



The Holidays Are Here: 10 Practical Tips for Hiring Seasonal Workers

Insights

11.14.22

Employers across a wide variety of industries are looking to ramp up their hiring efforts as the holiday season begins. Indeed, many businesses will rely on temporary workers to meet the uptick in demand that holiday shopping brings – which makes it critical for you to understand and avoid the legal pitfalls associated with seasonal employment. Here are 10 practical tips to help you stay compliant as you prepare for the holiday rush.

1. Understand the Definition of “Seasonal Employee”

First, you should determine whether your temporary employees are truly “seasonal.” According to the IRS, an employee is considered seasonal if the employment period is expected to last for six or fewer months and the need for the role usually starts and ends at about the same time each year – such as November to January for the holidays.

2. Ensure Compliance with Wage and Hour Laws

The federal Fair Labor Standards Act (FLSA) and state laws generally require you to pay seasonal employees 1.5 times their regular rate of pay for all hours worked beyond 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. Additionally, the FLSA provides for subminimum wage for minors under certain circumstances. It’s important that you review your seasonal employees’ status under federal and state law to determine whether overtime exemptions apply.

3. Verify Employment Authorization

Employers must treat seasonal staff in the same way they treat regular employees by verifying that they are legally eligible to work in the United States. Employers should complete the Employment Eligibility Verification form (I-9 form) even for seasonal employees. If you’re hiring remote workers this season, you should note that – due to ongoing COVID-19 concerns – employers will have the flexibility to remotely review employment documents for I-9 purposes in some circumstances until July 2023.

4. Avoid Issues with Misclassification

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. You should also note that some states, such as [California](#) and [Massachusetts](#), have stricter rules than federal law when it comes to independent contractor classification.

5. Review Potential Paid Time Off Allowances

Unless employment continues beyond the holidays, seasonal employees are ineligible for federal Family and Medical Leave Act (FMLA) leave because they will not fulfill the required 1,250 hours of work in a 12-month period. However, some state and local jurisdictions require employers to provide paid time off – such as sick leave – to employees who work for shorter durations. Seasonal employees may or may not qualify for such leave accruals, so it's important to check the laws in your jurisdiction.

6. Note Restrictions When Employing Minors

Both federal and state laws restrict the time of day and number of hours that minors can work, the type of work that minors can perform, and the equipment they can use. The FLSA governs child labor but allows states to enact more restrictive child labor laws, so you must be aware of any local restrictions as well. In situations where the federal law and state law differ, you must follow the law that provides the most protection for the minor. For more information, check out [our employer's guide to bringing aboard minors, interns, and volunteers](#).

7. Be Aware of Your Obligations – and Any New Obligations Based on Employer Size

Many employment laws – such as those prohibiting employment discrimination, harassment, and retaliation – apply with equal force to regular and seasonal workers. Therefore, you should take steps to prevent and address allegations by seasonal employees in the same manner as for regular employees. Don't cut corners when it comes to onboarding seasonal employees, ensuring that they receive the same EEO prevention training that you offer all throughout the year (knowing how to report harassment or discrimination, understanding your professionalism rules, etc.).

You should also recognize that most federal and state employment laws apply only to businesses with a certain number of employees. So, your seasonal employee headcount might bring your business under the purview of additional laws. Particularly if you're a small business, you should pay attention to whether hiring seasonal employees will increase your total number of employees and trigger additional legal obligations.

8. Set Clear Expectations

Although seasonal employees typically understand that they were 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 and the employee have a legal right to terminate the employment relationship, with or without cause, at any time.

9. Protect Confidential Information

The protection of confidential information should not be overlooked when hiring seasonal employees. If the seasonal employee will have access to confidential or proprietary information, an employer may want to consider entering into a non-disclosure or confidentiality agreement.

10. Train Supervisors

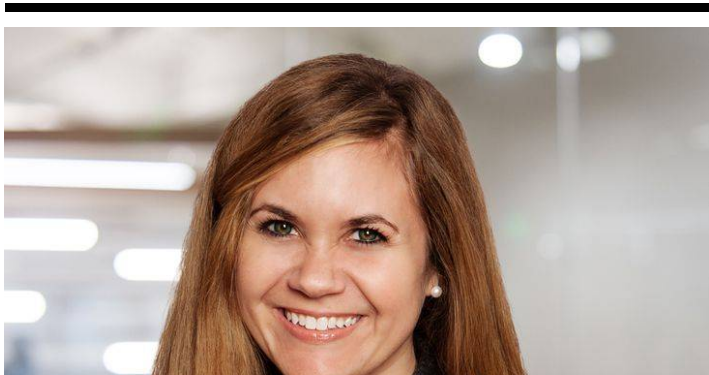
Make sure supervisors know that most rules that apply to regular workers also apply to seasonal workers with equal force. In addition, they should be trained on how to properly address reports of harassment and discrimination, and how to respond to requests for accommodation. For example, if an employee 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.

Conclusion

As always, employers should take care to hire the best seasonal candidates, apply and follow internal policies, and closely monitor their pay practices to ensure they are complying with state and federal laws for all employees. Employers that carefully assess their seasonal hiring practices can take great strides toward protecting themselves from liability.

We will monitor developments, so make sure you are subscribed to [Fisher Phillips’ Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Wage and Hour Practice Group](#).

Related People





Courtney Leyes

Partner

901.322.1656

Email

Service Focus

Privacy and Cyber

Employee Defection and Trade Secrets

Employee Leaves and Accommodations

Employment Discrimination and Harassment

Immigration

Wage and Hour

Industry Focus

Gig Economy