On The Farm It’s Safety First, But Accidents Happen

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Everyone wants to avoid accidents in the workplace. Employers and employees of farming operations are no exception. However, farm workplaces present a variety of hazards, and injuries to workers do occur. It is therefore important for both employers and employees to know the laws applicable to safety and accidents in the workplace. In addition, employers and employees should be aware of the laws in Manitoba relating to the liability of farm employers for injuries to their workers and the compensation available to such workers.

All farming operations that employ workers should be aware of The Workplace Safety and Health Act (and Regulations) (the “WS&H Act”) of Manitoba, which requires farm employers to ensure farm workers’ safety and health are of paramount importance. Whether it involves operating machinery, handling bales of hay, or assigning younger or inexperienced workers to a particular task, the WS&H Act requires, among other things, that the workplace environment is as safe as reasonably possible, and that training and supervision are provided where necessary. In the event of an accident, monetary fines (and even imprisonment in exceptional cases) may result if an investigation by safety and health officers indicates preventable but dangerous work conditions, or failures to abide by requirements under the WS&H Act or Regulation. Consulting the relevant legislation or a lawyer in advance might therefore assist in avoiding potential liabilities.

Aside from potential penalties under the WS&H Act, farm employers also may have concerns about their liability to farm workers who are injured in the workplace. In Manitoba, the legal consequences arising from an injury sustained by a farm worker in the course of his or her duties have changed dramatically since January 1, 2009, when Manitoba’s legislature decided to bring farm workers within the compensation scheme set out under Part I of The Workers Compensation Act. Prior to that time, farmers were subject to lawsuits for work-related injuries and illnesses sustained by farm workers.

The inclusion of farm workers within the provisions of The Workers Compensation Act means that farm employers are now immune from civil lawsuits from farm workers. On the other side of the equation, farm workers are now entitled to compensation for their work related

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injuries from the Workers Compensation Board (“WCB”), regardless of whether they can establish legal fault for their injuries against another party.

It remains of importance to note that farmers themselves (meaning the owners and/or operators of a farming operation), along with their family members, nonetheless remain exempt from the mandatory compensation scheme under The Workers Compensation Act. The intention of the legislature in making the January 1, 2009 changes was essentially to make WCB coverage mandatory for “arms-length” farm employees, without impacting smaller family-run farming operations. It should be noted that the definition of “family member of a farmer” found under the Excluded Industries, Employers and Workers Regulation, is quite broad. Aside from immediate family members in the traditional sense, “family member of a farmer” is also defined to include “any other person whom the farmer considers to be like a close relative, whether or not they are related by blood, adoption, marriage or common-law relationship”. Given the scope of the definition, a farmer who occasionally employs close friends or acquaintances to assist in farming operations may not be found to require WCB coverage in respect of such workers. However, unless a farmer is comfortable he, she or it can easily establish that all persons working at a farm are so close to the farmer as to be considered “family”, farmers are best advised to register with the WCB for coverage in respect of their farm workers.

Farmers who only employ family members (or persons so close to them as to be considered “family”) should keep in mind that as a result of the exclusion from mandatory WCB coverage, they still remain subject to civil lawsuits from such workers who are injured in the course of working on their farm. While family members may well be less inclined than non-relatives to sue a farmer, the possibility remains. Farmers may seek protection against such liability through coverage for legal liability that may be included as part of a farm insurance policy. Farmers who employ family members may wish to consult with their insurance agent or broker to see whether such liability coverage is in place or is available.

Although WCB coverage is not mandatory for farmers and their family members, the WCB also provides optional coverage for these individuals. Through this optional coverage, farmers who employ family members can make the benefits of the WCB compensation scheme available to those family members.

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