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Home Delivery of Farm Products

Local farmers are adjusting their business operations to incorporate new ways of getting their products to customers and seizing the opportunity to add new marketing channels to their existing farm businesses. For many farmers, this shift has meant delivering products directly to the doors of their customers. If you are a farmer engaged or considering engaging in home delivery of farm products, this guide outlines some legal considerations to keep in mind.

Things to consider when transporting and delivering farm products to the homes of customers:

Direct sales to customers can be facilitated through social media forums, online sales platforms or mobile phone applications, such as WhatsGood and Market 2day. You may also be able to team up with other farmers or join a food hub to get products to market. Whatever method you choose, you will need to deliver or arrange for delivery of your products to the homes of your customers.

Who will be packing and delivering the products and what vehicle will be used?

Using Farm Labor

If the person responsible for packing goods for delivery or the driver of the vehicle making the deliveries is a farm employee, state law may require you to pay the employee differently for this work than for work done on the farm. This is true in Massachusetts, for example, where employees engaged in agricultural work are exempt from minimum wage and overtime pay requirements. Activities like packing and delivery of farm products for customers would **not** be typically considered agricultural work and therefore would not qualify for the exemption.

If you ask employees who typically perform agricultural work on the farm (and are paid accordingly) to pack and deliver farm products, the hours they spend on packing and delivering activities (i.e., non-agricultural work) will be subject to the Massachusetts minimum wage and overtime requirements, whereas the hours spent performing traditional agricultural work may not. Accordingly, you will want to keep track of your employees' hours spent working in the different categories of work so that you can ensure you are paying your employees in compliance with applicable state law.



For more information about what is considered agricultural work in Massachusetts, please see our lightning guide: [Employment Rules for Agricultural Workers in Massachusetts](#).

Vehicle Insurance, Registration and Licensing

If you or your employees will be delivering farm products to your customers you should carry appropriate and adequate vehicle insurance. All drivers should be listed on the policy. Because the delivery vehicle is being used for business purposes, you will likely need a commercial automobile insurance policy. The amount or nature of coverage may vary based on whether the vehicle used is registered as a passenger vehicle, commercial vehicle, or farm vehicle as well as whether the driver of the vehicle has a commercial driver's license. Contact an insurance agent to determine the right type and level of insurance for your delivery program.

Additionally, depending on the particular vehicle used for delivery, e.g., personal car or commercial van, different registration and licensing requirements may apply.

Mitigating risks to the driver, vehicle and third parties during delivery of farm products

Home delivery of farm products presents potential risks to the driver making deliveries and the vehicle used for delivery. However, you can implement strategies to mitigate these risks.

One obvious and significant risk to the driver and vehicle are accidents while driving. Having adequate vehicle insurance is key in protecting the business against liability for accidents (See discussion above.).

Other risks to the delivery person include accidents which may occur while making deliveries at the homes of customers, ranging from slip and falls to dog bites. To help avoid such events or reduce their financial impact:

- Establish good lines of communications with customers, collecting information about potential risks at each delivery site, such as whether there are dogs on site that may be protective of the property or other hazards to be aware of, such as broken front porch steps.
- Carry workers' compensation insurance as required by applicable law. You will also want to make sure that your workers' compensation policy covers any employees you use for delivery services.
- Make sure your general liability insurance covers the activities of the home delivery program. General liability policies that you carry in connection with an operating farm typically only cover issues that arise on the farm itself. You may want to obtain additional liability coverage for your farm's delivery operations. Contact your insurance

agent to explain the changes you have made to your business operations in order to maintain adequate insurance coverage for all activities you are engaged in.

In order to protect both your employees and your customers during the current COVID-19 pandemic and in similar public health emergencies, you should make sure that you and your employees comply with safety precautions published by the State in which you are operating, the Centers for Disease Control and any other applicable governmental or industry authority.

Such measures can include:

- Maintain social distancing when interacting with customers
- Establish contactless methods of payment, such as online payment and tipping
- Wear masks whenever interacting with fellow employees or customers

Mitigating risks related to the products being delivered

Home delivery of farm products presents two types of risk related to the products being delivered. First, there is the risk **to** the product itself while in transport, such as spoilage, damage or total loss of the product. Second, there is a risk that a product damaged or spoiled by handling or during transportation may cause illness or other harm when it is consumed by the customer. There are strategies you can implement to address these risks as well. When speaking with your insurance agent, ask whether farm products to be delivered are insured against loss by existing policies and whether new or different coverage would be appropriate. You can also ask whether sufficient product liability coverage is in place in light of the new delivery operations.

It is also important to implement a food safety protocol for those involved in transporting goods. The protocol should include strategies for maintaining proper travel temperature for products, use of personal protective equipment, and instructions for securing items within the delivery vehicle. To maintain transparency, the protocol could be communicated to existing and potential customers.

The following practical suggestions may also help limit damage to farm products during delivery:

- Use efficient delivery routes (perhaps through use of apps such as Google Maps, OptimoRoute, RoadWarrior, Farmigo)
- Organize customers into delivery zones and assign different delivery days among zones
- Keep internal recordkeeping for deliveries, which could include a delivery log to detail each delivery and, if possible, a time-stamped photo of where the products were left
- Keep a vehicle inspection log to ensure cleanliness of delivery vehicles
- Keep a maintenance schedule for each vehicle to prevent breakdowns during delivery
- Provide customers with delivery instructions, an ETA, and product details
- Advise customers to leave a cooler outside to store the farm products if no one is home

Using independent contractors for delivery

You may decide to engage independent contractors to handle deliveries, rather than making deliveries yourself or by using your employees. Below are some pros and cons of hiring to consider regarding using independent contractors for delivery.

Pros

- Potentially no need to provide and outfit a delivery vehicle
- Fewer insurance (vehicle and general liability) and licensing issues, provided the independent contractor is compliant with applicable requirements
- Avoid issues relating to minimum wage, workers' compensation, overtime, or health insurance, provided the contractor qualifies as an independent contractor
- May work well on an as-needed basis

Cons

- May result in less personal interaction with customers
- May be more expensive – who will pay the delivery fee and how will that fee be factored into the overall cost of the products?
- Greater opportunity for mistake or error if supervision is less intensive and an additional person is involved in the chain of delivery
- Risks of misclassifying employees as independent contractors

For more information on the distinction between an employee and an independent contractor, see page 13 of our [Employment Law Guidance for Massachusetts Farmers](#).

When must sales tax be collected and paid?

Whether or not sales tax must be collected on the sale of farm products varies from state to state. In Massachusetts food for human consumption that is not sold ready-to-eat is generally exempt from the State's sales tax.¹ Such tax exempt items include fruits, vegetables, dairy products, meat, grain, and spices. However, meals and certain foods sold in ready-to-eat or prepared format may be subject to sales tax, as well as non-food items such as soap or flowers. Keep in mind the need to collect and pay sales tax if you sell and deliver items that may be seen as a meal or ready-to-eat or non-food items.

¹ See MASS. GEN. LAWS ANN. ch. 64H, § 6(h) (West 2018); 830 MASS. CODE REGS. 64H.6.5 (2017).

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