



TOP LEGAL ISSUES ON THE DAIRY FARM – 2014

Several issues face dairy agriculture in 2014. This article is intended to be a brief summary regarding several developments from recent months/years of which the dairy producer should be aware.

(1) Premises Liability: Iowa Legislature Acts to Protect Farms

Iowa agriculture was surprised with a February 2013 decision by the Iowa Supreme Court regarding possible liability for injury when an individual visiting the farm on a school tour is injured. See my article entitled "Should you allow farm visits?" on ISU's Ag Decision Maker blog: <http://blogs.extension.iastate.edu/agdm/2013/02/25/should-you-allow-farm-visits/> The key issue related to Iowa's recreational use statute (Iowa Code chapter 461C) which provided some protection for Iowa landowners who allow access to their land for various recreational uses listed in the statute. However, the Iowa Supreme Court noted the statutory list did not include educational tours or persons who may accompany school groups as chaperones. The 2013 legislature took notice and revised the code section to include "educational activities" as well as chaperones. Despite this needed legislative change, farmers are still well-advised to take note of farm hazards and be vigilant about farm safety for family members and employees as well as occasional visitors to the farm. Further, it is always a good idea to conduct regular reviews with insurance and legal professionals regarding farm premises liability insurance policies to assure those are updated and that coverage is adequate. In particular, if the dairy farm operation moves into the realm of "agri-tourism" – offering farm-based activities for a fee (tours, day camps, bed-and-breakfast and the like) it is vital to inform insurance and legal advisors to obtain proper coverage for mishaps that may occur as part of such activities.

(2) Federal Estate Taxation: Congress Acts to Help Farmland Owners Avoid the Cliff

In the earliest days of 2013, Congress passed the American Taxpayer Relief Act (ATRA). See my article Federal Estate, Gift Taxation and the "Fiscal Cliff": Where Did We Land in 2013? On the Ag Decision Maker blog: <http://blogs.extension.iastate.edu/agdm/2013/01/07/a/> This is of particular importance to Iowa farmland owners in light of increasing land values, especially during the past decade. ATRA made a number of key provisions related to federal estate and gift taxes permanent which brings a level of certainty for professional planners and those who have estates that could be impacted by federal estate or gift taxes. Rather than a possible reversion to old levels, ATRA makes a \$5 million estate tax exemption amount permanent and this exemption will continue to be indexed for inflation – expected to be up to \$7.5 million by 2020. Nevertheless, farmland owners should not ignore farm estate and succession planning based on a belief that the federal estate tax bite is being avoided. ISU Extension and Outreach offers farm estate and succession planning workshops and materials – please check with your county extension office to find out about events near you.

(3) Iowa's "Ag-Gag" Law is in effect: Will it survive a freedom-of-speech constitutional challenge?

In 2012, Iowa and Utah became the first two states to enact what have been called "Ag-Gag" laws. These statutes impose criminal penalties on persons who seek to be animal abuse whistleblowers by surreptitiously gaining access to an "animal facility" (farm). See Iowa Code 717A.3A ("Animal Production Facility Fraud"). Discussion continues within the agricultural community regarding whether these laws are helpful or damaging to the image of animal agriculture. Beyond this, some legal commentators believe that such laws will not survive legal constitutional scrutiny under freedom of speech challenges related to news-gathering functions. The purpose of raising this issue is two-fold: (1) Do not think that an "Ag-Gag" law will protect you from persons who may seek wrongful access to your operation. Always check references and conduct background checks of potential employees, just as you always have. See the "Checklist for Iowa Agricultural Employers" on Ag Decision Maker. (2) The best protection against whistleblower activity is education and maintaining best practices on your farm regarding livestock handling – educate and train all employees in good practices and maintain constant vigilance that these practices are followed consistently.

(4) New Forms: USCIS Introduces a New I-9 Form in 2013

All employers should be using the new I-9 Form introduced by the US Citizenship and Immigration Service in 2013. Remember, effective in May 2013, this new I-9 Form is the only acceptable form that must be completed for all new employees. Many farm employers continue to have questions about how the I-9 should be completed. This new I-9 Form has seven (7) pages of instructions, and the USCIS website also has booklets and on-line videos regarding correct procedures and recordkeeping related to the I-9 Form. The new I-9 Form is easier to read and the instructions are clearer than those with older versions. Check out the I-9 Central portion of the USCIS website at www.uscis.gov/i-9-central.

(5) Pay Your Employees for ALL Hours Worked

Legal commentators note an increase in claims by employees (and former employees) that they have not been paid for all hours worked. These claims result in significant additional liability (*i.e.*, money owed) by employers to their employees. There are several reasons for these additional claims. First – employers have become careless or misunderstand the basic rule that if an employee is allowed to work, such time worked is paid time. Here’s an example: An employee consistently comes to work early to make sure that all her supplies and equipment are in order so she can start her shift promptly – and likewise stays late at the end of the day to make sure that everything is completed and cleaned adequately. This employee is consistently working an extra 30 minutes each day. This is work time, and the employee is entitled to be paid for it. It does not matter if the employer did not ask her to come in, or even has mentioned that she doesn’t need to come in early or stay late. She is there working, the employer knows it and has allowed her to do it. The employer is obligated to pay wages for all time worked. The basic rule is where the employee is doing work of benefit to the employer, the employee is entitled to be paid for that time. Second, many employees have smart phones, cell phones, or other mobile devices – and the employer uses those means of communication to contact the employee at all hours of the day and night regarding work issues. Sending texts or e-mails to employees regarding issues at the dairy can become “work time” which must be paid to an hourly employee. If an expectation is created that an employee should be available at all hours, and is required (for example) to respond to a 15-minute phone call on an issue related to the dairy, this can be time for which the employee must be paid. Dairy owners may need to think about how they are using electronic communication devices, or discuss this issue with management team members. Again, if employees are engaged in activity which benefits the employer, and the employer is aware of it and permits it, the time spent is work time for which the employee must be compensated.

(6) Manure Management on Small Dairy Farms

While large dairy farms may traditionally have had more heightened awareness regarding manure management, small dairy farms definitely need to increase knowledge and adherence to manure or runoff management. The definition of a “small dairy” has some variation – but for this purpose, any dairy operation with less than 1,000 animal units where animals have access to outside yards, pens or lots not completely housed under a roof at all times may fall into the description of a “small dairy.” In regard to manure management concerns, this type of dairy may be considered a medium-sized CAFO (concentrated animal feeding operation) and subject to particular requirements and regulations. It is beyond the scope of this brief article to outline these requirements – but dairy producers should analyze their operations and determine whether they may be subject to applicable Iowa DNR or EPA regulations. Throughout Iowa we have seen increased scrutiny by regulatory agencies of manure management practices. Dairy producers should be proactive, get educated and seek technical assistance to assure compliance. A summary of these issues along with a list of resources can be found at the Iowa Manure Management Action Group (IMMAG) page of the ISU Extension and Outreach website – www.agronext.iastate.edu/immag/ – then click on the link for small dairy producers.

Dairy producers with questions about any of these issues should seek technical advice and consult with their own legal advisors who are familiar with their situations.

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