

# DEVELOPING HIRING PRACTICES

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# Agriculture Law Education Initiative

The Agriculture Law Education Initiative is a collaboration between the University of Maryland Francis King Carey School of Law and College of Agriculture & Natural Resources, University of Maryland, College Park. Through the University of Maryland Extension - the statewide, non-formal agriculture education system - the collaboration partners with the School of Agricultural and Natural Sciences, University of Maryland Eastern Shore.

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# Thank you

Partially based on previous presentations given by Shannon Ferrell, Oklahoma State University, and Tiffany Lashmet, Texas A&M.



# OVERVIEW

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# Hypothetical Farms: A Case Study

- Dairy milking 2,000 cows; 28 employees.
- Added four employees to help with milking.
- Each applicant was interviewed and the owner called references given.
- The farm does not have an employee handbook, written policies, or contracts with employees.

# Hypothetical Farms (cont.)

- The owner notices one of the new hires arrives early and leaves late after his shift is over.
- One month later, the owner gets a call from a TV reporter in the nearest big city, seeking a comment on the YouTube video being released that afternoon by PETA, depicting animal abuse on his farm.

# Hypothetical Farms (cont.)

- Within hours, the farmer has hundreds of requests for interviews and comments, the sheriff has arrived, death threats are pouring in home phone and cell phones of owner, wife, and children.
- The owner goes online and views a horrific video depicting his employees striking the cows, poking them with pitch forks, kicking them in the ribs, etc.



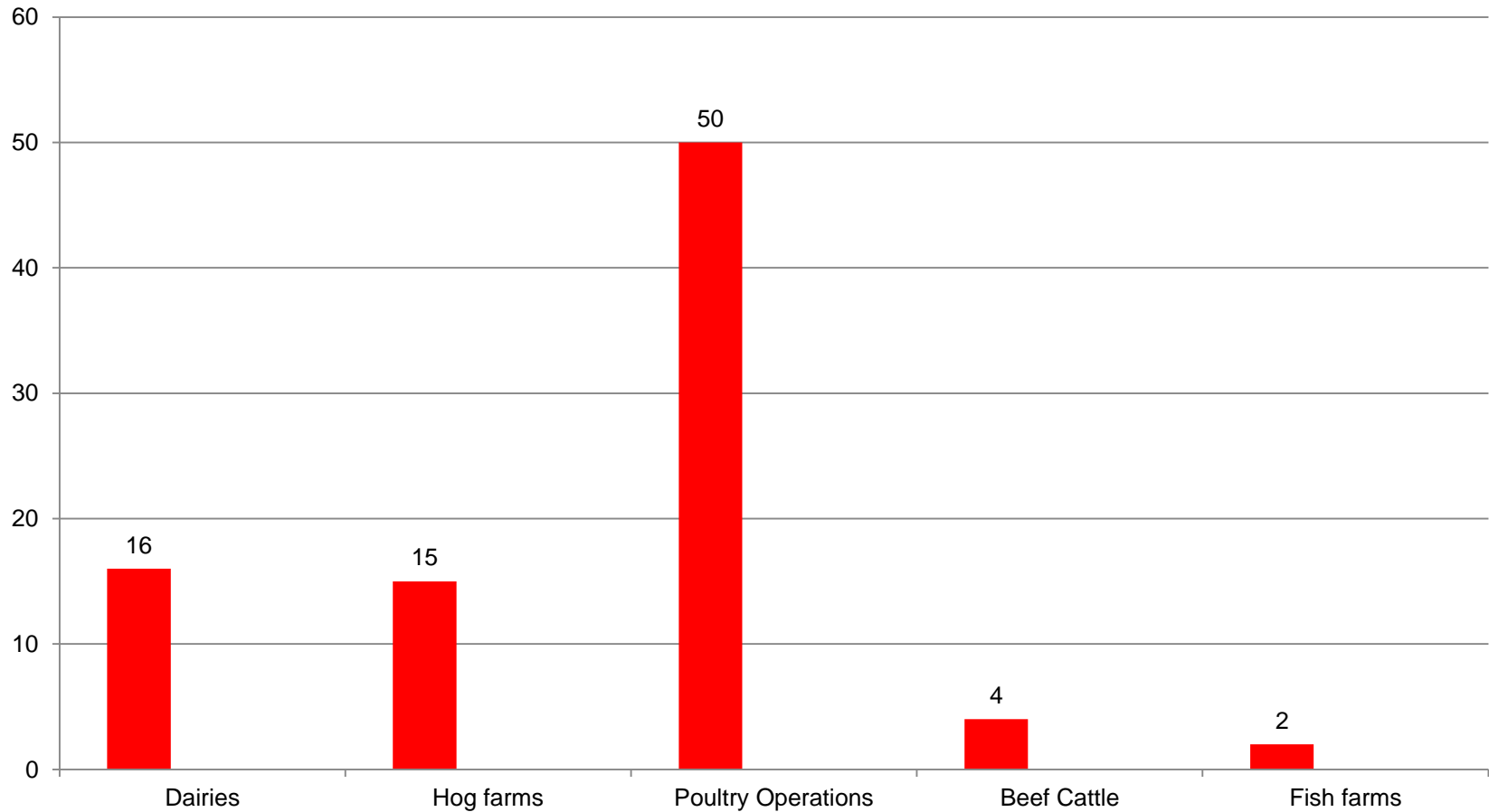
# Hypothetical Farms (cont.)

- The next day, the farmer fires the employees abusing animals on the video.
- Farmer stumbles through a statement that left him looking confused and defensive.
- Within hours, the farmer's milk buyer has called and cancelled their contract.
- In a nutshell.....the farmer's world and the family business that has been building for generations is crumbling around him.

# Hypothetical Farms (cont.)

- Interviews with remaining employees indicate they had not seen this type of behavior; the videographer befriended the two employees as soon as he arrived.
- Circumstantial proof videographer encouraged and even paid two employees to take the abusive actions .
- The videographer disappears, never to be seen or heard from again. His references turn out to be false.

# Undercover video releases by sector



# Overview

- You have heard the old adage “the best defense is a good offense”?
- Goal is to give you tools to put you on offense



# Overview

- Why offensive?
- Can't un-ring the bell
- Changes the hypothetical around



# Overview

- Where are we going?
  - Possible legal theories if you are on the defensive (and limitations with them)
  - Employment Law (your offense)
  - What can you do (implementing your offense).

# LEGAL THEORIES

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# FARM PROTECTION STATUTES (AKA “AG GAG LAWS”)

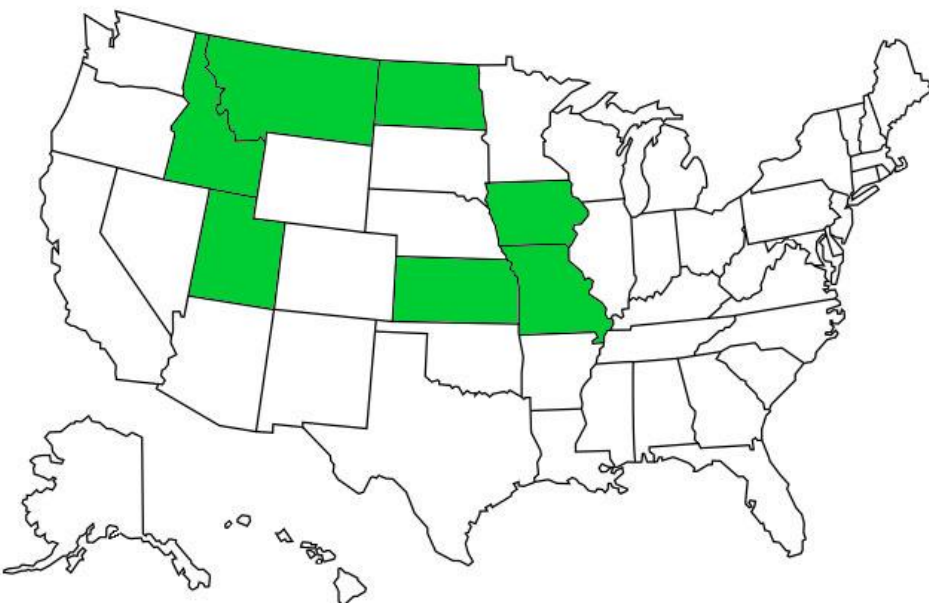
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# Understanding the Law: Legislative Approach

Bills Passed

7



Bills Failed

18



# Common Provisions of Farm Protection Laws

- Prohibition on trespassing to video an ag operation.
- Prohibition on seeking employment with intent to video an ag operation.
- Prohibition on seeking employment using false information.
- Requirement that all animal abuse be reported to authorities w/in 48 hours.
- Criminal violations

# Potentially Unconstitutional

- Federal district court in Idaho found Idaho's to be unconstitutional
- State is appealing that ruling to 9<sup>th</sup> Circuit
- Utah's is also being challenged



# OTHER LEGAL THEORIES

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# How can farms “prosecute” spies?

You could sue for...	...but
Fraud	would not affect employees using actual credentials / not lying in hiring process
Trespass	absent fraud, requires statute
Breach of duty of loyalty	vague common law doctrine
Conspiracy	very difficult and complex to prove (= \$)
Defamation	better be right or you won't like the trial; truth defense

# Further,

- Principal is EXPENSIVE  
(often  $\approx$  \$200,000 to trial)
- Videographers frequently “judgment proof”
  - Broke
  - From another state
- Hard to get proof to obtain judgment against larger activist group.
  - Often no formal tie
  - Obscured ties (proof of conspiracy)
  - Volunteered for activity

BETTER SOLUTION?

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# Hire Good People

- Develop good hiring practices
- Develop employee handbook
- Follow those always





# HIRING PRACTICES

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# Hiring Practices

- Require a signature on employment applications which ensures all information provided is true under penalty of perjury.
- Ask about group affiliations. An animal activist group affiliation may raise a red flag to at least put you on alert to pay close attention for any future inconsistencies.

Employment Application							
1. Personal Information							
Name				Date of Application			
Address							
Home Phone				Work Phone			
Cell Phone				Email			
2. Position Information							
Position Desired				Pay Scale			
Date Available				Type of Employment			
Hours Available							
3. Education History							
	School	Name and Location		Graduated	Area/Subjects of Study		
1							
2							
3							
4							
5							
4. Specialized Skills							
1							
2							
3							
5. Work History							
	Company Name	Position	Date Started	Date Ended	Type of Employment	Pay Range	Phone Number
1							
2							
3							
4							
5							
Have you ever been employed by a previous employer?							
If not, why not?							
Reason for leaving most recent position:							
6. References							
	Name	Nature of Relationship		Length of Relationship		Contact Information	
1							
2							
3							
4							

# Hiring Practices



**Alias**

- Ask for any prior names or aliases.
  - This will be important for a background check
- Ask for references → call these references with all names and aliases in hand
- Ask if a potential employee owns any video or recording equipment (which these days includes a cell phone). Keep track of who does.

# Hiring Practices

- Include a signed statement that such recording devices may only be used with your permission.
- Make sure to check references if, of course, potential employee grants you permission. You must have permission.



# Hiring Practices

- Check the potential employee's social media pages (facebook, twitter, instagram, etc.).
- Adopt, and make known, policies prohibiting recording or photographs.



# Hiring Practices

- Adopt, and make known, policies against cell phone use on operation premises.
- Adopt, and make known, policies requiring immediate reporting of animal cruelty, abuse, contamination, and the like.



# Hiring Practices



- Consider using a non-disclosure agreement (NDA) in addition to your employment contract.
- An NDA protects your business information from being released to the public or a third party.



# Hiring Practices



- Additionally, make known that any recordings or photographs are property of the dairy.
- Use your long-time trusted employees as your own eyes during the day-to-day operations.



# Hiring Practices

- Have compliance training on your farm policies and procedures to ensure the information is well understood by your workforce.
  - Consider also have a handbook of these policies and make sure each employee has a copy



# Hiring Practices



- Lastly, consider doing your own undercover investigating to ensure all employees are following policies and procedures as well as to ensure your operation is in full compliance with all regulations.

# BACKGROUND CHECKS IN GEORGIA, FLORIDA, AND SC

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And GOOGLE!

# Background Checks

- Check references
  - Beyond phone calls: indirect references
  - Verify identities
  - Check websites of companies
- Google the employee's name.
- Pay to have thorough background check run through professional organization.
  - For example: BeenVerified or another type service

# Background Checks

- Georgia offers criminal background search but court records not online
- Florida offers criminal background search (costs) and court records online
- South Carolina offers online court records search by county but no online criminal background search.
- Alabama offers criminal background checks but not court records

# WARNING SIGNS

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# Monitoring social media

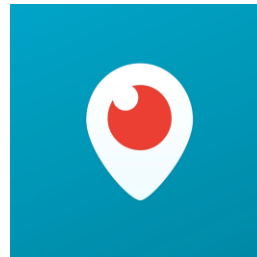
Content/sharing:



Photography:



Live-streaming:



# Warning Signs (and a warning about warnings)

- Seeing employment below skill level
- Previous jobs are out of character with what they are seeking
- Volunteering for work with no pay
- Out of state and/or newly obtained drivers' license
- Usually young (age 18-30)



# Warning Signs

- May seek short term work
- Asking questions about security and/or time schedules
- Volunteering for jobs before/after normal business hours
- Arriving early/staying late
- Volunteering for less desirable jobs that involve conduct with animals.

# Warning Signs

- Mingling with upper management
- Frequently seen in places their job should not take them
- Employees want to see places because they've always wanted to see how something was done

# EMPLOYEE HANDBOOKS

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Y 'all have one right?

# Employee Handbook/Contract

## Animal Handling Policies

- Require that employee review and sign acknowledgement of all written practices.
- Explicitly require strict adherence to best practices for animal handling; explicitly prohibit abusive behavior.
  - AND CONSISTENTLY ENFORCE IT!!!
- Require that any abuse be immediately reported to their supervisor and owner.

# Employee Handbook/Contract

## Intellectual Property / Social Media Issues

- Cell phones must be left in vehicles or lockers. Cameras may only be used with written permission from the owner.
- Provide that any photos or videos are property of the company.
- Prohibit use of social media while on duty
- Consent to notify of all social media accounts and monitoring of same.

# A Final Word on Handbooks and Policies

- Develop with the help of HR professional and attorney
- Train and refresh employees
- 
- Consistently and fairly apply them; failing to do so can cause more damage than they prevent



# Employee Training

- Develop policies for animal care and handling.
  - General animal handling
  - Dealing with downed cattle
  - Euthanasia procedures
  - Medical treatment necessity
- Have recurring, mandatory trainings on these policies.

# Employee Training

- Ensure employees have tools and equipment identified in policies.
- Keep long-time, trusted employees on the look out for suspicious activity.
- Conduct your own undercover investigation to ensure best practices are being followed.



# FIRING PRACTICES

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# Firing Practices

- But, Paul isn't it just?
- Slightly, but still are legal considerations



# Civil Rights Act of 1964



- Will prohibit discrimination based on:
  - Race
  - Color
  - Religion
  - Sex
  - National origin
  - Disability
  - Age

# Civil Rights Act of 1964

- Example:
- Bad: Jon, you are fired because you are a Mississippian and you stole \$200.
- Good: Jon, you are fired because you stole \$200



# AT-WILL EMPLOYMENT VS. CONTRACT

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# At-Will Employment

- Means employment is at will of employer and employee
- Typically, at-will employment is for indefinite period of time
- Either party can terminate relationship regardless of reason (unless would violate another law)



# Contract



- Employment contract can also overrule firing for no cause.
- If contract is for period of time (Ex: 2 years, for growing season, etc) then employer gives up ability to terminate employee for no cause.

# Contract and Handbooks

- Both can limit termination to when job performance is unsatisfactory or breaches terms in employment contract/employee handbook.
- Limiting is 2-edged sword
  - Gives employee more security
  - Can potentially require you to do employee evaluations
  - Can require you to follow the handbook (but isn't that why it exists?)

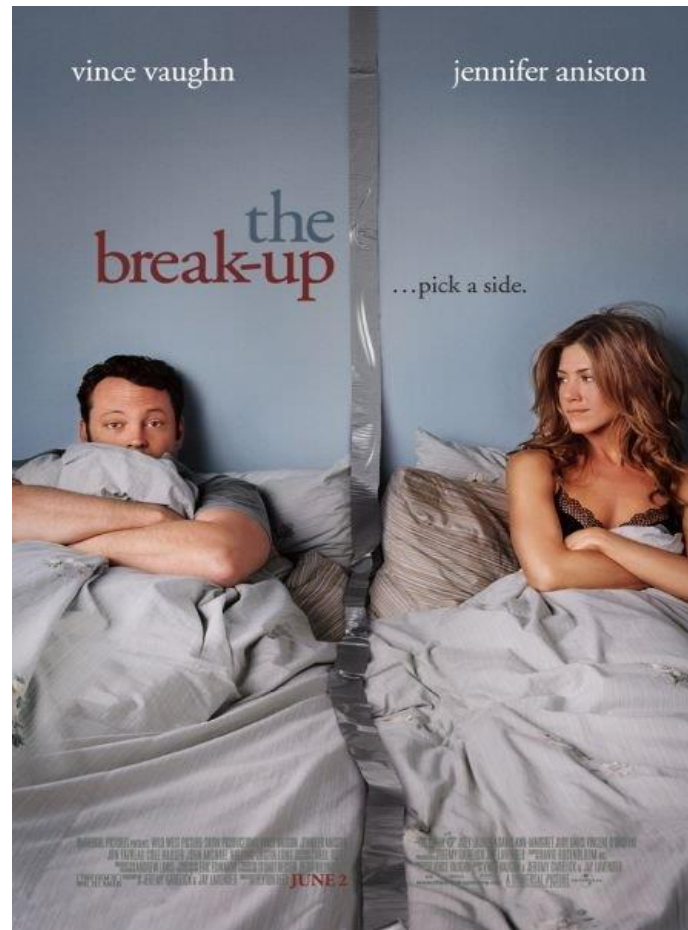


# Terminating

Because you may get sued for wrongful termination (rare but could happen)  
document in your files  
why you fired the person.



# Or what to do when the relationship ends?



# Wages

- You will need to pay terminated employee for any wages earned.
- Unless company policy is different, potentially could be required to pay for unused leave



# Equipment/Tools



- Make sure former employee returns any tools and equipment they might have
- Develop inventory and checkout procedures
  - Yes it takes time, but
  - You want your equipment/tools back right?

# Inventory Management

- Can be as simple as keeping files on serial numbers of equipment
- Taking photos of tools
- Or using other ways to indicate you own that

# Locks and Passwords

- Remember to change the locks to areas the former employee might have had keys to
- Change passwords to any accounts the former employee may have had access to.



# BEFORE THE EMERGENCY

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# Before the Emergency

- Bad actors will slip through the cracks
- What else can you do?
- Put together a response team:
  - Attorney
  - Vet
  - Media person





# Before the Emergency

- Identify who should be involved and make assignments clear.
- Appoint a spokesman, ideally with media training.
  - May not be you
  - Maybe family member or other employee
- Have a written communications policy in place.



# If The Emergency Hits

- Immediately send a spoliation letter to keep entire video.
- Seek injunction from video being played.
- Take swift action to terminate employees who acted improperly.
- Take responsibility.



# From The Horse's Mouth...

- Build goodwill in your community before this occurs.
- Hire a media firm and ensure spokespersons have media training.
- Invest in background checks on new hires.
- Write down every policy, procedure, and best practice you have.
- Increase transparency.

WRAP UP

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# Wrap Up



- Developing hiring practices is not easy
- Need to do background checks to ensure don't hire bad actors
- Be on the lookout for the warning signs

# Wrap Up

- Develop employee handbooks/guidelines
- Stick to those guidelines and provide trainings
- Monitor employees to ensure not abusing animals and fire/discipline anyone who does



# Wrap Up



- Consider developing a response team to help you quickly respond to abuse claims.
- Remember goal is to be on offensive/proactive and defensive/reactive

# THANKS!

# ANY QUESTIONS?

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