



Guide to the Law and Best Practice in **TRANSPORTING FARM WORKERS** in the South African Agricultural Industry





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This guideline is based on South African legislation and research conducted over a 3-month period in the Western Cape, Free State, Limpopo and Mpumalanga.

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Information provided in this Guide should therefore not serve as alternative to legal advice.

Where you are unsure of the interpretation of any piece of legislation, or if apparent ambiguities or contradictions exist, it is best to seek legal advice or contact the relevant Government Department.

We welcome your comments with regard to the technical content and general user-friendliness of the Guide, which will be updated from time to time.

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INTRODUCTION

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Over the past 20 years, there has been a decline in the number of permanent workers who reside on farms, and a dramatic increase in the use of fixed term and seasonal labour. Seasonal workers come from other provinces of South Africa, neighbouring countries such as Zimbabwe, Mozambique and Lesotho or from nearby towns. With the change in the nature of employment on farms has come the increased need to provide means of transport to workers for a variety of purposes.

Transporting farm workers to and from the workplace and for other non-work related purposes is not a legal requirement but due to the remote geographic location of many farms and the absence of reliable public transport it is a common phenomenon in the agricultural industry.

It is also a contentious issue and has received much publicity in the South African media recently due to a spate of serious road accidents involving vehicles transporting farm workers. These incidences are not unique to South Africa and the International Labour Organisation (ILO) draws attention to the risks associated with transport in the agriculture industry worldwide:

“In agriculture, many injuries are caused by overturning tractors/vehicles, being struck by a moving vehicle, and falling under a moving vehicle when trying to mount or dismount from this vehicle. Serious and fatal injuries are common, and the incidents involve drivers, other employees and pedestrians. Other hazards include those from lifting operations; unsuitable vehicles being used to transport employees and others; people being struck by falling objects when products are being transported; whole body vibration; ergonomic hazards; and contact and entanglement with power take off shafts. Children are particularly at risk from transport in the agricultural environment.”

This transport guide complements the ethical handbook in its aim to encourage continuous improvement and good ethical and social accountability practice in the South African fruit industry. By introducing acceptable practices for safe transportation and, implementing the systems to regulate these practices, you protect the health and safety of employees and increase the productivity of your business as a whole.

This guide was funded by Tesco, as an additional resource for producers.

We hope you will find it useful!

THE LEGAL FRAMEWORK

2

There are a number of laws and regulations that guide safe transport practices both on and off the farm. These are listed below and form the basis of this transport guide.

- National Road Traffic Act 93, 1996 (NRTA)
- National Land Transport Act 5, 2009 (NLTA)
- The National Road Traffic Act Regulations
- Labour Relations Act 66, 1995 (LRA)
- Basic Conditions of Employment Act 75, 1997, as amended in 2002 (BCEA)
- Sectoral Determination 13: Farm Worker Sector
- Occupational Health and Safety Act 85, 1993 (OHSA)
- Compensation for Occupational Injuries and Diseases Act 130, 1993 as amended in 1997 (COIDA)
- The Road Accident Fund Act 56, 1996 (RAF)
- International Labour Organisation (ILO) Health and Safety Standards

The relevant legislation is explained in more detail in Section 5: A Guide to Legislation

MANAGEMENT SYSTEMS

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Transporting workers on or off farm carries many risks that need to be managed sensibly and effectively. This will protect you the employer, your workers and your business and brings many benefits such as a reduction in injuries and financial costs from them, improved productivity and morale. This section looks at the management systems that are necessary to effectively manage transport of employees.

MANAGEMENT SYSTEMS

A management system is a set of policies and procedures developed and implemented to help you conduct your business in an orderly, effective and consistent manner. A transport management system for farm workers should be specific to agriculture and appropriate to the size and nature of your business.

Steps to follow when developing and implementing an effective transport management system:

STEP 1 DEVELOP A TRANSPORT POLICY

This should be a written statement of principles and goals outlining the company's commitment to safe transportation of workers on and off the farm. A policy document says what the rules are, when they apply and who they cover. A policy provides a common reference point and helps promote consistency in responses.

The transport policy should be:

- Documented
- In compliance with local legislation
- Authorized by senior management
- Accessible to management and employees
- Communicated to employees in a language they can understand
- Reviewed from time to time.

STEP 2 DEVELOP & IMPLEMENT PROCEDURES

Procedures are more detailed and describe how the policy should be implemented. There are several aspects to consider when developing your transport procedures, for example:

1. Decide on responsibility and lines of accountability

You need to decide who will be responsible for transport. This will depend on the size of your business, but in any event it should be a senior management position.

Document competence requirements and training – detail and document the skills, qualities and training needed by employees involved in transport in your business. For example: manager(s) responsible for transport, drivers responsible for transporting workers to and from the workplace, drivers responsible for transporting workers on the farm.

2. Conduct a risk assessment looking specifically at the transportation of farm workers

The Occupational Health and Safety Act requires the employer to do everything “reasonably practicable” to protect people from harm. To ensure these legal requirements are met a risk assessment must be drawn up outlining all areas of risk in the business. Your Transport Risk Assessment should form part of the overall health and safety risk assessment for the business.

A risk assessment is a careful examination of what, in your workplace, could cause harm to people. It allows you to weigh up whether you have taken enough precautions to protect them or need to do more. The risk assessment should look at all hazards associated with transporting workers on and off-farm and then assess the level of risk (the chance, great or small, that someone will be harmed by the hazard).

Once the hazards, risks and the risk levels have been identified, an action plan should be formulated to set out what will be done in that area to remove or minimize the risk and to protect employees. The action plan should state what will be done, by whom and by when. It may also include how it will be monitored, by whom, how and when.



When developing a risk assessment ask the following questions:

i. What are the hazards? What can cause harm to people and property?

ii. Who might be harmed?

iii. What are the chances of them being harmed?

iv. What are the consequences (risks) if the hazard is not controlled?

v. What can be done about it? What can you do or put in place to prevent it from happening?



Think about what could go wrong in these instances.

STEP 3 DEVELOP AND IMPLEMENT CONTROLS

Based on your risk assessment you should:

- Define objectives for the reduction of risks to as low a level as possible.
- Devise and implement corresponding preventative control measures.
- Develop and implement a safe transport plan.

Activity being assessed	Hazards and those at risk	The risk	Risk reduction methods - controls
Tractor used for transporting workers to the orchards in trailers	Steep slopes causing roll over of tractor and trailer. At risk: the driver, workers in the trailer or those working close by.	Risk of death or serious injury Damage to tractor and trailer.	All tractor drivers should be trained in the safe use of tractors and particular rollover prevention and required to follow safe work practices.
Vehicle used for transporting	Bad weather conditions and travelling when dark (early morning and at dusk) Vehicle overloading making it unstable. At risk: the driver, workers transported and other vehicles/ persons on the road.	Risk of death or serious injury to occupants of the vehicle, damage to vehicle, liability claims against the company - civil law suits. Damage of another vehicle and/or its occupants or persons walking next to the road.	Drivers to have valid driver's licence and additional refresher safe driving training. Driver to undergo medical fitness test every 2 years. Set up a vehicle checklist that the driver needs to complete on a daily or weekly basis.

STEP 4 COMMUNICATE AND INFORM

Inform workers (permanent and seasonal) about the potential hazards, rules and regulations regarding transport on and off the farm. This should be included in your induction training programme and all information should be provided in a language workers understand. Keep an induction training register as a record of who has been trained.

Equally important: communicate the consequences of NOT adhering to the farm policies and procedures. Emphasize the importance of safety and that all personnel are responsible for ensuring their own safety and that of others (such as the public) and that this is not exclusively a management responsibility!

STEP 5 DOCUMENTATION & RECORD KEEPING

RIGHTS AND RULES: Employees' rights, duties and the company's transport regulations must be documented. Procedures for raising issues / complaints about transport (eg. unsafe driving) should be included in the transport regulations.

TRANSPORT AGREEMENT: The transport regulations should form the basis of a Transport Agreement with employees. The terms and conditions of the Transport Agreement should be clear and should be explained to the employee before he or she commences employment. The Agreement should be signed by both parties as part of the contract of employment.

RECORDING TRANSPORT ACTIVITIES: Transport logbooks and schedules should be in place.

INCIDENTS AND ACCIDENTS: Document and make available procedures and necessary forms for reporting and investigating incidents and accidents. Keep a register for near-misses as well as accidents. This, together with the transport logbook, schedules and complaints can be reviewed by the health and safety committee to assist in identifying problem areas.

EMPLOYEE DETAILS: A list of names of workers to be transported must be available.

LABOUR BROKERS

A number of seasonal workers are recruited through labour brokers and many of these workers are transported by the labour broker to farms on a daily basis. The nature of this transport varies from overloaded trucks and bakkies to more sophisticated means of transport fully compliant with safety regulations.

A labour broker is any person who, for reward (payment for a service), provides to (or procures for) a client (producer), workers who perform work for the client (producer) but who are paid by the labour broker. *LRA section 198 and BCEA section 1.*

It is important to remember that labour brokers cannot be used to remove any legal responsibilities towards employees. 'Collective and individual' responsibility means that if a worker employed by a labour broker is injured in the course of work and the labour broker is not registered in terms of COIDA the worker can then claim against the client's (producer) COID registration number. *COIDA section 89.*

What does the law say? Labour brokers have to comply with the same laws that producers have to comply with.

Section 87 of the Basic Conditions of Employment Act states that the client (producer) and labour broker will be held jointly and severally liable for breaches by the labour broker.

What is recommended? Draw up and sign a contract of service with the labour broker that clearly states what is expected of him or her regarding labour and health and safety practices.

Check that the labour brokers you use comply with legislation in terms of UIF and COIDA. Check that the labour broker is registered with the Compensation Commissioner and that the payment of their assessment fees is up to date. This can be done by asking them for an original or certified copy of a current Letter of Good Standing from the Compensation Commissioner.

CHECKLIST

	YES	NO	COMMENT	DATE
Senior management responsible for the transportation of workers is aware of, and has access to relevant transport legislation and regulations.	<input type="checkbox"/>	<input type="checkbox"/>		
The business is registered and annual assessment fees paid up to date in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993 (COIDA)	<input type="checkbox"/>	<input type="checkbox"/>		
The business has effective employee records in place:				
Workers employed	<input type="checkbox"/>	<input type="checkbox"/>		
Record of wages and hours worked	<input type="checkbox"/>	<input type="checkbox"/>		
There is a transport policy in place	<input type="checkbox"/>	<input type="checkbox"/>		
Employees responsible for transport are skilled and competent to do the job	<input type="checkbox"/>	<input type="checkbox"/>		
There are procedures in place for managing transport	<input type="checkbox"/>	<input type="checkbox"/>		

CHECKLIST CONTINUED

	YES	NO	COMMENT	DATE
There is a transport risk assessment in place	<input type="checkbox"/>	<input type="checkbox"/>		
There are controls in place to minimize risk	<input type="checkbox"/>	<input type="checkbox"/>		
There are communication channels in place for communicating with employees	<input type="checkbox"/>	<input type="checkbox"/>		
The following are documented and available:				
Transport rules and regulations	<input type="checkbox"/>	<input type="checkbox"/>		
Signed transport agreements	<input type="checkbox"/>	<input type="checkbox"/>		
Grievance mechanism	<input type="checkbox"/>	<input type="checkbox"/>		
The Disciplinary Code makes provision for non-compliance with company rules, regulations and policies.	<input type="checkbox"/>	<input type="checkbox"/>		
Accident and emergency procedures	<input type="checkbox"/>	<input type="checkbox"/>		
A list of names and details of employees transported	<input type="checkbox"/>	<input type="checkbox"/>		
There is a service agreement with labour brokers.	<input type="checkbox"/>	<input type="checkbox"/>		

GUIDELINES FOR TRANSPORTING FARMWORKERS

4

This section provides guidance for transportation of workers and non-workers on and off the farm. It consists of three parts:

- A. Transportation of workers to and from the workplace.
- B. Transporting workers on the farm during the course of employment.
- C. Transportation of people working and living on farms outside normal working hours and for non-work related activities.

A. TRANSPORTATION OF WORKERS TO AND FROM THE WORKPLACE

Although employers are under no legal obligation to provide transport to and from the workplace there are a number of factors that make it difficult or impossible for employees to otherwise get to work. The remote location of farms, the lack of public transport and the level of poverty in rural areas are examples of such factors.

Transport in the farming sector has been the subject of a lot of media attention recently with some serious accidents involving farm workers. Traditionally, employers have used farm vehicles (or production vehicles) to serve the transport needs of employees. These vehicles are however often not designed or manufactured for this purpose and so already present a risk. It is therefore very important that employers take steps to minimize the risk of injury of employees being transported in company vehicles.

What are the risks?

There is always the risk of serious injury or death caused by accidents, both on and off Public roads.

The cause of such accidents could be due to a number of factors including:



- Negligent driving.
- Overloaded vehicles.
- Vehicles not roadworthy.
- Getting on and off the transport vehicle.
- Falling from a vehicle while in transit.
- Injury caused by contact with interior paneling, fixtures, other passengers or objects during unexpected movements by vehicle.
- Accidents caused by other drivers.
- Weather hazards, potholes or animal obstructions.

There is a risk of liability to the employer: The employer may be liable for damages (injury, disability or death) caused by accidents if negligence can be proven, e.g. the vehicle was not in a roadworthy condition, the driver was under the influence of alcohol, etc.

There is the risk of loss of product, skilled workers and productivity: Any accident that results in injury or damage to property will affect the operations and productivity of your business.

What does the law say?

- Employers must be registered in terms of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA).

- Workers transported, free of charge, to and from work in a vehicle owned by the business and driven by a designated employee is seen to be in the course of employment COIDA Section 22(5).

When transporting workers on public roads, the National Road Traffic Act of 1996 states the following:

- All drivers who drive vehicles must have a valid driver's license.
- Vehicles used to transport employees must be in a safe and roadworthy condition.
- The vehicle must be registered and licensed.



Adequate material for protection.



Workers are seated because the sides are too low for standing.



Adequate railings for protection.

The National Road Traffic Regulations (Regulation 247) stipulate the circumstances under which people may be carried on a goods vehicle, such as a farm 'bakkie' or truck, are as follows:

- The portion of the vehicle which is carrying the people must be enclosed to a height of at least 350 millimetres above the surface on which the people are seated;
- and at least 900 millimetres above the surface on which the people are standing.
- The material must be strong enough to prevent a person from falling from the vehicle.
- Employees may not be transported with other goods (except for personal belongings) unless it is partitioned from them.

When employees are transported on the back of a vehicle on the open road no part of their bodies may protrude from the vehicle. *The National Road Traffic Regulations 308 (1)*.

The number of passengers allowed on a vehicle is limited by the maximum weight the vehicle can carry as stipulated by the manufacturer of the vehicle. A general safety rule is that passengers should be able to sit comfortably with spaces between them – whether they intend on sitting or not.

Vehicles transporting people must be visible to fellow road users in all weather conditions.



Tractors used for conveying passengers by means of a trailer cannot travel after sunset and before sunrise, or during unfavourable weather conditions.

Because trailers can obstruct the lights and signage of the tractor making it difficult for other drivers to see the tractor, the trailer (itself) must have working lights and at least 7 retro-reflectors. *NRT Regulation 191 (3) (b)*.

Transportation vehicles and trailers should comply with appropriate signage: chevron (retro-reflective stickers) should go around 80% of vehicle.

Where people are being transported the operator needs to be in the possession of a valid operating licence to do so: However in terms of The National Land Transport Act 55 of 2009 Section 53 (1)(c) farmers carrying their own workers in vehicles of which they are sole owners are exempted.

The driver of the vehicle must have a PrDP – Professional Driving Permit if they (even occasionally) drive a bus, vehicle or minibus with seating for more than 12 persons (whether or not it has enough seats) where it is used to transport people.

National Road Traffic Regulations 115.

What is recommended?

Where transport for workers is provided by the business, it must meet the minimum standards prescribed by the National Road Traffic Act. As soon as the vehicle enters a public road the rules of the road apply. Even where workers are being transported on farm roads, every precaution should be taken to minimize the risk to the people being transported.

The transport vehicle should provide seating, a canopy against weather and seat belts.



CHECKLIST

	YES	NO	COMMENT	DATE	
<p>All vehicles used to transport workers must be fit for purpose, safe and comply with road safety legislation – they are:</p> <p>Roadworthy</p> <p>Registered</p> <p>Licensed</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<div style="border: 1px solid black; height: 150px;"></div>		
<p>The mechanical condition of the vehicle is checked regularly and serviced as required by the manufacturer</p>	<input type="checkbox"/>	<input type="checkbox"/>		<div style="border: 1px solid black; height: 40px;"></div>	
<p>Vehicles are checked before trips against a documented checklist that is kept on file and faults are repaired promptly</p>	<input type="checkbox"/>	<input type="checkbox"/>		<div style="border: 1px solid black; height: 40px;"></div>	
<p>Vehicles conveying employees are stationary when employees are mounting or dismounting</p>	<input type="checkbox"/>	<input type="checkbox"/>	<div style="border: 1px solid black; height: 40px;"></div>		
<p>Vehicles are clear from obstructions that can cause employees to fall or trip during mounting/dismounting</p>	<input type="checkbox"/>	<input type="checkbox"/>	<div style="border: 1px solid black; height: 40px;"></div>		

CHECKLIST CONTINUED

	YES	NO	COMMENT	DATE
The use of vehicles is monitored in a logbook	<input type="checkbox"/>	<input type="checkbox"/>		
Site speed limit posted, enforced and not exceeded	<input type="checkbox"/>	<input type="checkbox"/>		
The vehicles comply with legislation to ensure passenger safety:				
Safety enclosures meet legal requirements	<input type="checkbox"/>	<input type="checkbox"/>		
Passengers are safely seated or standing	<input type="checkbox"/>	<input type="checkbox"/>		
The vehicle is not overloaded	<input type="checkbox"/>	<input type="checkbox"/>		
First Aid kit and emergency numbers are available	<input type="checkbox"/>	<input type="checkbox"/>		
Inform passengers about safety procedures and ensure they are familiar with the relevant rules and regulations	<input type="checkbox"/>	<input type="checkbox"/>		
The disciplinary code makes provision for contravention of policies and safety regulations as outlined above	<input type="checkbox"/>	<input type="checkbox"/>		
The use of tractors on public roads to transport workers is avoided as far as possible	<input type="checkbox"/>	<input type="checkbox"/>		

CHECKLIST CONTINUED

	YES	NO	COMMENT	DATE
Tractors are never used to transport workers in bad weather, before sunrise or after sunset	<input type="checkbox"/>	<input type="checkbox"/>		
There is of list of names of workers to be transported	<input type="checkbox"/>	<input type="checkbox"/>		
The transport vehicle provides fixed seating, a canopy against weather and seat belts	<input type="checkbox"/>	<input type="checkbox"/>		
The vehicle is driven by a qualified person	<input type="checkbox"/>	<input type="checkbox"/>		
There are grievance mechanisms in place for employees to report bad driving and grievances are taken seriously by management and dealt with immediately	<input type="checkbox"/>	<input type="checkbox"/>		

Examples of Good Practice

An independent bus service is contracted to transport workers to and from the workplace and producers cover the cost of this service.

Transport for workers is provided in a bus trailer (capacity 80 passengers) that latches on to a large truck otherwise used to transport goods.

Enclosed vehicles with clearly marked steps for climbing into and off the transport vehicle.

Producers have a written agreement with the Labour Broker that sets out the minimum requirements for transporting workers. The Labour Broker transports the workers to the farm gate from which point the farm provides its own transport for workers.

Seasonal workers recruited from other provinces collectively decide on the means of transport (independent bus or taxi service) and the employer covers the cost.



Independent bus service.



Enclosed transport with steps.



Bus trailer.

DRIVERS

Truck, bus, or tractor drivers play a key role in transporting employees. While some farms have policies and training programmes in place for drivers, on many farms, risk management strategies for drivers is lacking.

Drivers responsible for transporting people to and from farms must have appropriate training and skills and must adhere to the farm's Transport Policy and relevant legislation.

What is the risk?

There is a risk of injury or death due to:

- An incompetent driver.
- Reckless driving.
- Fatigue – drivers working excessive hours.

There is a risk of damage to vehicles.

There is a risk of loss of product, skilled workers and production time due to accidents or incidents involving transport vehicles.

What does the law say?

The National Road Traffic Act, 1996 stipulates the requirements for drivers:

Drivers are required to be fit and equipped with a driving licence issued by the Traffic Department.

The National Land Transport Act 2009 stipulates that if there is a charge for the transport you need an Operator License and drivers need a professional Driving Permit (PrDP) if transporting more than 12 people – both these permits are issued by the local Traffic Department.

Drivers must operate vehicles according to the laws and regulations stipulated in the NRTA.

The Sectorial Determination 13 states that drivers may not work more than 15 hours overtime per week.

What is recommended?

Make sure drivers appointed are competent, responsible, medically fit and hold a valid driver's license. There should be a clear set of rules outlining the responsibilities of drivers and additional training should be offered if required.

Manage the working hours of drivers as they often start work earlier and end later because of transport commitments and in some cases they work over weekends. In this case it is important to manage working hours and rest times in accordance with legislation.

Log all trips - include kilometres travelled and the number of workers transported. This will help your business manage transport and ensure that there is no misuse or overloading of vehicles.

Examples of Good Practice

Drivers are permanently hired after their driving records and driving licences have been evaluated. Each driver is assigned to a particular vehicle for which the driver had signed a Company's Driving Policy (CDP). The CDP commits the driver to safe driving and transporting practices, such as: the responsibility to check the safety of the vehicle before it is used and report any damages found, the regulation of vehicle licences and services, and the use of a logbook that monitors the distance, fuel consumption and hours driven. By signing the CDP, drivers commit to refrain from smoking, drinking alcohol, using illegal drugs or a cellular phone while driving. Each vehicle is also equipped with an Accident Report Form and a separate information sheet with emergency numbers in the case of an accident.



Safe transport provided to workers.

CHECKLIST

Drivers employed by your business are:

	YES	NO	COMMENT	DATE
Competent, responsible, medically fit and hold a valid driver's license and PrDP if applicable	<input type="checkbox"/>	<input type="checkbox"/>		
Aware of the farm transport policy, rules and regulations	<input type="checkbox"/>	<input type="checkbox"/>		
Trained and understand the serious health and safety responsibility involved in transporting employees, and is disciplined in his/her approach to driving. For example, checks vehicles before use; reports faults; never takes short-cuts; complies with speed limits; does not pick up hitch hikers along the way, never drinks alcohol and drives; etc.	<input type="checkbox"/>	<input type="checkbox"/>		
Aware of the legal requirements e.g. the number of passengers vehicles are allowed to convey, speed limits, etc	<input type="checkbox"/>	<input type="checkbox"/>		
Vigilant about record keeping – filling in the prescribed log book	<input type="checkbox"/>	<input type="checkbox"/>		

CHECKLIST CONTINUED

	YES	NO	COMMENT	DATE
Vigilant about inspecting vehicle (tyres, lighting, brakes etc.) with a checklist before the trip, and results are recorded. <i>See Resource section for example of a checklist.</i>	<input type="checkbox"/>	<input type="checkbox"/>		
The drivers' hours of work are managed effectively	<input type="checkbox"/>	<input type="checkbox"/>		

B. TRANSPORTING WORKERS ON THE FARM DURING THE COURSE OF EMPLOYMENT

The most common cause of serious and fatal injuries on farms involves moving and overturning vehicles.

Transport in and around the workplace needs to be controlled to protect people and to prevent damage to vehicles.

The employer has a duty to ensure that workers who are transported on the farm, for example to orchards for picking or thinning, are safely transported and that measures have been put in place to reduce the risks involved.

What are the risks?

There is a risk of injury or even death due to a number of possible factors including:

- Unsafe transport methods – workers sitting on the edge of bins – resulting in falls from a moving vehicle.
- Workers climbing on and off moving vehicles.
- Vehicles driving too fast due to production pressure or sheer negligence.

There is a risk of damage to vehicles and property if there is an accident.

There is a risk of loss of productivity due to injury or damage to vehicles.

What does the law say?

Although there is nothing in the law that relates specifically to transporting workers on a farm, the Occupational Health and Safety Act places a duty on employers to maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of employees. Employees must also take reasonable precautions over their own health and safety at work. They must follow precautions and rules about safety and report any unsafe circumstances or accidents as soon as possible (before the end of shift) to the safety representative or supervisor.

Workers must be made aware of potential dangers as well as the rules related to vehicles and transport on the farm

For example:

- Workers must be seated in trailers when being transported and not sitting on the edge.

- Workers must wait for the vehicle to stop (be stationary) before getting on or off.

Drivers of vehicles such as 'bakkies' used to transport workers on the farm must have a valid driver's licence, be aware of risks and know the rules related to driving on the farm:

- Be aware of dangers of slopes, wet and muddy roads on the farm.
- Be aware of speed limits and not exceed them.

Tractor drivers must receive formal training.

Workers may not be transported in bins containing equipment (such as ladders, etc).

Workers may not be transported in the same bins as fruit. (Food safety regulations).

INJURIES AND ACCIDENTS

The farm is liable for any harm or injury caused to an employee during the course of employment, except for when an employee intentionally caused the hazard or accident. In the latter the employer has a duty to prove it.

The employer is also liable for any harm or injury caused to an employee if the accident was due to negligence in health and safety procedures, or if the working environment provided such conditions for injury.

All accidents and incidents (even first aid incidents) must be recorded and in cases where more than first aid is required, an Annexure 1 report must be completed and the cause of the accident investigated.

The Compensation for Occupational Injuries and Diseases Act (COIDA) as amended in 1997 offers compensation to employees if they are injured in the workplace whilst on duty. Workers who are injured or obtain an occupational disease can claim compensation for temporary or permanent disablement. If workers die as a result of an injury on duty, their dependents will also be entitled to claim compensation. Employers who registered their employees are protected against civil claims from their employees and their dependents in this regard.

The farm should provide transport or cover the costs for an injured employee to be transported to get the appropriate medical attention. Transportation should also be made available for the injured employee back to his/her residence. COIDA Section 22(5). Transportation costs can be claimed back from the Compensation Commissioner.

What is recommended?

Vehicles used to transport workers on the farm should be able to move around safely, be properly maintained and drivers should be adequately trained.

Have good management systems in place for the transportation of workers on the farm and ensure these are implemented effectively. Ensure a high level of awareness around safety – everyone on the farm is responsible!

When an incident or accident occurs in the workplace, it is important to report the accident as part of your compliance with the requirements of the Occupational Health and Safety Act and Compensation for Occupational Injuries and Diseases Act (COIDA) (Section 22).



CHECKLIST

	YES	NO	COMMENT	DATE
Management systems are in place for vehicles and transport of workers on the farm and these are implemented effectively	<input type="checkbox"/>	<input type="checkbox"/>		
Transport is included in your health and safety risk assessment	<input type="checkbox"/>	<input type="checkbox"/>		
You have a transport policy in place	<input type="checkbox"/>	<input type="checkbox"/>		
Workers have received training on the transport rules and regulations – this should form part of your induction training programme	<input type="checkbox"/>	<input type="checkbox"/>		
Transport rules and regulations are displayed in the workplace	<input type="checkbox"/>	<input type="checkbox"/>		
Vehicles used for the transportation of workers on the farm are fit for purpose:				
They are serviced regularly	<input type="checkbox"/>	<input type="checkbox"/>		
Checked before use each day	<input type="checkbox"/>	<input type="checkbox"/>		
Vehicle drivers to have valid driver’s licenses	<input type="checkbox"/>	<input type="checkbox"/>		
Tractor drivers have received formal training	<input type="checkbox"/>	<input type="checkbox"/>		

	YES	NO	COMMENT
There are grievance mechanisms in place whereby workers can report dangerous driving practices	<input type="checkbox"/>	<input type="checkbox"/>	
Procedures are in place for reporting and investigating incidents and accidents in the workplace	<input type="checkbox"/>	<input type="checkbox"/>	
Vehicle drivers undergo medical fitness tests and check-ups at least every 2 years	<input type="checkbox"/>	<input type="checkbox"/>	

Examples of Good Practice • Transport on the farm



Tractor driver wearing a seat belt.



Trailer for transporting workers is enclosed, has seats and seat belts and there is a separate compartment for equipment.

C. TRANSPORTATION OF PEOPLE WORKING AND LIVING ON FARMS FOR NON-WORK RELATED ACTIVITIES

Because of the remote location of many farms, the lack of public transport and financial resources, farmers often provide transport for non-work related purposes, including transport to:

- Shops over weekends for workers to buy supplies
- Doctors or clinics
- Receive government grant payments
- Sports events
- Religious functions.

When transport of this nature is provided it must be safe and effectively managed so as not to put anyone at risk.

What are the risks?

There is always the risk of serious injury or death caused by road accidents. The cause of such accidents could be due to a number of factors including:

- Negligent driving
- Overloaded vehicles
- Vehicles not roadworthy
- Getting on and off the transport vehicle
- Falling from a vehicle while in transit
- Accidents caused by other drivers
- Weather hazards, potholes or animal obstructions.

There is a risk of liability: The vehicle owner is liable if the vehicle does not meet legislative requirements – for example, it is not roadworthy, unlicensed or overloaded.

If there is no policy or rules governing this kind of transport it could lead to misunderstandings, unrealistic expectations and eventually conflict in the workplace.

What does the law say?

Transportation provided must meet the minimum standards prescribed by the National Road Traffic Act.

Vehicles used must be fit for purpose, safe and driven by a qualified person.

What is recommended?

Once again, there is no legal obligation to provide this nature of transport but if it is provided it should be controlled and managed effectively in accordance with the law and good practice. Have clear policies and procedures in place and delegate responsibility to a senior employee to ensure they are implemented effectively. Ensure that vehicles assigned for the purpose are in good condition, that a driver is assigned, properly trained and responsible. There must be strict rules to avoid overloading of vehicles and make sure that under no circumstances should people transport – or be transported – under the influence of alcohol and or drugs.

Rules, regulations and consequences for violations must be clearly communicated with everyone making use of this transport.



CHECKLIST

	YES	NO	COMMENT	DATE
There are written agreements and policies in place when farm vehicles are employed for reasons that are not work-related	<input type="checkbox"/>	<input type="checkbox"/>		
Written agreements stipulate the terms and conditions of the use of the vehicle	<input type="checkbox"/>	<input type="checkbox"/>		
Safety policies and procedures are clearly communicated to all parties	<input type="checkbox"/>	<input type="checkbox"/>		
A qualified, responsible driver is designated for the job	<input type="checkbox"/>	<input type="checkbox"/>		
The vehicle used meets the legislative requirements:				
Licensed	<input type="checkbox"/>	<input type="checkbox"/>		
Roadworthy	<input type="checkbox"/>	<input type="checkbox"/>		
Registered	<input type="checkbox"/>	<input type="checkbox"/>		
A code of conduct should be part of your transport agreement with your workers	<input type="checkbox"/>	<input type="checkbox"/>		

Vehicle use is monitored and recorded in a logbook or register	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Mechanisms are in place for reporting unsafe driving, etc that put passengers at risk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>

Examples of Good Practice

Transport for medical purposes is provided free of charge.

Many families living on farms depend on Government grant payments to supplement their household income. This is recognised on many farms and transport is provided for this purpose once a month.

Free transport for all farm employees (permanent and seasonal) to town once a week or on 'pay-day'.

In some cases, the employees are allowed to use the farm's vehicle to visit or transport family members to other provinces, on the condition they pay for the fuel. Farmers provide free transport for special occasions such as: when families moved from one house to another, funerals, meetings, etc. For long distance travel there were written agreements in place.

One farm designates a truck for emergencies after work and on weekends. The vehicle is able to transport ten people and all trips are recorded. The farm also provides free transport for religious groups to church once a month and transport for soccer and rugby teams to weekend games. Except for the tractors, all vehicles are equipped with a tracking system to monitor movement.



TRANSPORTING CHILDREN TO AND FROM SCHOOL

The absence of a national policy on school transport has resulted in fragmented provision of transport services administered by provincial departments of education and transport. The journey to school for many children involves long distances to walk, unsafe modes of travel, exposure to weather and traffic related dangers. In response to this situation, many farms assist with the transportation of children to school and back home on a daily basis. Because children are vulnerable particular attention must be afforded to the safety of such transport.

What is the risk?

Accidents involving the transportation of learners to school have been widely critiqued in the media and the general public.

If not managed and controlled, the risk of injury or death is high due to:

Road accidents caused by overloading, negligent driving, etc.

Children falling from moving vehicles

Children running in front of a moving vehicle or road traffic.

What does the law say?

There are no specific provisions for the transportation of school children with the exception of section 264 of the National Road Traffic Regulations. This mode of transport is therefore regulated in terms of general transport legislation and regulations which stipulate:

The driver should be fit, competent and have a valid driver's license and relevant driving permit.

Vehicles must be fit for purpose, etc.



What is recommended?

Although there are no specific provisions for the transportation of children, where this transport is provided it must be safe and meet the requirements of general transport legislation and regulations.

Children should ideally be transported in busses, mini-busses or a vehicle that is closed with seats and seatbelts.

The driver must be competent, have a valid driver's license and relevant permit and understand the risks involved in transporting children.

Develop a policy and safety procedures for transporting school children and ensure that these are communicated to the driver, parents and the children. The following should be included:

Rules of conduct for both the driver and the children

Emergency procedures

Safety measures – for example:

- Children waiting for transport must do so in a safe area away from traffic.
- Make sure the bus / transport vehicle is stationary before allowing the children to embark or disembark.
- Children should cross the road only once they have full visibility of oncoming road traffic, etc.



Examples of Good Practice

There is generally a high level of awareness amongst employers of the challenges involved in getting children who live on farm to school and back home. Many of the employers interviewed actively engage with families and government departments to ensure availability of adequate transport for school-going children. Some employers hire bus or taxi services to provide this service and cover the cost while others enter into an agreement with families to share the cost of this transport.



On one farm situated about 5 km from a main road, the employer has engaged with families to ensure all children attend school. In this particular case government does provide a bus service, but the pick-up point is the main road 5 km from where the children live. The farm decided to provide transport to and from school on a daily basis – a bakkie with a fitted canopy is used for this purpose.

In one province, Government has provided children from rural areas with hostel facilities close to schools. Farmers provide transport for these children on a termly basis to the hostel facilities and back home for the school holidays.

CHECKLIST

	YES	NO	COMMENT	DATE
There is a policy in place for the transporting of school children	<input type="checkbox"/>	<input type="checkbox"/>		
A person is appointed to manage the transporting of school children	<input type="checkbox"/>	<input type="checkbox"/>		
The vehicle (s) is safe and appropriate for transporting school children	<input type="checkbox"/>	<input type="checkbox"/>		
The driver is competent, medically fit and has a valid driver's licence and permit if applicable	<input type="checkbox"/>	<input type="checkbox"/>		
The driver is aware of how to deal with children and understands the risks involved in transporting children	<input type="checkbox"/>	<input type="checkbox"/>		
These are rules of conduct in place for both driver and children and they have been communicated and understood	<input type="checkbox"/>	<input type="checkbox"/>		
Vehicle(s) equipped with first aid kits and emergency numbers	<input type="checkbox"/>	<input type="checkbox"/>		

A GUIDE TO LEGISLATION

5

This section provides a brief summary of laws and regulations that are relevant to the transportation of farm workers.

National Road Traffic Act 93, 1996 (NRTA)

The National Road Traffic Act governs matters regarding road traffic, licensing, permits such as the Professional Driving Permit (PrDP), vehicle standards, driver and vehicle fitness and related issues e.g. automatic license suspension, fines, or court appearance for any conviction of reckless driving, driving under the influence, failing to stop after an accident, or violent offences.

National Road Traffic Regulations in terms of the National Road Traffic Act

Regulations 115, 247, 250 and 251: Sets out circumstances under which persons may or may not be carried on goods vehicles.

Regulations 234 – 239, 242, 243 covers the loads of vehicles i.e. the various permissible and maximum mass loads on axles and tyres.

Regulations 244, 245 covers the signage that needs to be placed on various vehicles especially goods and passenger transporting vehicles.

Regulations 265, 266 cover operator fitness and the registration of the operator for a PrDP in a category when transporting persons.

National Land Transport Act 5, 2009 (NLTA)

The National Land Transport Act regulates public transport on public roads.

For the purposes of this guideline it stipulates the following in Section 50:

If a person operates a road-based public transport service, he/she is required to carry an operating licence (valid for 7 years) issued by the Traffic Department, and adhere to the applicable rules thereof.

Section 53 states that “farmers carrying their own workers in vehicles of which they are sole owners” are exempted from this requirement.

Occupational Health and Safety Act 85, 1993 (OHSA)

The Occupational Health and Safety Act in section 8 (1) places a duty on employers to and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his / her employees.

The Occupational Health and Safety Act 85, 1993 section 24 and the General Administrative Regulations 8 and 9 outlines the procedures for reporting and investigating incidents and accidents in the workplace.

Compensation for Occupational Injuries and Diseases Act 130, 1993 as amended in 1997(COIDA)

For this guide's purpose this Act provides compensation to employees and their dependants in cases where they are transported by the business owner e.g. farmer or labour broker or by someone appointed by the owner/labour broker to and from their place of residence to the workplace or from the workplace to any other place/site where they are to perform work or to a training venue to undergo training in regards to their work. This service is normally free of charge.

Workers who are injured in a motor vehicle accident in the course of duty (on the way to or from the workplace, work site, training venue) are seen as an injury on duty (IOD) and can therefore claim compensation for temporary or permanent disablement. If workers die as a result of this accident, their dependants will also be entitled to claim compensation. This also applies to seasonal workers and foreign nationals employed. According to section 35 of COIDA, an employee cannot sue their employer for damages if they are injured whilst on duty.

Section 1 (xix) (c) of the COIDA recognises labour brokers (who against payment provides a person to a client for the rendering of a service or the performance of work, and for which service such a person is paid by the labour broker) as an employer.

Provision is made in COIDA section 89 for employees of labour brokers who have failed to be registered at the Compensation Commissioner or to pay its assessment fees to piggy-back on the client company's (e.g. the farm) registration with the Compensation Commissioner. Therefore if any of the labour broker's employees has an IOD on the client's premises e.g. the farm or packhouse, the client will have to claim for those employees' disability, injury or death compensation from the Compensation Commissioner.

The Road Accident Fund Act (RAF) 56, 1996

The Road Accident Fund Act is applicable where, due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle, an employee is injured while being transported in the course of his/her employment (Section 17).

In such cases COIDA and the RAF Act must be read together. If a person was injured in a motor vehicle accident in the course of employment he/she must first claim compensation for occupational injuries in terms of COIDA. The compensation given to the person must then be deducted from the total amount claimed from the RAF.

The RAF (Section 23 (4)) and the COIDA (Section 36) provides for employees to claim against third parties.

The RAF does not cover damage to vehicles or things inside the vehicles.

Labour Relations Act 66, 1995 (LRA)

Section 198(2) states that the worker provided by the labour broker (the service) is the employee of the labour broker (the employer).

Basic Conditions of Employment Act 75, 1997, as amended in 2002.

Section 82(3) states that the client (producer) and the labour broker are jointly and severally liable where the labour broker does not comply with the BCEA or a Sectoral Determination.

Section 17(2)(b) states that transportation must be made available between the farm worker's place of residence and the workplace at the commencement and conclusion of the farm worker's shift. Night shift means work carried out after 18h00 and before 6h00 the following day.

Sectoral Determination 13: Agricultural Sector

Part B: section 8 regulates deductions that may be made from workers' wages.

Part D: section 13 regulates overtime hours for farm workers

Part D: section 17 states that transportation must be made available between the farm worker's place of residence and the workplace at the commencement and conclusion of the farm worker's shift. Night work means work carried out between 20h00 and 4h00 the following day.