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Engaging Labor through Contractors

Given all the regulatory and technical challenges of managing labor and the risks of incurring fines or other penalties for infractions of law, many growers contract with an external entity for services on their land. Engaging workers through farm labor contractors (FLCs, also referred to as crew leaders in some places) and custom operators has increased as farm operators have sought more organizational flexibility, time for other management functions, and relief from legal obligations and exposures to liability.

Contractors can alleviate various difficulties, uncertainties, and costs associated with direct employment, especially the transaction costs of filling and laying off from short-term jobs during peak activity periods. Though dealing with contractors may involve other complications that farmers have to weigh against the burdens of hiring and managing their own employees, about three of five growers in California, for example, purchase services from at least one FLC, custom harvester, or pesticide applicator to supplement or substitute for workers they hire as employees.

Legal Considerations in Contracting

The form in which labor is engaged to work on a farm has important practical consequences. Doubts have increased about whether farmers actually reduce their legal risks as employers by purchasing labor services from contractors. Although FLCs who operate properly and independently do lessen risks for both growers and workers, growers may leave themselves open to joint liability for negligent and unlawful acts committed by contractors with whom they do business, especially those who are poorly equipped or operate unscrupulously.

Farm and ranch operators are liable for harm caused by the negligence of their employees while acting in the scope of employment, but generally not for negligent acts of an independent contractor and its employees. Similarly, labor laws protect employees, not “independent contractors,” and such contractors are responsible for lawful treatment of their own employees. When the relationship between grower and labor contractor has the characteristics of employment (rather