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2003 Nebraska Ag Worker Compensation Requirements

J. David Aiken

University of Nebraska-Lincoln, daiken@unl.edu

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Cornhusker Economics

Cooperative Extension

Institute of Agriculture & Natural Resources
Department of Agricultural Economics
University of Nebraska – Lincoln

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Market Report	Yr Ago	4 Wks Ago	10/17/03
<u>Livestock and Products,</u>			
<u>Average Prices for Week Ending</u>			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt	\$65.77	\$93.24	\$116.77
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt	*	*	109.50
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg	86.57	109.05	108.80
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt	101.31	148.35	184.35
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt	29.00	42.00	37.37
Feeder Pigs, US 1-2, 40-45 lb Sioux Falls, SD, hd	*	*	31.50
Vacuum Packed Pork Loins, Wholesale, 13-19 lb, 1/4" Trim, Cent. US, cwt	97.09	116.22	105.00
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt	77.25	*	*
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt	156.02	180.62	180.81
<u>Crops,</u>			
<u>Cash Truck Prices for Date Shown</u>			
Wheat, No. 1, H.W. Omaha, bu	4.90	3.36	3.23
Corn, No. 2, Yellow Omaha, bu	2.43	2.13	2.00
Soybeans, No. 1, Yellow Omaha, bu	5.26	6.26	7.10
Grain Sorghum, No. 2, Yellow Kansas City, cwt	4.76	4.07	4.00
Oats, No. 2, Heavy Minneapolis, MN, bu	2.07	1.62	1.52
<u>Hay,</u>			
<u>First Day of Week Pile Prices</u>			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton	150.00	130.00	130.00
Alfalfa, Lg. Round, Good Northeast Nebraska, ton	85.00	61.25	65.00
Prairie, Sm. Square, Good Northeast Nebraska, ton	117.50	*	*
* No market.			

DISCLAIMER: This information is provided for educational purposes only and is not legal advice. If you have questions regarding your worker compensation legal obligations, consult an attorney

The purpose of the Nebraska worker compensation program is to provide no-fault compensation to employees injured on the job. Traditionally farm and ranch workers have been exempted from Nebraska worker compensation statutes, despite the fact that agriculture is one of Nebraska's most dangerous industries. For many years the Supreme Court has interpreted the farm and ranch worker exemption narrowly in order to provide worker compensation protection to as many injured agricultural workers as possible. This attitude was reflected in a 2002 opinion (*Larsen v D B Feedyards*, 264 Neb 483) in which the Nebraska Supreme Court ruled that a cattle feedlot was not entitled to the farm and ranch laborer exemption where 50-75 percent of the cattle in the feedlot were being custom-fed.

In response to the *Larsen* decision, the 2003 Nebraska Unicameral adopted Legislative Bill 210 which requires agricultural employers of at least 10 non-related full time employees working at least 13 calendar weeks a year to provide worker compensation insurance. Exempt agricultural employers must provide notice to employees that they are not covered by worker compensation insurance when the employees are hired. Because LB210 is a significant change in the liability of agricultural employers for injured employees, and because exempt agricultural employers must now notify new employees that they are not covered by worker compensation insurance, this newsletter discusses the new agricultural worker compensation requirements.

The earliest an ag employer can become non-exempt and therefore subject to worker compensation insurance requirements is December 29, 2003. However, it is not clear when exempt ag employers must begin having new employees sign the LB210 notice form in order to retain the employer's exemption from worker compensation insurance requirements. This date could be as early as October 4, 2003. This



significant legal uncertainty should be legislatively addressed in 2004.

Ag worker compensation insurance requirement. Effective August 31, 2003 agricultural operations that employ (a) 10 or more non-related full-time employees (b) at one or more locations (c) for 13 or more calendar weeks per calendar year, must carry worker compensation insurance. NRS 48-106(2)(d). Agricultural employers who employ only family members are not subject to worker compensation requirements. NRS 49-106(2)(c). Non-related employees are employees beyond the third degree of kinship and their spouses. Related employee is defined as a spouse of an employer and an employee related to the employer within the third degree by blood or marriage. This includes parents, grandparents, great grandparents, children, grandchildren, great grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and their spouses. NRS 48-106(9)(c). Cousins are fourth degree relatives and would not be considered related employees for worker compensation purposes. Full time under the statute is defined as more than half-time. NRS 48-108(9)(b).

When ag worker compensation requirements take effect. The effective date of the ag worker compensation statute is August 31, 2003. However, the earliest an ag employer can be characterized as non-exempt is at the end of the 13th calendar week beginning August 31, 2003, or November 29, 2003. If an ag employer qualifies as non-exempt (because at least 10 non-related employees have been employed for at least 13 calendar weeks), the employer then has 30 days within which to obtain worker compensation insurance. December 29, 2003 is 30 days from November 29, 2003. Thus, the earliest that any non-exempt ag employer will be subject to the new ag worker compensation insurance requirements is December 29, 2003.

Most ag employers who do not routinely employ at least 10 non-related employees a week, but who might employ at least 10 non-related employees seasonally will not become non-exempt (and therefore subject to ag worker compensation insurance requirements) during calendar year 2003, because LB210 will have been in effect during only 17 calendar weeks during calendar year 2003. Because the 13 week threshold is for a calendar year, on January 1, 2004 the clock restarts for the 13 week trigger for ag employers who did not become non-exempt during 2003. Ag employers who reach the 13 week trigger during 2004 will have the same 30 days from the end of that thirteenth week to obtain worker compensation insurance, and do not become legally liable for workplace injuries until that 30 day period has passed. The earliest that an ag employer could become non-exempt and therefore subject to ag worker compensation insurance requirements is April 3, 2004. So an employer who reaches the 13 week threshold on April 3, 2004 has until May 3, 2004 to obtain worker compensation insurance. The Nebraska Worker Compensation Court has a worksheet that employers can use to determine when they have met the 13 week requirement (see below).

Losing exempt status: the new employee notice form requirement. Ag employers who do not lose their exempt status because of the number of employees they hire must still take certain steps to remain exempt from worker compensation insurance requirements. Exempt employers must notify new

employees in writing at the time they are hired that the employees are not protected by worker compensation insurance. NRS 46-106(7). When ag employers become exempt in 2003 and therefore must have new employees sign the LB210 notice forms is not obvious. One interpretation of LB210 is to wait until the end of each calendar year. If the ag employer has not met the 10 non-related employees/13 calendar weeks test by the end of the year, then the ag employer is exempt and must have new employees hired after the end of the year sign the LB210 notice form in order to retain exempt status.

But this interpretation of LB210 is not necessarily correct. Another approach is to determine the point in time at which it becomes impossible for an ag employer to satisfy the 13 week requirement. For ag employers who never employ at least 10 non-related employees by August 31, 2003, that date would be October 4, 2003 – after this date there are only 12 calendar weeks left in 2003. If the ag employer hired 10 or more unrelated employees for the rest of the year, the employer would not become non-exempt during 2003 because there were only 12 calendar weeks left in 2003. And this employer would start over again with a clean slate for the 13 week requirement in 2004 because non-exempt status is established during a calendar year, not during any 52-week period. If this interpretation is correct (and either interpretation could be correct), this ag employer would become exempt on October 5, 2003 and would need to get signed LB210 notice forms from employees hired on October 5, 2003 or thereafter. Such signed form must be obtained ***at the time of hiring*** in order for the exemption to apply, so there is no grace period. If you are in this situation, and have hired an employee without obtaining a signed LB210 notice form, contact an attorney. ***Any additional employees hired should sign the LB210 written notice form.***

If an ag employer can become an exempt employer before the end of a calendar year (as described above), it will be confusing for such employers to determine when they must provide notice to employees that they are not protected by worker compensation insurance. LB210 should be amended by the 2004 Unicameral to clarify that the determination of when an ag employer becomes exempt and subject to the notice requirement is made at the end of the calendar year. This provision should also be made retroactive.

Additional information (information sheets and employment tracking worksheets) are available from the Nebraska Workers Compensation Court at www.nol.org/home/WC/. An LB210 notice prepared by the Nebraska Farm Bureau Federation is available at http://nefb.org/archivej/uploads/1workers_comp.pdf. The official text of LB210 is available at: http://www.unicam.state.ne.us/Legal/SLIP_LB210.pdf

J. David Aiken, (402) 472-1848
UNL Water & Ag Law Specialist
daiken@unl.edu