

Cornhusker Economics

Cooperative Extension

Institute of Agriculture & Natural Resources
Department of Agricultural Economics
University of Nebraska – Lincoln

Nebraska Supreme Court Restricts Farm & Ranch Worker Compensation Exemption

Market Report	Yr Ago	4 Wks Ago	8/30/02
<u>Livestock and Products,</u>			
<u>Average Prices for Week Ending</u>			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt	\$69.98	\$62.35	\$63.15
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt	96.75	82.00	83.25
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg	104.21	90.63	89.36
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt	107.75	97.60	99.16
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt	44.00	36.50	21.00
Feeder Pigs, US 1-2, 40-45 lb Sioux Falls, SD, hd	*	17.06	10.00
Vacuum Packed Pork Loins, Wholesale, 13-19 lb, 1/4" Trim, Cent. US, cwt	115.70	105.11	82.67
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt	*	80.25	*
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt	*	162.86	161.95
<u>Crops,</u>			
<u>Cash Truck Prices for Date Shown</u>			
Wheat, No. 1, H.W. Omaha, bu	2.99	3.86	4.39
Corn, No. 2, Yellow Omaha, bu	1.92	2.36	2.62
Soybeans, No. 1, Yellow Omaha, bu	4.63	5.58	5.37
Grain Sorghum, No. 2, Yellow Kansas City, cwt	3.68	4.43	4.90
Oats, No. 2, Heavy Minneapolis, MN, bu	1.43	1.86	2.08
<u>Hay,</u>			
<u>First Day of Week Pile Prices</u>			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton	102.50	105.00	142.50
Alfalfa, Lg. Round, Good Northeast Nebraska, ton	67.50	82.50	92.50
Prairie, Sm. Square, Good Northeast Nebraska, ton	105.00	117.50	120.00
* No market.			

Agricultural workers comprise 6.6 percent of the Nebraska workforce; yet 33 percent of the Nebraska workplace fatalities from October 1, 2001- September 30, 2002 were agricultural related. This means that agricultural work related fatalities were 500 percent of agriculture's proportionate share. Obviously, agriculture is a hazardous industry. Nonetheless, Nebraska statutes §48-106(2) states that "the following are declared not to be hazardous occupations . . . : employers of household domestic servants and employers of farm and ranch laborers . . ." On July 26, 2002, the Nebraska Supreme Court ruled in *Larsen v D B Feedyards*, 264 Neb 483, that a cattle feedlot was not entitled to the farm and ranch laborer exemption where 50-75 percent of the cattle in the feedlot were being custom-fed. This newsletter discusses impact of the *Larsen* decision on Nebraska worker compensation law for agricultural producers.

Worker compensation. Prior to the enactment of worker compensation statutes employers were legally liable for job-related employee injuries only if the injured employee could prove in court that employer negligence had led to the employee's injury. If the employee's own negligence (or that of a fellow employee) contributed at all to the injury, the employee was denied recovery. As a practical matter, injured employees rarely were able to recover money damages from employers. State legislatures during the Progressive era decided that this fault-based approach to compensation of injured employees was poor social policy. Injured employees and their families often were destitute when the family breadwinner could not work, and had to go on relief (i.e. welfare) until the employee was able to return to work (if ever). This led to the current worker compensation system, originally adopted in Nebraska in 1913.

Under Nebraska worker compensation statutes, employees injured on the job are entitled to recover damages unless the worker was intoxicated or willfully (i.e. deliberately) negligent. The injured employee is entitled to recover damages even if the employee was negligent, or another employee contributed to the injury. The worker compensation program is



considered to be a “no-fault” compensation system because recovery is allowed regardless of fault. This protects the worker’s family during the period of the injured employee’s recovery.

The amount of monetary recovery is specified injury-by-injury in Nebraska worker compensation statutes for both temporary injuries and permanent disability. An injured employee can recovery directly from the employer (if the employer is self-insured - that is, uninsured) or directly from the employer’s insurance company. If the employer or insurance company refuse to pay, the injured employee can attempt mediation, or file a claim with the Nebraska Workers Compensation Court (<http://www.nol.org/home/WC/>).

Agricultural exemption & custom work. The farm laborer exemption was part of the 1913 worker compensation statute. The ranch worker exemption was added in 1945. The rationale for the 1913 farm laborer exemption may have been that most farm labor was provided by family members. That is probably still true for smaller Nebraska farms and ranches but not for larger operations.

The Nebraska Supreme Court has consistently ruled, prior to the 2002 *Larsen* decision, that employees involved in custom work for others, rather than in direct agricultural production by the employer, are not covered by the farm or ranch laborer exemption. The cases include *Campos v Tomoi*, 175 Neb 555 (1963) (employee injured during commercial hay grinder operation) and *Hawthorne v Hawthorne*, 184 Neb 372 (1969) (employee injured during commercial custom combining operations). In both cases the Nebraska Supreme Court ruled that if the employee was engaged in providing commercial services to other farmers, the work was custom (or commercial) work and not farm labor, and the injured employee was entitled to worker compensation benefits.

Judicial warning. In 1969, the Nebraska Supreme Court observed that “the statement contained in §48-106(2) to the effect that farm or ranch labor is not a hazardous occupation is patently [i.e. obviously] silly” This was a clue that the Nebraska Supreme Court was uncomfortable with the farm and ranch laborer exemption and would likely interpret that exemption as narrowly as possible in order to allow no-fault worker compensation recovery to more injured workers.

The Larsen decision. In *Larsen* the employee injured his thumb while roping a steer in the defendant’s feedlot. Fifty to seventy-five percent of the cattle fed in the defendant’s feedlot were custom fed, and the steer being roped at the time of the injury was being custom fed. The injured employee filed a worker compensation claim. The Worker Compensation Court judge and the three-judge Worker Compensation Court appeals panel both ruled that the employee was not covered by the farm and ranch laborer exemption and was entitled to recovery against the feedlot.

The Nebraska Supreme Court ruled that the following factors justified the worker compensation judge ruling that the injured employee was not a farm or ranch laborer: (1) the feedlot was organized as a commercial business of custom cattle feeding; (2) the feedlot averaged 5,000 cattle on feed,

50-75 percent of which were being custom fed; and (3) the plaintiff was injured when roping a custom-fed steer.

The dissenters. The *Larsen* decision was a split decision, with the justices voting 3-2. Two dissenting opinions were issued. The first suggested that it was absurd to rule that a feedlot worker was exempt from worker compensation if injured while roping a non-custom fed steer, but would be entitled to compensation if injured while roping a custom-fed steer. This observation ignores that whose steer was roped was only one of the three factors the Supreme Court identified as justifying the decision, as well as the two previous cases ruling that custom work is not farm or ranch labor. My interpretation is that the majority opinion in *Larsen* probably would have allowed recovery by the injured feedlot worker even if the steer being roped was not a custom-fed steer.

The second dissenting opinion recognized that the Nebraska Supreme Court has long been uncomfortable with the farm and ranch laborer exemption and that the 1969 decision quoted earlier was a clear signal to the Legislature to reconsider it. The dissent encouraged the Legislature to revisit that issue soon.

Commentary. Agriculture is obviously a dangerous occupation. There is no factual basis for the farm and ranch labor worker compensation exemption, and it should be repealed. While closing this loophole might raise insurance costs for some agricultural operations, it would also provide an important measure of financial protection to workers who are in obvious need of it. No doubt the Unicameral will address this issue in 2003.

In the meantime, agricultural operations that are primarily (more than 50 percent) custom operations should no longer assume that they will be entitled to a farm or ranch labor worker compensation exemption. If these operations have not yet provided worker compensation insurance as an employee benefit, they should seriously consider doing so.

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