

# Legal Issues – Landowner / Operator Liability

A landowner who opens his or her land to the public faces the risk that he or she could be considered liable if an entrant is injured while on the property. The duty of care owed to someone who is on a landowner's property is traditionally based on the classification as a trespasser, licensee, or an invitee. The classification of invitee is the most relevant to agritourism operators, though either two could apply under certain circumstances.

A trespasser is someone on the land without the landowners' permission. A general rule is that landowners owe trespassers no duty of care except avoiding intentionally injuring them.

A licensee is someone who is on the property with permission but does not provide any economic benefit to the landowner, i.e. a hunter or fisherman who does not compensate the landowner. Licensees must be told of hidden dangers and the landowner owes a duty of care to not harm the licensee.

Invitees are persons who have permission to enter the premises with the permission of the landowner or operator. Invitees provide an economic benefit to the operator and are owed the highest duty of care.

The landowner must warn invitees of potential dangers and must keep the premise relatively safe for them. Some states have abandoned the traditional system based on entrants' classification to which a landowner must use reasonable care to warn entrants of foreseeable risks regardless of their classification. An agritourism operator has to determine legal standards for landowner liability in his jurisdiction. In addition operators should be aware that recreational activities are often not covered by farm insurance policies and additional liability coverage may be needed to cover injuries arising from agritourism activities.

## Animal Welfare Act

Animals that are used strictly for agricultural purposes are exempt from regulation under the Animal Welfare Act (AWA). However, the AWA is applicable when animals are exhibited, even if they are farm animals. According to the Animal and Plant Health Inspection Service (APHIS), the USDA agency that administers the AWA, the exhibition of animals including petting zoos, roadside zoos, trained animals shows and educational displays. An agritourism operator who uses animals for exhibition purposes should be aware of the potential application of the AWA.

## Other Considerations:

Agritourism enterprises may involve a variety of other legal issues, depending on the activities involved and laws of the state where the business is located. Producers who provide food stands or restaurants must consider local food safety and public health laws that apply and governing liquor licenses if alcohol is served on premises. Additional insurance coverage may be

needed if an operation transports guests in a vehicle. Operations may also face issues with zoning restrictions, building codes, compliance with American Disabilities Act, taxation, and business permits.