

MANAGING LEGAL LIABILITY SERIES: Workers' Compensation & Vendor Liability for Farmers' Market Owners and Operators

Scott DeNoon, CPCU, API, AFIS, AIS, CIC, Virginia Farm Bureau
Jesse Richardson, Associate Professor, School of Public & International Affairs
Martha A. Walker, Ph.D., Community Viability Specialist

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.

Every Virginia employer who regularly employs *three (3) or more* full-time or part-time employees must purchase and maintain workers' compensation insurance. For farm and horticultural operations, the threshold is slightly different in that they are not subject to the Virginia Worker's Compensation Act unless they have *more than three (3)* full-time employees. However, 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 worker's 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 lawsuits asking for very large amounts of damages. Workers' compensation law limits damages for injuries to a certain number of weeks of 66 2/3 percent of regular wages.

For example, an employee that loses a thumb (or has permanent loss of use of a thumb) receives 60 weeks x 66 2/3 percent of his regular wage. If an employee makes \$500/week, he will receive \$19,998 (60 x .6666 x \$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 may not file a lawsuit that may go on for years and that may result in a huge award for the employee, or may result in the employee getting nothing.

In general, farmers' market operators with three or more 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 apprentices and aliens, regardless if they are lawfully or unlawfully employed. For farmers' markets, employees can be any of the following:

- Family members
- Minors
- Full-time workers
- Part-time workers
- 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 Liability

General liability insurance can and should be purchased by farmers' market operators to address exposures related to ownership of the market (i.e. premises & operations, 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 permitted to sell their products at the market. The owner and/or operator of the farmers' market should also be named as an additional insured. This precaution also applies to landowners renting property to a farmers' market operator.

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