

HOW GROWERS CAN REDUCE LIABILITY RISKS

*Insurance coverage and safety
are still your best defense*

Fruit and vegetable growers, like other businessmen and women, face some liability risk every time they make their produce available for public consumption. But there are basic business practices they can use to help reduce the likelihood of liability suits being filed.

"Regrettably, there is no way to prevent a lawsuit being filed against you in most circumstances," says Donald L. Uchtmann, a professor and acting head of the University of Illinois' Department of Agriculture Economics and an Extension agricultural law specialist. "A consumer may believe that pesticide residue on fruits or vegetables made him sick." A U-pick customer or delivery person may break a leg on your property and believe it's your fault. An employee may be injured on the job or your dog might bite a neighbor. Or, while driving your truck to town, your employee may hit a pedestrian.

"While growers can't anticipate every potentially damaging circumstance, growers can increase the chances of successfully defending the suit if and when it is filed. They can also insure against remaining risks that are unavoidable."

Before addressing these steps, growers need an understanding of the overall legal issues involved in liability. Growers may

be liable for injury or property damage to a third party because they acted negligently, because an employee was negligent or because of special circumstances in which the law allows recovery even in the absence of fault on the part of the defendant.

Types of Liability

Uchtmann says it is important that growers have a reasonably clear definition of the legal terms. For example, negligence can be defined as a lack of care under the circumstances.



Photos: University of Illinois Ag Communications

Donald Uchtmann, University of Illinois ag law specialist, says there is no way to prevent a lawsuit being filed against you in most cases. However, by stressing safety and health awareness at your farm market, you can reduce the risk of lawsuits.

"This is an imprecise definition because the very concept of negligence is intended to be flexible," he says. "In essence, growers may be liable for personal injury or property damage to third parties when their failure to be careful is the cause of an injury or an accident."

A blatant example of negligence would be to knowingly allow a defective ladder to be used in a U-pick operation.

"Whether a grower acted carelessly is usually a question that a jury answers using its collective common sense, unless an out-of-court settlement is reached," he says.

Respondent superior is another legal concept that places liability for an employee's negligent acts upon the employer.

"A key provision is that the act occurred in the performance of the employee's duties or within his or her scope of responsibility," Uchtmann says. "The law broadly defines 'within the scope of employment, so an employer cannot escape liability simply by ordering the employee to do all the work carefully."

Premises liability is another component of negligence. Uchtmann says the general rule is that landowners or tenants are not liable for someone injured on the premises unless the landlord or tenant is at fault. Landowners could be at fault if they were negligent, or if they intentionally injured the entrant.

"If the entrant is a trespasser, the probability of the owner or tenant being liable is very low, but liability could arise if 'excessive force' is used to remove the trespasser or if the trespasser is intentionally injured."

Product liability laws are also important to those growers who sell directly to consumers. Plus, product warranties can be expressed or implied.

"Express warranties" involve a positive statement about the product. One ex-

ample would be a label noting that, "This fruit has not been sprayed with Pesticide X in the last 10 days." Implied warranties arise automatically, such as the implied warranty that fruits or vegetables sold are of reasonable quality.

"If a product does not live up to the express or implied warranty, and if the consumer is injured as a result, liability can arise," he said. "In contrast, strict or automatic liability does not require evidence of either breach of warranty or fault. Strict liability may be present whenever a product is sold in an unreasonably dangerous condition. Fruits or vegetables with certain pesticide contamination could be viewed as unreasonably dangerous."

Workmen's Compensation

Workmen's compensation laws provide an example of liability even though the person has not been negligent. Where such laws apply, the employer is automatically liable for specified amounts when an employee is injured on the job.

"Agricultural employment is exempt from workmen's compensation laws unless the employer hires more than 500 worker days of labor per fiscal quarter," Uchtmann says. "Growers involved in direct marketing operations should be aware that the sales activities of employees working at roadstands and other marketing facilities are not clearly agricultural in nature, which means direct marketers may not be able to use the agricultural exemption."

Dog bites provide another potential for liability without show of negligence. In Illinois for example, a dog that attacks without provocation and injures people peacefully conducting themselves in places where they may lawfully be exposes its owner to automatic full liability for any injuries.

Recent changes in Illinois law have also affected a grower's potential liability. Several changes were made last summer in

the liability law in response to the "alleged insurance crisis" in the state.

"Under prior law, if an accident occurred and the defendant (say, a grower) was 10% at fault and the injured party was 90% at fault, the injured party could still receive 10% of his damages from the grower," says Uchtmann. "Now, under the comparative negligence rule, defendants cannot be held liable unless they are more than 50% at fault."

Other changes include some limitations on claiming punitive damage (compensation exceeding actual damages), procedural changes which discourage frivolous suits and modification of the joint and several liability rules. Uchtmann says fruit and vegetable growers from other states can contact their extension agricultural law specialist for more specific information.

Protecting Against Liability

"With this background, a grower is ready to take some steps to protect against liability," says Uchtmann. "I recommend several simple and basic actions."

"First, be very careful and cultivate a safety consciousness among those who work in your business. People who are concerned about safety and are constantly reminded to be careful are less likely to be negligent."

"Growers should also make the premises as safe as possible. If the premises are safe, the probability of injury to a cus-

tommer, delivery man or others is reduced. They should avoid extra label use of pesticides. In particular, don't apply pesticides not approved for the particular fruit or vegetable, and don't apply approved pesticides too close to harvest."

"A grower should also create as much good will as possible. If someone is injured on the premises, be as helpful as you can. And last, keep your dog away from customers."

Uchtmann says being careful is not enough. It is important for fruit and vegetable growers to appreciate the risks of liability inherent to their businesses and to take appropriate steps to insure these risks. Adequate insurance protection is a must.

Growers should thoroughly discuss their operations with their insurance carriers, paying particular attention to any possible need for premises liability, product liability and workmen's compensation coverages.

"You can't prevent the lawsuit," says Uchtmann. "But making sure your operation is as safe as possible and having appropriate insurance coverage are the best two ways to manage the liability risk."

Editor's note: For more information, contact Donald Uchtmann, Agricultural Law Specialist, Cooperative Extension Service, 151 Bevier Hall, University of Illinois, Urbana, IL 61801 or call (217) 333-1829.

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