

Farm Animals and People: Liability Issues for Agritourism

Factsheet

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Peggy Kirk Hall

Associate Professor

Ohio State University Agricultural & Resource Law Program



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Who can resist the appeal of a goat, a calf, or a baby pig? Farm animals can be a valuable attraction for an agritourism operation. But having people and animals on the farm creates liability risks. Whether feeding, riding, petting, observing, or just being near farm animals, visitors could be harmed and agritourism operators could be liable for that harm. Understanding farm animal liability risks and utilizing tools to reduce those risks can help reduce both the possibility of visitor injuries and legal liability for the agritourism operator.

Negligence and legal duties for property visitors

Laws in every state establish legal duties that require landowners to keep visitors safe from harm on the property. These legal duties arise from premises liability laws made by our courts and also from various state statutes. Premises liability laws require landowners to take reasonable actions to protect visitors from foreseeable risks that could harm them. Some states command an even higher legal duty if the visitor is a customer, and require a landowner to protect a customer from unknown dangers in addition to those risks that are foreseeable to the owner. Legal duties for landowners can also derive from state and local statutes and regulations that call for specific actions a property owner must take in certain circumstances.

Whether a legal duty derives from court-made law or specific statutes and regulations, a visitor who suffers harm because the property owner violated the legal duty may be able to allocate liability to the property owner. Negligence is the typical legal theory for doing so. A negligence cause of action would assert that a property owner failed to meet the mandated legal duty,

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which caused the visitor's harm. If the visitor can prove that the landowner violated a legal duty that he or she had to the visitor and that the breach of that duty caused harm to the visitor, the landowner could be deemed negligent. A finding of negligence would make the landowner liable for the resulting harm suffered by the visitor.

Farm animals and premises liability law

Imagine the many foreseeable risks of allowing agritourism visitors to be around farm animals. A person could be stepped on, pushed over, thrown from, pinned, kicked, scratched, or bitten by an animal. Another increasingly common way a visitor can be injured is by getting an infection from an animal, referred to as zoonotic disease transmission. These dangers and risks to visitors posed by farm animals translate into legal duties for agritourism operators. According to premises liability law, an operator has the legal duty to take reasonable actions to protect visitors from the risks of being around farm animals. Reasonable actions can include removing or repairing dangerous conditions, keeping visitors away from them, or warning visitors of the dangers. If a visitor is harmed because an operator failed to take such actions, the operator could be subject to liability through a negligence claim.

Farm animals and statutory laws

An agritourism operator could also be negligent if his or her failure to meet a legal duty assigned in a statute or regulation caused harm to a property visitor. A variety of laws and regulations can relate to protecting people from the dangers of farm animals. The laws vary from state-to-state, so it's important to identify the precise laws that apply in a particular state. Two types of laws are most common: livestock containment laws and sanitation laws.

Livestock containment statutes

All but a handful of states have laws that require owners of livestock to contain or "fence in" their livestock. If an animal escapes its enclosure and causes harm to visitors or others' property, an owner could be liable for the harm. Most of these state laws don't create automatic liability for the livestock owner but instead require a harmed party to prove that the owner negligently breached the legal duty to contain livestock, such as by leaving gates open or failing to maintain good fences or stalls.

In the agritourism setting, livestock containment laws establish a statutory legal duty for operators to properly contain their animals. This duty could include using best management practices to build fences, gates, stalls and doors that are capable of containing livestock. Some state or local laws might also mandate particular types of enclosures or fences, such as requiring that fences be constructed according to Natural Resources Conservation Service Conservation Practice Standard Code 382. In addition to proper construction, an operator's legal duty would include inspection and maintenance of enclosures and regular monitoring to ensure that animals are in their enclosures.

Hand sanitation statutes

State hand sanitation laws establish hand washing facilities and education in order to prevent zoonotic disease transmission, a growing liability risk for agritourism operations. Zoonotic diseases occur when humans pick up animal germs by touching animals or surfaces contaminated by animals then transferring the germs to their mouths.¹ This accidental ingestion of animal germs can cause infections and diseases that may lead to illness or death, such as an e-coli infection from animal manure that led to permanent dialysis for a young child in Minnesota and a \$7.5 million judgment against the agritourism operation that hosted the child.²

Despite the high danger of zoonotic disease transmission from human-animal interactions, only seven states have hand sanitation laws that could reduce this risk. Of those, only the laws of New Jersey, New York, Pennsylvania and Washington could apply to agritourism operators, as the other laws apply only to fairs and public shows or exhibitions.³ While the sanitation laws vary from state-to-state, they generally address the placement of hand washing stations near animal contact exhibits. Some also require the operator to provide education for visitors about zoonotic disease transmission and how to properly wash hands and avoid contact with animal germs. Such requirements create statutory legal duties for agritourism operators, and an operator could be liable for harm to a visitor who contracts a zoonotic disease because the operator did not fulfill his or her legal duty to provide the required sanitation station or educational information.

Management practices and legal duties

There are many management practices that can help an agritourism operator meet his or her legal duties to keep visitors safe from farm animal dangers. Common sense suggests many of these practices, but it is also wise to refer to experts for recommended “best management practices” and industry standards. Don’t forget that state laws could also require an operator to follow certain practices. Following the steps below to identify and implement management practices can reduce the risk of a farm animal liability incident.

1. Assess the types of animal-human interactions that occur on the operation and the potential dangers visitors face from being near farm animals.
2. Identify required and recommended management practices that address each type of animal-human interaction or potential danger. See the chart below, and refer to specific laws and academic and industry experts in agritourism, farm animals, and farm safety.
3. Include emergency response planning that addresses what to do if there is an accident or emergency involving farm animals and people.
4. Develop and document standard operating procedures that implement the required and recommended practices.
5. Train all employees on how to correctly follow the standard operating procedures.
6. Continuously assess the property to ensure that practices are in place.

7. Maintain records of standard operating procedures, employee training protocols, and any actions taken to implement management practices. Records can include written materials as well as photographs and videos.

The following chart provides examples of management practices that address farm animal-human interactions. This is not a complete list. To finalize a list for a particular agritourism operation, refer to specific state laws and additional resources from experts such as those listed at the end of this publication.

Examples of Management Practices for Farm Animal-Human Interactions

<i>Farm animal danger</i>	<i>Examples of practices to keep visitors safe</i>
Being stepped on, pushed over, pinned, kicked, scratched or bitten by an animal.	<ul style="list-style-type: none"> • Construct and maintain fences that are capable of containing the specific types of animals. • Place barriers between visitors and animals and utilize locking mechanisms on doors and gates. • Allow animal contact only through barriers. • Regularly inspect all animals, fences, enclosures and gates. • Supervise all animal-human interactions. • Remove animals that have a history of negative interactions with people.
Falling off or being thrown from an animal, or falling off equipment pulled by or attached to an animal.	<ul style="list-style-type: none"> • Provide proper instruction on handling or riding an animal. • Match inexperienced or young visitors with animals that have a history of good behavior and interactions with people. • Regularly inspect and maintain equipment. • Train employees to follow standard operating procedures and best management practices.
Ingesting germs from direct animal contact.	<ul style="list-style-type: none"> • Select lower risk animals for direct contact such as rabbits, pigs and horses. • Prevent human contact with higher risk animals such as poultry, pre-weaned calves and young lambs or goats. • Provide hand washing stations with running water, soap, and towels (required by state sanitation laws in some states). • Provide instructions on how to wash hands properly (required by state sanitation laws in some states).
Ingesting germs from contaminated surfaces, objects or foods.	<ul style="list-style-type: none"> • Continuously manage manure and prevent human contact with manure areas. • Regularly inspect and disinfect surfaces in animal areas that visitors might touch, such as railings and barriers. • Provide a transition area between animal areas and non-animal areas and do not allow toys, baby bottles, strollers, food, beverages or similar items beyond the transitional area. • Place food service or eating areas far from animal areas. • Provide handwashing stations and instructions in food areas, as stated above.

Immunity statutes can protect operators

An immunity law can change the outcome of a negligence claim against an agritourism operator. An immunity law removes the operator's legal duty to keep visitors safe in certain situations that carry inherent risks. Immunity laws assume that a person knows that certain activities have inherent risks that a landowner can't completely control. If a visitor voluntarily engages in an inherently risky activity and suffers harm, the immunity law shifts responsibility for that harm to the injured person rather than the landowner.

Because agritourism activities carry many inherent risks, a number of states have enacted "agritourism immunity laws" to protect agritourism operators from liability for certain risks. One common provision in these laws is to identify "the behavior of domestic and wild animals" as an inherent risk of being on an agritourism farm. This type of provision could prevent an operator from being liable if an animal steps on, bites, or otherwise behaves in a way that causes harm to a visitor. Note, however, that only a few of the agritourism immunity laws might address the transmission of farm animal diseases. Only Ohio's law specifically mentions illnesses from animals,⁴ while Maine's law includes harm from "the depositing of manure,"⁵ and Florida protects an operator from "any of the inherent risks of agritourism,"⁶ which might address farm animal diseases.

"Equine activity laws" might also provide immunity for agritourism farms that have horses, donkeys, and similar equine. These laws shift the risk of being harmed by an equine's unpredictable behavior to the participant in an equine activity, but don't protect operators who provide faulty equipment or tack or fail to assess a participant's ability to engage in the equine activity. "Recreational user statutes" might also protect agritourism operators from harm to visitors who engage in certain recreational activities on the farm. Be aware that many recreational user statutes apply only if the landowner does not receive a fee or benefit for the activity, so a state's law might not extend to a commercial agritourism operation.

For each of these different types of immunity laws, an operator must meet the requirements of the law in order to receive the immunity. For example, most agritourism laws require the operator to post a warning sign that notifies visitors of inherent risks of agritourism activities and that the law protects the operator from liability. Failing to meet an immunity law's requirements can disqualify an operator from immunity.

It's very important for an agritourism operator to know which immunity laws apply to the operator and to understand the requirements of each applicable law. For more information on immunity laws, refer to our Fact Sheet on "Agritourism Immunity Laws in the United States," available on the National Agricultural Law Center website at <http://nationalaglawcenter.org/>.

What about waivers?

A written waiver or release of liability form is the traditional tool for addressing liability for voluntary engagement in risk-based activities like those involved in being around farm animals. The waiver serves as the participant's recognition that he or she is assuming the risk of the activity. It contains a promise by the participant to release the activity provider from any liability if the participant suffers harm due to the provider's ordinary negligence or the inherent risks of the activity.

The types of immunity laws described above can negate the need for an agritourism operator to require that customers sign a waiver before participating in an agritourism activity. If the state immunity law covers all farm animal risks then the business may not need to utilize written waivers. However, if the operation offers additional activities that the immunity law might not include within its liability protections, the agritourism business might need to use a written waiver for those activities that might not be covered by the law. Also, an insurance provider or attorney might encourage an agritourism client to utilize waivers as a risk management tool even if the state has an agritourism immunity law. Note, however, that state laws can have very specific requirements for waivers and a court might not enforce a waiver that does not meet the legal requirements. For this reason, an agritourism operator who wants to utilize waivers should consult with an attorney to determine whether a waiver is applicable to the situation and should have the attorney draft the instrument.

Insurance: an important tool for managing risk

Insurance is a valuable tool for addressing the potential that an agritourism operator will be liable for harm to a visitor. An agritourism operator who offers agritourism activities, whether or not for pay, should have adequate insurance to address all agritourism activities conducted on the operation. Because many farm general liability policies don't include agritourism activities, however, an agritourism operator may have to obtain a customized rider that adds or amends liability coverage above and beyond a farm or ranch's general policy. It is important to review all farm animal activities to ensure that the policy covers each one. If coverage is not available or is very costly, an agritourism operator might want to reconsider whether to offer the farm animal activity. For more information on agritourism insurance, refer to our Fact Sheet on "Agritourism and Insurance," available on the National Agricultural Law Center website at <http://nationalaglawcenter.org/>.

Reduce the risk of farm animal liability

The following checklist provides a summary of important steps to follow in order to reduce the risk of liability for harm caused by farm animals on the agritourism operation. Be sure to confer with an attorney and insurance provider for individual guidance on liability protection.

Reducing Liability for Farm Animals and People: A Checklist

Agritourism operators may use this checklist as a starting point to help ensure careful consideration of the liability issues that arise from farm animal-human interactions, and should also confer with an attorney and insurance provider for individual guidance on liability protection.

1. **Identify your legal duties for protecting visitors from farm animals.** Identifying your legal duties requires that you understand:
 - Your state's premises liability laws, which defines the legal duties you have for different types of visitors on your operation.
 - Additional state or local laws that specifically address farm animals, such as livestock containment laws and sanitation statutes.
2. **Implement management practices that address your legal duties.** Refer to our chart above and other resources from experts in agritourism, farm animals, and farm safety to identify required and recommended management practices for your operation.
 - Develop standard operating procedures to implement the identified practices.
 - Include emergency response plans that lay out procedures to follow in case there is an accident from animal-human interaction.
 - Train all employees on your management practices and response plan and how to correctly follow standard operating procedures.
 - Maintain records of your standard operating procedures, employee training protocols, response planning, and other actions taken to implement best management practices.
3. **Utilize applicable immunity laws in your state and determine whether you should also utilize waivers.** Identify the immunity laws that apply to your farm animal activities and understand how to qualify for and utilize the laws, and consult with an attorney to determine if you should use waivers and if necessary, to draft your waivers.
4. **Assess liability insurance needs.** Review your farm animal activities with your insurance provider and ensure adequate liability insurance coverage for each activity.
5. **Regularly review, inspect and assess your farm animal activities.**
 - Conduct regular inspections of the property to ensure that you are properly addressing your legal duties for farm animal situations.
 - Stay up-to-date on best practices for managing animal-human interactions.
 - Before adding new activities involving farm animals on your operation, conduct a risk analysis by assessing your legal duties, required management practices and insurance coverage options. If the risk of liability is too high, reconsider whether to offer the new activity.

References and Resources

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¹ Carrie Klumb, *Agritourism, Zoonotic Diseases and Legal Liability*, NATIONAL AGRICULTURAL LAW CENTER (June 21, 2017), <http://nationalaglawcenter.org/consortium/webinars/zoonotic-liability/>.

² *Stephanie Heidish, et al. v. Dehn's Pumpkins LLC*, No. 27-CV-14-17068 (Minn. Dist. Ct. Hennepin Co. Feb. 22, 2017).

³ CENTERS FOR DISEASE CONTROL AND PREVENTION, “Menu of Hand Sanitation Laws for Animal Contact Exhibits,” available at <https://www.cdc.gov/phlp/docs/menu-animalsanition.pdf>.

⁴ OHIO REV. CODE § 901.80(A)(6)(e).

⁵ 7 M.R.S.A. §251(5)(B).

⁶ West's F.S.A. § 570.88.

See our other Factsheets in this series for more resources on legal issues in agritourism.