



PennState Law

Center for Agricultural
and Shale Law

Understanding Agricultural Law Educational Series

Understanding the Basics of Agricultural Labor Law

April 29, 2022





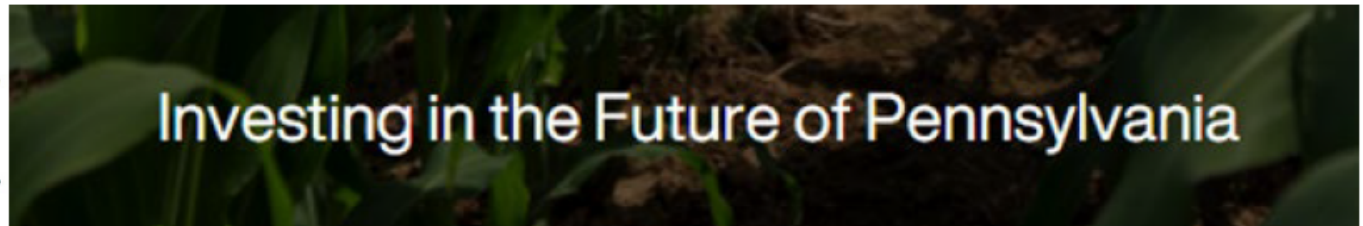
Understanding Agricultural Law

A Legal Educational Series for General Practice Attorneys and Business Advisors Representing Agricultural and Rural Clients

This webinar series is specifically tailored to creating subject matter literacy and competence on fundamental issues of agricultural law for attorneys, advisors, and service providers to agricultural producers and agri-businesses.



Understanding Agricultural Law Webinar Series



Established as part of the 2019 Pennsylvania Farm Bill, the [Agricultural Business Development Center](#) supports [Farm Transitions](#), linking farmers to the next phase of their life and their farm's future; [Beginning Farmers](#), providing advice and counsel to the next generation of agricultural producers; [Risk Management](#), providing information on crop insurance and other opportunities for risk management; and [Financial Assistance](#), connecting farmers with low-interest loan options and reimbursable grant programs. This initiative seeks to build the "ag literacy" and competency of the existing network of legal, engineering, accounting, and other disciplines of business advisors available to farmers.



Understanding Agricultural Law Webinar Series

April 29, 2022, 12 noon – 1 pm ET.

Understanding the Basics of Agricultural Labor Laws – Every area of labor and employment law seems to have its own unique rules for agricultural workers. Learn about them in one webinar session that better prepares you to advise your clients competently about what they need to know. Increase your understanding of the Fair Labor Standards Act, OSHA, child, migrant and seasonal labor laws, the H-2A program, and much more.

May 20, 2022, 12 noon – 1 pm ET.

Understanding the Basics of Leasing Farmland for Energy Development - The present and future will see many agricultural/rural landowners faced with tough decisions about land use and income opportunities presented by energy transitions. Gain an understanding of the ins and outs of leasing for gas and solar development to better serve current clients and build your skill set to take advantage of a growing market for professional advice in this area.

June 24, 2022, 12 noon – 1 pm ET.

Understanding the Basics of Local Land Use Regulation of Agriculture – To properly represent agricultural clients in land use regulation matters requires more specialized knowledge every year about ag structures and operations and the soil, stormwater and nutrient management requirements that apply. There are also some unique laws in Pennsylvania protective of agricultural uses, the understanding of which can make you invaluable to your clients.



Center for Agricultural and Shale Law

<https://aglaw.psu.edu>

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Our Website



The screenshot shows a web browser window displaying the website aglaw.psu.edu. The browser's address bar shows the URL and various icons. The website header features the PennState Law logo, the center's name, a "SUBSCRIBE FOR UPDATES" button, and a search bar. A navigation menu includes links for HOME, ABOUT THE CENTER, EVENTS, PUBLICATIONS, RESEARCH BY TOPIC, WATCH OR LISTEN, MEDIATION, and LEGAL CLINIC. The main content area has a large background image of a golden field with a path leading into the distance. A text overlay on the image reads "Welcome to the Center for Agricultural and Shale Law". Below the image, there are sections for "Agricultural Law Weekly Review" with sub-sections for "Week Ending April 16, 2021" and "Week Ending April 9, 2021". The "Week Ending April 16, 2021" section includes a paragraph about COVID-19 and the Farmer to Families Food Box Program, dated April 21st, 2021. The "Week Ending April 9, 2021" section includes a paragraph about an antitrust settlement in a peanut class action suit, dated April 5, 2021. On the right side of the website, there is a "Tweets by @AgShaleLaw" section showing two tweets from the account @AgShaleLaw. The first tweet discusses shale growth and price war, and the second tweet discusses Tyson Fresh Meats joining the US CattleTrace program. Below the tweets is a "Penn State Center for Agricultural and Shale Law" social media widget showing 163 likes and a "Send Message" button.



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Case Law

The following resources represent a collection of court filings and judicial opinions regarding the Pennsylvania Right to Farm Act. Furthermore, the decisions may be viewed via an online legal database using the mentioned docket number.

This list of cases is not exhaustive.

Branton v. Nicholas Meat, LLC

Superior Court of Pennsylvania, No. 536 MDA 2016

- **Opinion** (Apr. 4, 2017) (holding that RTFA's "lawful" requirement under § 954(a) is satisfied if an agricultural operation "substantially complies with relevant federal, state, and local laws." The court stated that "a lawful use is not rendered unlawful simply because an owner may have been cited for an infraction for noncompliance in connection with the use." Nevertheless, the court ruled that while the application and storage of food processing waste are normal agricultural operations under RTFA, the construction of a 2,400,000-gallon storage tank was a "substantial change" to the agricultural operation. As a result, because the suit was brought within one year of the change, the case was not barred under RTFA)

Burlingame v. Dagostin

Luzerne County Court of Common Pleas, No. 2015-02092



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Agricultural Law Issue Trackers

Penn State Law's Center for Agricultural and Shale Law is making available a research tool – the Issue Tracker – aimed at simplifying the historical developments relevant to selected agricultural legal topics by documenting relevant federal and state legislative, regulatory and litigation/judicial proceedings in a reverse chronological timeline format. The Issue Tracker also supplements legal developments, as appropriate, with relevant actions and statements of stakeholders directly involved.



Agricultural Antitrust



Bioengineered Food Disclosure



Cell-Cultured Food Regulations



CERCLA / EPCRA Reporting



COVID-19



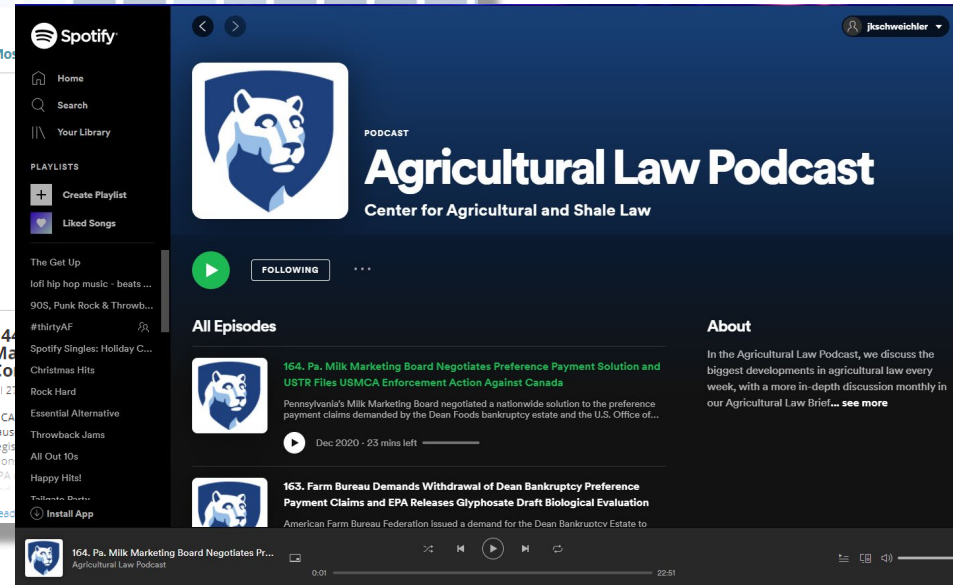
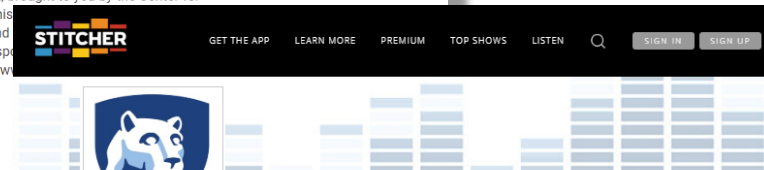
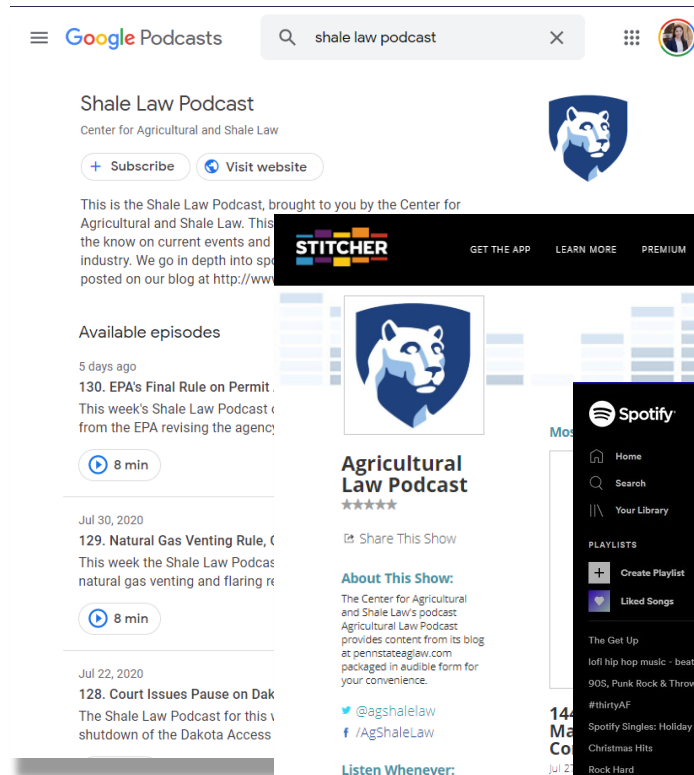
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Pennsylvania Agricultural Mediation Program

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Agricultural Labor Law

April 29, 2022

Presenters: Ross Pifer and Brook Duer,
Center for Agricultural and Shale Law



Overview of Today's Presentation

- Agricultural Labor Generally
- Major Federal Statutes and Regulations
 - Fair Labor Standards Act
 - National Labor Relations Act
 - Migrant and Seasonal Worker Protection Act
 - H2A Program
 - OSHA / FIFRA / Workers Compensation
- Current Issues



Who Provides Agricultural Labor?

- Farm Operators
- Unpaid Family Workers
- Hired Farmworkers and Contract Labor
- Volunteers / Interns / Workshares



Shares

Meat

Kitchen

Farmhouse Classes

Events

Farm Stand

Find Us

Red Acre Center

Volunteer for Veggies

Have an extra hour? Come on out!

We are continually humbled by and grateful for those who have and those who continue to volunteer on the farm.

This is information about the volunteer for veggies program. We also have a volunteer program (without a vegetable trade), a WOOF opportunity, and an intern program. If you want information about one of our other opportunities please contact us: [email](#), call or text (435) 865-6792

It is pretty simple: We provide the task and you provide the labor. * You work at least an hour or up to 4 hours. Dress for the weather. Bring a water bottle, food, sunscreen, gloves, hat, and anything else you need. When you are finished you shop for veggies at the Back Porch our farm stand. Not always but sometimes we offer other items to volunteer for veggies. 1 hour = \$6 worth of veggies 2 hours= \$12 worth of veggies 3 hours = \$18 worth of veggies 4 hours= \$25 worth of veggies.



Volunteers / Interns / Workshares

Dairy Grazing Apprenticeship (DGA) is the first formally accredited agricultural apprenticeship program in the United States. The program pairs beginning farmers with mentors—or *master graziers*—to provide a guided pathway toward independent dairy farm ownership or a career in grazing while strengthening the economic and environmental wellbeing of rural communities and the dairy industry.

Using the model of education that has prepared skilled workers in the trades for generations, DGA combines work-based training with related instruction for the federally recognized occupation of “Dairy Grazier.”

DGA was founded by dairy farmers in Wisconsin, and is now operating in several states across the country. We partner with DGA to administer apprenticeships in Pennsylvania and surrounding areas.





Trends in Agricultural Labor

- Increased reliance on mechanization and technology
 - Decline in overall labor input
- Larger, more productive farms
 - Increased reliance on hired labor
- Increase in CSA-type operations
 - Sources of non-traditional labor



Reliance on Hired Labor

Farm Production Expenditures by Expenditure Category and Percent of Total – United States: 2019 and 2020

[For definitions of terms used in this table, see Terms and Definitions. Excluding Alaska and Hawaii. Totals may not add due to rounding]

Expenditure	2019		2020	
	(million dollars)	(percent)	(million dollars)	(percent)
Livestock, poultry, and related expenses	42,800	12.0	39,600	10.8
Feed	59,400	16.6	56,800	15.5
Farm services	42,800	12.0	44,700	12.2
Rent	29,700	8.3	30,100	8.2
Agricultural chemicals	15,500	4.3	16,500	4.5
Fertilizer, lime, and soil conditioners	22,300	6.2	24,400	6.7
Interest	10,500	2.9	9,900	2.7
Taxes	13,400	3.7	14,100	3.9
Labor	34,800	9.7	36,700	10.0
Fuel	12,300	3.4	11,100	3.0
Farm supplies and repairs	17,600	4.9	19,400	5.3
Farm improvements and construction	13,500	3.8	14,400	3.9
Tractors and self-propelled farm machinery	11,900	3.3	13,700	3.7
Other farm machinery	5,100	1.4	6,000	1.6
Seeds and plants	21,200	5.9	23,000	6.3
Trucks and autos	4,430	1.2	5,100	1.4
Miscellaneous capital expenses	570	0.2	700	0.2
Total farm production expenditures	357,800	100.0	366,200	100.0

- Source – NASS – Farm Production Expenses 2020



Reliance on Hired Labor

- Varies widely among sector
 - Overall – approx. 10% of gross income
 - Grains – approx. 5% of total cash expense
 - Livestock – approx. 10% of total cash expense
 - Specialty crops – approx. 40% of total cash expense



Top states for hired agricultural labor

- California
- Florida
- Washington
- Texas
- Oregon
- North Carolina
- Wisconsin
- Michigan
- Minnesota
- New York
- Pennsylvania



Agricultural Labor Laws

- Agricultural exceptions
- Specific agricultural provisions
- Agriculture-specific laws



Agricultural Labor Laws

- Fair Labor Standards Act (FLSA)
- Occupational Safety and Health Act (OSHA)
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
- Migrant and Seasonal Agricultural Worker Protection Act
- National Labor Relations Act
- Workers Compensation



Fair Labor Standards Act

- Addresses minimum wage, overtime pay, and child labor
- Requires an employment relationship – not applicable to independent contractors
- Partial agricultural exemption



FLSA – Exemptions

- Why should agriculture receive exemptions?
- Specific exemptions:
 - Minimum wage
 - Overtime
 - Child labor provisions



FLSA – Minimum Wage Exemptions

- Less than 500 man-days of ag labor during any calendar quarter in prior calendar year
 - Man-day = “any day during which an employee performs agricultural labor for not less than 1 hour.” – section 3(u)
 - Translates to approx. 7 full-time workers
 - Application to part-time workers
- Immediate family members



FLSA – Minimum Wage Exemptions

- Primarily engaged in range production of livestock
- Hand-harvest laborers paid on piece-rate basis
 - Commute daily
 - Employed less than 13 weeks in prior calendar year



FLSA – Overtime Exemption

- “. . . farming and all its branches and among other things including the tillage of soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, furbearing animals, or poultry, and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations.”



FLSA – Child Labor Provisions

- Prohibits use of oppressive child labor
 - Any employment of one under age 16
 - Any employment of one between 16 and 18 in a hazardous occupation



FLSA – Child Labor: Agricultural Exemption

- Ages 14 and 15 permitted so long as not engaged in hazardous activity



FLSA – Child Labor: Agricultural Exemption

§ 570.71 Occupations involved in agriculture.

(a) *Findings and declarations of fact as to specific occupations.* The following occupations in agriculture are particularly hazardous for the employment of children below the age of 16:

(1) Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.

(2) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:

(i) Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;

(ii) Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or

(iii) Power post-hole digger, power post driver, or nonwalking type rotary tiller.

(3) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:

(i) Trencher or earthmoving equipment;

(ii) Fork lift;

(iii) Potato combine; or

(iv) Power-driven circular, band, or chain saw.



FLSA – Child Labor: Agricultural Exemption

(4) Working on a farm in a yard, pen, or stall occupied by a:

(i) Bull, boar, or stud horse maintained for breeding purposes; or

(ii) Sow with suckling pigs, or cow with newborn calf (with umbilical cord present)

(5) Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches.

(6) Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.

(7) Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.

(8) Working inside:

(i) A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;

(ii) An upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;

(iii) A manure pit; or

(iv) A horizontal silo while operating a tractor for packing purposes.

(9) Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 *et seq.*) as Category I of toxicity, identified by the word “poison” and the “skull and crossbones” on the label; or Category II of toxicity, identified by the word “warning” on the label;



FLSA – Child Labor: Agricultural Exemption

(10) Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or

(11) Transporting, transferring, or applying anhydrous ammonia.

(b) *Occupational definitions.* In applying machinery, equipment, or facility terms used in paragraph (a) of this section, the Wage and Hour Division will be guided by the definitions contained in the current edition of *Agricultural Engineering*, a dictionary and handbook, Interstate Printers and Publishers, Danville, Ill. Copies of this dictionary and handbook are available for examination in Regional Offices of the Wage and Hour Division, U.S. Department of Labor.



FLSA – Child Labor: Agricultural Exemption

- Ages 12 and 13 permitted by parent or with written consent of parent or on farm where parent is employed
- Under Age 12 permitted by parent or with written consent where all employees are exempt from minimum wage



National Labor Relations Act

- Affirmative protection of worker's right to organize with other workers
- 29 USC section 157 – Basic Declaration of Workers' Rights
- 29 USC section 158 – Unfair Labor Practices by Employer



NLRA – Exemption for Agricultural Laborers

- Fundamental right does not extend to all workers.
- Worker must fit within definition of “employee” to receive NLRA protection.
- Definition of employee “shall not include any individual employed as an agricultural laborer.”



Agricultural Labor – Case Law

- *Holly Farms Corporation v. NLRB*, 517 U.S. 392 (1996)
 - Background – Teamsters filed representation petition with NLRB seeking an election for a bargaining unit to include live-haul workers (truck driver, forklift operator, chicken catchers).
 - Issue – Are live-haul crew workers considered to be agricultural laborers?



NLRA / FLSA

- Definition of agriculture – section 3(f)
 - Primary agriculture
 - Secondary agriculture



NLRA / FLSA – Primary Agriculture

- Includes farming in all its branches and among other things including the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, furbearing animals, or poultry
 - Holly Farms was not a farmer when it collected poultry.
 - See *Bayside Enterprises, Inc. v. NLRB*, 429 U.S. 298 (1977).



NLRA / FLSA – Secondary Agriculture

- Any practices performed **by a farmer** or **on a farm** as an incident to or in conjunction, in with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.
 - Court – activities of live-haul crew were not incidental to contract growers' poultry-raising operations.



Migrant and Seasonal Agricultural Worker Protection Act

- Enacted in 1983
- Federal statute providing protection to migrant and seasonal workers in a number of areas relating to working conditions
- Why is protection needed?
 - Perception of little recourse for substandard working conditions
 - Language barriers
 - Long way from home



MSPA – Coverage

- Agricultural employment of seasonal or temporary nature
 - Migrant worker – required to be absent from permanent place of residence
 - Seasonal worker – not required to be absent
- Covered entities
 - Agricultural employers
 - Agricultural associations
 - Farm labor contractors – recruiting, soliciting, hiring, employing, furnishing, or transporting



MSPA – Requirements

- Registration requirements
 - Farm Labor Contractor must be registered
 - Employer must verify registration of FLC
- Terms of employment
 - All wages must be paid when due
 - Workers cannot be required to purchase goods or services



MSPA – Requirements

- Disclosure of employment terms and conditions
 - Done upon recruiting
 - Written statement of earnings
- Housing requirements
- Vehicle safety requirements
 - Insurance required



MSPA – Exemptions

- Family business exemption
 - Farmer or immediate family member performs contracting activity
- Small business exemption
 - “500 man-days” standard from FLSA
- Limited contracting activity
 - Within 25 miles of permanent residence
 - Less than 13 weeks per year



MSPA – Enforcement

- Criminal sanctions
- Administrative sanctions
- Private right of action



MSPA – Concept of Joint Employment

- Concerns about MSPA compliance if:
 - Farm will retain FLC as an independent contractor
 - FLC will hire workers and assume responsibility for compliance with MSPA
 - If farm is not an employer, then no requirements under MSPA
 - BUT if farm is a joint employer, then subject to MSPA requirements



MSPA – Concept of Joint Employment

- A single individual is considered to be an employee to two or more persons at the same time
- Importance of economic dependence



Concept of Joint Employment – Factors

- Power to direct, control, or supervise worker or work performed
- Power to hire, fire, modify employment conditions, determine pay rate or method
- Permanency and duration of relationship
- Tasks that require little training



Concept of Joint Employment – Factors

- Tasks performed are integral part of overall business operation
- Tasks performed on premises
- Agricultural operation assumes responsibilities normally assumed by employer