

# FARM AND RANCH EMPLOYEE EXCLUSIONS

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## INTRODUCTION

The [Code](#) excludes certain farm and ranch employees. Section 4(2)(e) reads:

4(2) This Act does not apply to

(e) employees employed on a farm or ranch whose employment is directly related to

- (i) the primary production of eggs, milk, grain, seeds, fruit, vegetables, honey, livestock, game-production animals within the meaning of the Livestock Industry Diversification Act, poultry or bees, or
- (ii) any other primary agricultural operation specified in the regulations under the *Employment Standards Code*

or to their employer while he is acting in the capacity of their employer;

When investigating an application, an officer must discover several things by examining an employee's responsibilities and the nature of the employer's operations. Ask yourself:

1. Is the agricultural product one of those listed in Section 4(2)(e)?
2. Is the operation a "farm" or "ranch"?
3. What is "primary production" of the product?
4. Is the employment "directly related" to primary production?

This policy describes:

- agricultural products to which the exclusion does not apply;
- what is a farm or ranch operation;
- the meaning of "primary production";
- when employment is "directly related" to primary production;
- applicable provisions of the [Employment Standards Code](#); and
- "game-production animals" in the [Livestock Industry Diversification Act](#).

## EXCLUDED AGRICULTURAL PRODUCTS

The exclusion covers some, but not all agricultural and horticultural activities. Seed-, fruit- and vegetable-growing operations fit within the exclusion. Other plant- and flower-growing operations do not. For example, tomatoes grown in a hothouse fall within the exclusion. A Leduc nursery that produces lilies from Dutch bulbs does not.

Tree farms do not fit within the exclusion. See: [*Bock v. Edmonton Nurseries Ltd.* (1987), Employment Standards Umpire decision, 82-037E]. Neither does aquaculture. Aquaculture involves cultivation of plants or breeding of animals in water. Fish hatcheries do not fall within the exclusion. The “cultured fish” exception is discussed in the practice notes.

The application of Employment Standards Umpire decisions is discussed below under [Employment Standards Code](#).

## **WHAT IS A FARM OR RANCH?**

Traditionally, farming or ranching involves a tract of land under cultivation for growing agricultural products or raising livestock. One expects that the owner or lessor of that land is the farmer or rancher. The Board’s “irrigation decisions” of the 1970s suggest farming includes the cultivation of soil, caring for livestock, and hauling produce to market.

### ***If an Operation is Commercial in Nature, is it a Farm?***

The [Code](#) does not refer to the “commercial” nature of an operation. Therefore, “farm” and “commercial undertaking” may not be mutually exclusive or a commercial aspect to an agricultural operation might affect the application of the farm/ranch exclusion. For example:

- An operation producing commercial (large, marketable) quantities of product and employing many employees, might so stretch the notion of the family farm that the Board would conclude it is no longer a farm for labour relations purposes.
- A farmer taking in the produce of other farmers and completing the primary production process on their behalf for additional profit, might no longer be engaging in primary production. See *Primary Production* below for discussion of this form of commerce.

### ***Is an Operation Consisting Only of Buildings a Farm?***

Modern poultry growing and vegetable hothouse operations, such as mushroom farms, do not display the traditional connection to the land. Farms usually consist of land and buildings but many suggest the presence of buildings is enough. They suggest interpreting “farm” in its popular sense, as understood by those in the business. For example, past decisions of the Alberta and Ontario Boards identify mushroom growing operations as farms.

### ***Is it Appropriate to Consider only a Portion of the Operation as a Farm?***

An agricultural operation may be severable for labour relations purposes. See: [*Al Oeming Investments Ltd* (Polar Park), (1987) Employment Standards Umpire Decision, 82-079E; game farm comprised of “farm” and “public education and entertainment” portions]. The farm employees of the operation receive less Employment Standards protection and no collective bargaining rights under the [Labour Relations Code](#).

## WHAT IS “PRIMARY PRODUCTION?”

The wording of Section 4(2)(e) of the [Code](#), suggests two complementary meanings for primary production.

1. Primary production is different than processing. Primary production includes preparing the soil, planting, growing, harvesting, cleaning, storing, packaging and hauling to market. In processing, the agricultural product undergoes a change in its state. Canning, freezing and juice-making from fruits and vegetables is not primary production. The change in state indicates processing. In livestock production, primary production logically includes production activities up to the point of slaughter or sale. An artificial insemination facility which is not in the business of raising its own livestock does not appear to fit the exclusion.
2. Primary production means from the land of **that** farm or ranch. A farmer’s completion of primary production of vegetables may include cleaning, packaging and trucking. A farmer might take in produce from the lands of other farmers and complete these steps for additional profit. If this part of the operation employs many employees, the Board could conclude it is sufficiently “commercial,” and sever it for labour relations purposes. Those employees could then bargain. See: [*Federal Farms Ltd.*, 63 CLLC p. 16,292—farmer’s packing plant operations severed as 80% of produce packed came from other farmers].

## EMPLOYMENT "DIRECTLY RELATED" TO PRIMARY PRODUCTION?

Employment is directly related if it is integral or essential to the primary production of the agricultural product. In *UFCW v. Leaver Mushrooms* [1991] Alta.L.R.B.R. 20, the Board found that the business of a mushroom farm is growing and safekeeping mushrooms. Those who prepare the compost, seed the beds, pick, package and store the mushrooms do directly related work.

Primary production of livestock could include growing and conversion of alfalfa to feed pellets. The alfalfa must be necessary to livestock production and the crop yield used primarily for that purpose. See: [*Ruhl v. Jonk Farms Ltd.* (1987) Alberta Employment Standards Decisions, 83-202E]. If so, those employed in the alfalfa operations have work directly related to primary production.

## EMPLOYMENT STANDARDS CODE

The [Employment Standards Code](#), RSA 2000, c.E-9 may affect Labour Relations Board decisions about farm and ranch employees in two ways.

First, Employment Standards Umpire decisions also interpret a farm/ranch exclusion. The wording of the farm/ranch exclusion in Section 2(4) of the [Employment Standards Code](#) is identical to that in the [Labour Relations Code](#). The Board must consider whether labour relations considerations suggest a different interpretation. The Labour Library indexes “Alberta Employment Standards Umpire Awards” by statute section, subject and date of decision.

Second, Section 4(2)(e)(ii) of the [Labour Relations Code](#) excludes employees of any “primary agricultural operation” named in the regulations to the [Employment Standards Code](#). In 2000, the regulation were amended to include operations producing “cultured fish”. This is discussed more fully in the practice note on page 3.

## GAME-PRODUCTION ANIMALS

The Board has not processed any Section 4(2)(e) applications affected by the [Livestock Industry Diversification Act](#) (RSA 2000, c. L-17). Section 1(1)(f) of that Act defines “game-production animal.” It means:

... a wildlife animal of a prescribed species that does not belong to the Crown, that is identified and registered and that is in captivity in Alberta for the purpose or ultimate purpose of reproduction, sale as breeding stock or as meat or the sale of prescribed parts of it, or for any combination of those purposes;

Raising a prescribed species, is not enough. Only animals identified, registered, and in captivity in Alberta for one of the purposes in Section 1(1)(f) satisfy the exclusion.

To determine the “prescribed” species, check the regulations passed under the Act. *Alberta Regulation 255/91* (Livestock Industry Diversification (Principal) Regulation) lists the species of “game-production animals” prescribed to date:

- mule deer, white-tailed deer, moose;
- various elk species including the Manitoban, Tule, Rocky Mountain, Altai and Roosevelt;
- hybrids of these elk species; and
- progeny of any of the above.

Note the presence within Section 1 of the Act, of separate definitions for some terms used to define “game-production animal.” For example, see “identified,” “registered” and “species.” “Game-production farm” or “farm” is also defined.

Finally, Section 1(2) incorporates by reference, certain definitions from the [Wildlife Act](#).