

WEB EXCLUSIVE: 7 LEGAL PITFALLS TO AVOID WHEN HIRING SEASONAL EMPLOYEES

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With the holidays in full swing, many businesses are busy hiring seasonal employees to keep up with the holiday rush. As with recruiting any employee, well-planned hiring practices that comply with applicable employment laws can help ensure seasonal employees are suited for the job and that your company is prepared to defend any potential claims. Here are seven actions you can take to avoid common legal pitfalls when hiring seasonal workers:

1. **Assess Whether To Classify The Worker As An “Independent Contractor”**

Businesses often misclassify employees as independent contractors and, in the process, open themselves up to significant potential liability. This temptation can be especially compelling with seasonal employees. You should avoid designating a seasonal worker as an independent contractor without first determining that the circumstances legally justify such a classification.

2. **Clarify Expectations Regarding The Duration Of Employment**

Although seasonal employees are generally aware they have been hired on a temporary basis, you should be sure to specify the limited duration of employment both verbally at the onset and in writing. Further, you should require any seasonal employees to acknowledge, in writing, that they understand they are being hired for a limited duration and as “at-will” employees – meaning you have a legal right to terminate the employee, with or without cause, at any time.

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3. All Of The Usual Rules Apply

Most employment laws, except the Family and Medical Leave Act (FMLA), apply to seasonal employees. Unless employment continues beyond the holidays, seasonal employees are ineligible for FMLA leave because they will not fulfill the required 1,250 hours of work in a 12-month period. However, other employment laws – such as those prohibiting employment discrimination, harassment, and retaliation – apply with equal force to seasonal workers. You should take steps to prevent and address such allegations by seasonal employees in the same manner as for regular employees.

4. Watch The Clock

Generally speaking, the federal Fair Labor Standards Act (FLSA) and state laws require you to pay seasonal employees one-and-a-half times their regular rate of pay for any hours worked in excess of 40 in a given workweek. However, certain individuals are exempt from overtime requirements under both federal and state law. Under the FLSA, for example, employees of certain seasonal amusement or recreational establishments, organized camps, and religious or nonprofit educational institutions are generally exempt from overtime pay. It's important that you review your seasonal employees' status under federal and state law to determine whether overtime exemptions apply.

5. Develop Telecommuting Policies And Procedures

Many businesses hire remote workers for customer service and similar positions in an effort to improve productivity and efficiency. Telecommuting, however, raises unique legal issues that must be addressed in established policies and procedures before they become a liability. For example, the Occupational Safety and Health Act requires that you provide a safe workplace to all of your employees – even those working from home. In addition, workers' compensation laws apply to telecommuters. To address these issues, you can require that telecommuters have a designated workspace that has been inspected and approved by the company to ensure it is in compliance with workplace safety obligations.

6. Conduct Managerial Training

Before the holiday rush, all managers should understand that most rules apply to seasonal workers with equal force. In addition, they should be trained on how to

properly address reports of harassment and discrimination, and how to respond to requests for accommodation. For example, if an employee requests time off during the holiday season for religious reasons, managers should be trained to engage in a discussion with the employee to determine exactly what the religious requirements are and whether they can be accommodated.

7. Review Your Benefits Policies

Federal law does not require you to provide seasonal workers the same benefits as you do for regular, full-time employees. However, if a seasonal employee works more than 30 hours per week for a period exceeding 120 days, you may be required to offer health insurance under the Affordable Care Act. You should review your benefits policies and health plan documents to determine whether seasonal workers are eligible, as these documents can control when you provide benefits more generous than what the law requires. Failure to provide required benefits can lead to expensive consequences.

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