



HUMAN RESOURCE AND LEGAL RISK

By Dr. Laurence M. Crane, NCIS

This is the fifth article in a series of six that provide an overview of agricultural risk management.

Human resource risk refers to any event relative to the human element of the farm that is uncertain. Because the character, health and behavior of people are unpredictable, the farm is exposed to serious risk. Human resources are both a source of risk and an important part of the strategy for dealing with risk.

Legal risk is any activity or event that threatens the legal standing of the farm or puts the farmer in legal jeopardy. Laws and governmental programs that reflect society's changing attitudes create risks for farmers.

HUMAN RESOURCE RISK

The human element of the farm is often the most difficult to manage, and as agriculture production continues to become more technical, the importance of maintaining good human resources is intensified.

The issues surrounding the human resource risks of the farm can be divided into six general categories: 1) maintaining and guarding the health and safety of people on the farm; 2) avoiding and dealing effectively with common family problems; 3) working with farm partners; 4) dealing effectively with life changes such as marriage and divorce, illness and death; 5) meeting the educational and training needs of the people on the farm; and 6) managing farm labor.

Health and Safety

The best and most effective safety risk strategy is to ALWAYS think and act with safety first in mind. Preventive action is the only way to avoid getting hurt. Do not remove guards, shields, and other protective covering from equipment. Anticipate the potential result of your unsafe actions. Wear safety gear. There are many hazards to children living on farms and in rural areas—hazards that are attractive, fun, dangerous and deadly.

When using chemicals, follow the instructions exactly as stated on the label and do not take short cuts.

Animals are unpredictable and may become hostile if frightened or threatened. Respect electricity and be aware of all overhead wires.

Dealing with Common Family Problems

Life on a family farm can be hectic and at times seem out of control. Paying attention to both family and business concerns is not easy. Family rules and practices about what to talk about and what to keep quiet may limit discussion of important issues.

Financial stress and worries exact a heavy emotional toll. It is human nature for most to withdraw at the very time when they should be reaching out for support and help. Some pull back when they need to pull together; this is human nature.

Maintaining a balance in your life is especially helpful in combating these human risks. Things get out of focus in a hurry when we withdraw. Maintaining balance and learning to relax and relieve pressure is essential to your own health, happiness and the health and happiness of your family and business.

Neglecting family responsibilities sends the wrong message to the wrong people. Keep your goals realistic and follow the golden rule. The most valuable resources you have are those you live with. Nurturing these resources can pay important dividends.

Working with Farm Partners

Healthy relationships within the family are essential and often difficult to achieve. This is because we are all so different as human beings. Our personalities and human strengths and weaknesses are just that—human. However, the success of the farm as a business depends largely upon the ability of the human resources to make the most of all the resources available to the farm, including themselves. The more people involved in the farm, the more opportunity for disagreement, simply because there are more personalities and opinions to accommodate. On the positive side, there is also opportunity for more input and critical review of important decisions.

When there is lack of unity in purpose, or worse, total disunity, the farm is at serious risk. It is important to take the

corrective action necessary to ensure unity of farm purpose. This is best accomplished by setting farm goals that are consistent with personal goals.

Maintaining healthy relationships takes time and is likely the hardest aspect of farming together. If farming together is not possible due to a variety of personal reasons, then don't. Staying friends as family members is more important to most people than business success at the expense of family relationships.

Dealing with Life Changes

Some changes are preventable, but most aren't. Regardless, change provides an opportunity for growth and improvement, but also introduces uncertainty and risk.

Marriage is a type of partnership that requires constant work and nurturing. When marriages fail, for whatever reason, all involved pay a heavy price in many respects. Few farm businesses can survive a divorce without serious risk of failure.

Illness and death are disruptive and costly emotionally and financially. When human resources are unable to produce, the farm suffers. Especially difficult are those situations where key institutional knowledge and decision-making skills are lost. Keeping records, and cross training within the farm, are good risk management strategies in the event of such tragedies.

Exiting farming is more difficult for some than it was to enter; and entering isn't easy. It takes time and planning to properly transition to new management

for the farm, and to new habits and lifestyles for those exiting. Don't put off these important issues. It is never too early to start and it is never too late to look to the future.

Forced transition, either due to health or financial requirements, is usually traumatic. Seek professional help and counseling from clergy and/or other social service experts. They can truly help smooth the transition and give hope when all seems hopeless.

Education and Training Needs

Managing a farm is a very difficult occupation. The changing nature of the agricultural sector is towards specialization and the use of new technologies and special skills. The legal risks and responsibilities associated with owning and operating a farm continue to grow at a rapid pace. The only way to cope and succeed in this environment is to be willing to learn, adapt, and apply.

The training and cross training of others involved in the farm is a good risk management strategy. Each person associated with the farm needs to ask and answer this question: "If I was unable to do my job (my responsibilities) on the farm, who could and would do it?"

Managing Farm Labor

Farm labor management involves hiring and keeping quality farm labor. The goal is to use labor effectively so that increased costs can be justified.



Adding an employee brings a number of additional responsibilities, liabilities and legal requirements. Some regulations apply to all employers, while others exempt small employers or various types of employment. The number of different government agencies that enforce laws and regulations makes it difficult to ensure compliance with all of them. Seek competent professional legal advice to ensure you comply with all regulations.

LEGAL RISK

Many of the day-to-day activities of farmers and ranchers involve commitments that have legal implications. Understanding these issues can lead to better risk management decisions.

Legal issues cut across other risk areas. For example, acquiring an operating loan has legal implications if not repaid in the specified manner. Production activities involving the use of pesticides have legal implications if appropriate safety precautions are not taken. Marketing of agricultural products involves contract law. Human resource issues associated with agriculture also have legal implications, ranging from employer/employee rules and regulations, to inheritance laws.

The legal issues most commonly associated with agriculture fall into four broad categories: 1) appropriate legal business structure, and tax and estate planning; 2) contractual arrangements; 3) tort liability; and, 4) statutory compliance, including environmental issues.

Business Structure and Estate Planning

The method used to obtain and hold title to property is very important and has long-term effects. For instance, the options for disposing of property at the time of retirement from farming is largely determined by the way it is titled and legally held.

Estate planning is the process of developing a program for effective management, enjoyment, and disposition of property at the least possible tax cost. Making a will is a crucial part, but estate planning includes much more. When you plan your estate, you are creating a blueprint of how you want your financial and personal affairs handled after you can no longer handle them.

Many farmers avoid estate planning because they don't really know where to start and it appears as an enormous task; a task that involves dealing with many issues that are frequently unpleasant.

It is your plan. You set the goals and determine what you want accomplished. The only right answers are your answers. Start by learning the terminology and basic concepts and tools. Use professional advice and assistance.

Contractual Arrangements

A contract is usually defined as a written or oral agreement between two or more parties involving an enforceable commitment to do or refrain from doing something. In agriculture, contracts between farmers

and agribusinesses specify certain conditions associated with producing and/or marketing an agricultural product. By combining various market functions, contracting generally reduces participants' exposure to risk. In addition to specifying certain quality requirements, contracts can also specify price, quantities to be produced, and services to be provided.

Tort Liability

"Tort" is a Latin term that literally means "twisted action."

Tort liability arises from the negligent or intentional infliction of damage to a person or property. Tort liability can involve the failure to do something that a reasonable person would have done, or doing something that a reasonable person would not have done. This type of liability is currently insured under a general liability insurance policy.

The simplest type of tort arises where someone is injured on a farm or ranch property. In recent years, tort liability has broadened significantly to include what may be classed as employment torts, such as wrongful discharge. Another area of expansion has been in the so-called "toxic tort" area in which adjacent landowners, public groups, or others assert liability for damage to air and water quality on account of agricultural activity.

Statutory Compliance and Environmental Issues

A statutory obligation refers to all of the regulations and laws governing what you do as a farmer and a citizen. You are obligated to follow these laws/regulations and are subject to penalty if you do not. It is important that you become familiar with the statutory obligations regarding your farming operation so that you do not needlessly put your farm (livelihood) at risk.

A huge variety of statutory mandates apply to farmers and ranchers. These include tax reporting and payment obligations, wage, hour and safety requirements, compliance with nondiscrimination statutes, termination of employees, use of pesticides and herbicides, participation in certain farm programs, and many more.

Although many in agriculture are not fully aware of their legal obligations, failure to comply may have serious consequences in terms of fines, penalties, and abatement. For these reasons farmers and ranchers are advised to seek competent accounting and legal representation to avoid violation of statutory obligations with their accompanying penalties for non-compliance.

References

There are numerous sources of outstanding materials on all aspects of human resource and legal risk management. Contact your local Cooperative Extension office for assistance and direction.

The Risk Management Education website maintained by the University of Minnesota is an excellent starting point. This vast and current library of information can be accessed at: www.agrisk.umn.edu. **TODAY**

