to secure coverage for farm laborers supplied to their farms.

However, FLCs must have coverage for any other workers who are NOT farm laborers.

- Drivers, administrative staff, etc.

How can FLCs show proof the farm laborers they recruit or supply are covered under NYS Workers' Compensation Law?

- FLCs should ask farmers to add them as *certificate holders* on their NYS workers' compensation insurance policies.
- FLCs can produce the farmers' proof of coverage certificate when asked.

No cost to the laborer

The federal law and rules for H2A laborers working for FLCs require that the laborers be covered for workers' compensation at no cost to the worker and that the laborer be covered for any accidents that may occur during transportation to a work site by an FLC. The federal provisions do not specify who is to provide the workers' compensation coverage, just that the laborer may not be required to pay for it. Federal regulations permit the coverage for transportation to and from the farm to be provided under a variety of different types of policies, including commercial automobile coverage and workers' compensation (in New York State this coverage can be through the FLC's auto coverage).