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The Workers' Compensation Law---A Trap for Agriculture By Richard Endacott

There is a common misconception in Nebraska that if an agricultural employee is injured on the job, he has no right to make a claim for workers' compensation benefits. This is based on the assumption that most ag operations are automatically exempt from the Nebraska Workers' Compensation Law. However, if this is your understanding of workers' compensation law, you may be headed toward an expensive workers' compensation trap.

The Nebraska Workers' Compensation law provides that if an employee is injured in an accident which occurred in the course of and arising out of his employment, the employee is entitled to recover workers' compensation benefits. The employee can recover these benefits even without proving that negligence was the cause of the injury. Benefits from a workers' compensation claim can include medical expenses, payments for temporary periods when the employee is unable to work, permanent disability benefits, and vocational rehabilitation (services designed to assist the employee in returning to work). Total exposure can range from the payment of a few dollars for minor medical bills to a total outlay as high as a million dollars. Because an injured employee need not prove negligence in order to recover, and because potential recovery for such an accident involves any or all of the benefits described above, the premiums for workers' compensation coverage can be very expensive. Can workers' compensation exposure---and the necessity of obtaining expensive worker's compensation insurance coverage be avoided by agricultural operations?

Although most Nebraska businesses are subject to the workers' compensation laws, Nebraska law provides an exemption for certain agricultural operations. If the operation qualifies for the exemption, the operation is exempt from workers' compensation claims brought by an employee who is injured as a result of his employment. Thus, if an operation is not subject to workers' compensation claims, the operation can elect to avoid the expense of workers' compensation insurance.

However, contrary to popular belief, the exemption from workers' compensation is not automatic for all ag operations. In order to qualify for this exemption the agricultural operation must meet one of four conditions: 1) It employs only "related employees". "Related employees" include the owner, parents, all lineal descendants (children, grandchildren, etc.) brothers, sisters, aunts, uncles, nieces, nephews, and their spouses. 2) The operation employs less than ten "unrelated" full-time employees. 3) If there are more than ten unrelated, full-time

employees, the ten or more employees are employed during a calendar year for less than thirteen weeks. This would exempt, for example, a large haying crew or corn harvest crew that worked for four to six weeks, or the operation employs 4) Employees who are providing occasional services to another agricultural operation in return for reciprocal services by such other agricultural operation. An example of this condition would be if a ranch crew helps put up hay for a neighbor in return for the same or similar services provided by the neighbor.

Most ranching and farming operations will qualify for one or more of these exemptions. If the operation is exempt, the injured employee may not bring a workers' compensation claim against the operation. The workers only recourse is to sue the operation in a district court lawsuit. In such a suit the worker must prove that the negligence of the employer or someone involved in the operation caused the employees injury.

Because of the expense of workers' compensation insurance, many operations choose to be exempt from coverage of the workers' compensation law. However, there is a danger lurking in the statute for the unwary agricultural operator who assumes that the operation is exempt from a workers' compensation claim. *Nebraska law provides that all unrelated employees are subject to the workers' compensation law, even if they fall within one of the above exemptions, UNLESS the employer gives each unrelated employee written notice that they will not be covered by the workers' compensation law.* Furthermore, this notice is only effective if it has been signed by the unrelated employee and retained by the employer: The notice must state: "In this employment you will not be covered by the Nebraska Workers' Compensation Act and you will not be compensated under the act if you are injured on the job or suffer an occupational disease. You should plan accordingly."

Therefore, even if the operation employs less than ten "unrelated" employees, the failure to give this notice to ANY unrelated employee means that any unrelated employee who has not received and acknowledged such notice in writing may bring a workers' compensation claim.

Imagine a situation in which the employer assumes that the operation is exempt because it meets one of the four exemption conditions outlined above. As a result no workers' compensation insurance has been purchased. But, alas, the required notice has not been given to an injured unrelated employee. When the injured employee files his suit in the workers' compensation court, the operation has no insurance protection for payment of the claim. Therefore, any Workers' Compensation Court award (heaven forbid that it's a million dollar award) must be paid solely by the operation. OUCH! Such a calamity ranks alongside drought, low market prices, and mad cow disease.

Thus, before assuming that an operation will be exempt from the workers' compensation law, it is important to make sure that your operation is, in fact, exempt. This can only be done by meeting the above requirements, including especially the notice requirement to all unrelated employees.

Should the operation always choose to be exempt from a workers' compensation claim, therefore avoiding the purchase of workers' compensation insurance? This is an issue to discuss with your insurance specialist. However, although workers' compensation insurance is very expensive, there may be other considerations. What if a relative or highly-valued employee is injured on the job? Imagine a son becoming totally disabled as the result of a farm or ranch accident. Enough said? Given this alternative, many operations simply bite the bullet and obtain workers compensation insurance protection for their employees.

An alternative to workers' compensation insurance to be explored with your insurance specialist is liability insurance designed to protect you against a lawsuit brought by an employee who has been injured and can prove that the injuries are the result of the negligence. This alternative may protect the operation, but doesn't help the legitimately injured worker who cannot prove negligence.

A final alternative employed by some, which is also expensive, may be a combination of liability, health and disability insurance for employees. The problem with this solution is that these different types of insurance could add up to more expense than workers' compensation insurance.

It is not the purpose of this article to dictate to the reader the ideal type of insurance that may be needed for certain ag operations. This is a decision that must be made after consulting your insurance advisor. However, the important point is that exemption from workers' compensation coverage is not automatic for agricultural operations. If you choose to go the exemption route, you must be careful to make sure you have met the exemption rules. Failure to do so can place you at risk of falling into the agricultural exemption trap..