



Managing Legal Liability Series:

Workers' Compensation & Liability for Farmers' Market Vendors & Owners (2020)

Authored by Scott Denoon, CPCU, CIC, API, AFIS, AIS, Virginia Farm Bureau; Jesse Richardson, Associate Professor, School of Public and International Affairs; Martha Walker, Ph.D., Community Viability Specialist, Jennifer Friedel, Assistant Professor of Practice, Agriculture and Applied Economics

Introduction

The popularity of farmers' markets has increased significantly over the past decade as consumers take a greater interest in the various foods that end up on their dinner tables. These markets are located in various venues (entirely outdoors, completely indoors, combination of both) and may be open year round or on a seasonal basis. Regardless of the location or frequency of operation, farmers' market owners and operators have significant liability exposures presented by employees and participating vendors. This fact sheet recommends methods for dealing with these two exposures.

Workers' Compensation

Exposure to workers' compensation liability can be best addressed by workers' compensation insurance, which provides wage replacement and medical benefits to employees who are injured during the course of their employment. In doing so, it protects the employer by limiting their liability and, for the most part, preventing employee lawsuits due to work injuries.

Most Virginia employers who regularly employ **more than two (2)** part-time or full-time employees must purchase and maintain workers' compensation insurance. Employers not subject to the Workers' Compensation Act can voluntarily come under the act by either purchasing a workers' compensation policy or by qualifying as a self-insurer with the Virginia Workers' Compensation Commission.

It is advisable for any employer to obtain some type of workers' compensation or employer's liability coverage since it will shield them from potential

legal action due to work related injuries sustained by their employees. Workers' compensation is a tradeoff. In exchange for receiving certain and quick payment for work related injuries, employees forgo filing civil lawsuits asking for damages. Workers' compensation law limits compensation for injuries to a certain number of weeks (dependent upon the type of injury) of $66 \frac{2}{3}$ percent of the employee's regular wages.

For example, an employee that loses a thumb (or has permanent loss of use of a thumb) receives 60 weeks x $66 \frac{2}{3}$ percent of his regular wage. If an employee makes \$500/week, he will receive \$19,998 ($60 \times .6666 \times \500) for loss of a thumb. As another example, loss of the vision in one eye is compensated at 100 weeks. If covered by workers' compensation, the employee is barred from filing a lawsuit against the employer which could otherwise drag the employer into years' long litigation and might either result in a huge award for the employee or in the employee getting no compensation at all.

In general, farmers' market operators with more than two full or part-time employees are subject to the Virginia Workers' Compensation Act and are required to purchase and maintain worker's compensation insurance. Almost everyone working for another under a contract of hire is considered to be an employee, including contractors, apprentices, and aliens, regardless if they are lawfully or unlawfully employed. Under the Virginia Workers' Compensation Act, employees can be any of the following who perform work for a farmers' market:

- Family members
- Minors
- Full-time workers
- Part-time workers
- Seasonal workers
- Contractors
- Corporate officers
- Managers of Limited Liability Corporations (LLCs)
- A sole proprietor, a shareholder of a stock corporation having only one shareholder, a member of a limited liability company having only one member, or all partners of a business *if they elect to be included* as employees under the worker's compensation policy for the business

Additional information on the Virginia Workers' Compensation Act can be found on the Virginia Workers' Compensation Commission website at www.vwc.state.va.us.

An insurance agent can assist in obtaining workers' compensation coverage. If coverage is not available in the regular or voluntary market, the National Council on Compensation Insurance (NCCI) at (561) 893-1000 can also provide assistance in obtaining coverage. Questions about insurance underwriting issues, such as premiums charged by an insurance company or classification should be directed to the Bureau of Insurance of the State Corporation Commission (Consumer Services Section, PO Box 1157, Richmond, VA 23209).

Vendor & Owner Liability

Farmers' market vendors face numerous liability exposures related to their participation in a market. These include bulky equipment used for displaying their products, customers shopping for food as well as food that may be served to the general public. Vendors can be held liable for injuries, illnesses or damages resulting from farmers' market activities such as a customer becoming sick from eating purchased produce or someone being injured due to tripping over improperly placed boxes at sales booths. Incidents like these have the potential to negatively impact a vendor on several levels. Liability insurance can be obtained to provide protection from third party claims such as these and other farmers' market related exposures. With this in mind, it is important for vendors to consult a

reputable insurance agent for guidance in acquiring proper coverage for farmers' market activities.

General liability insurance can and should also be purchased by farmers' market operators to address exposures related to ownership of the market (i.e. premises & operations liability, and products liability for merchandise sold by them).

Market owners could also be named as co-defendants in lawsuits if a customer sustains a serious injury or becomes ill from a product purchased from any of the market's vendors. To address this exposure, market operators should require all vendors to provide proof of insurance at acceptable limits before being approved as a vendor at the market. The owner and/or operator of the farmers' market should also be named as an additional insured on all vendor policies. This precaution also applies to landowners renting property to a farmers' market operator.

Market owners should consult their insurance agent and attorney for assistance in determining appropriate liability limit requirements for vendor policies and their own coverage needs. Virginia Cooperative Extension's publication *Liability and Insurance* provides additional details on strategies for minimizing the risk of claims and securing appropriate insurance coverage.

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