

Seasonal Employees Pitfalls & Tips for Employers

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Summer is a popular time for seasonal employment — particularly in the restaurant, golf and service industries in Central Oregon.

Seasonal employment presents a host of challenges for employers. These challenges are rooted not in laws which are unique to seasonal employees, but by the practical challenges presented by fast onboarding and high turnover of seasonal employees.

Here are just a few of the issues and potential pitfalls for employers to keep in mind this summer.

Training and Premises Liability

Seasonal employees are often hired in a hurry. There can be a natural inclination to have the employee start “right away,” which can lead to accidental oversight with respect to the documents necessary to ensure that the prospective employee is actually authorized to work. Employers should ensure that employees have completed Section 1 of their Form I-9 no later than their first day of work. The employer, in turn, must complete Section 2 of the form within three business days of the employees’ first day of employment. Otherwise, the company is subject to monetary fines for a technical violation in the event of a notice of inspection issued by the United States Citizenship and Immigration Services office.

Second, there can be a tendency for employers to skip some of the training that might typically accompany the onboarding process with a long-term hire. The golden rule is that, if at all possible, employers should provide employees with the same onboarding training regardless of how long they will be with the organization. Additionally, employers should ensure that seasonal workers are aware of the company handbook, and that they attest to an understanding of the company’s policies — particularly with respect to harassment,



discrimination, and their ability to bring concerns to the attention of management.

In addition, be mindful of any other training or education requirements which might be particular to the business or industry. For example, if an employer hires a temporary line cook, they should ensure that the employee actually has or intends to get a valid food handler card within thirty days of beginning work. If an employee is serving alcohol, make sure that they are aware of the risks of overserving customers. Restaurants and bars expose themselves to potential premises liability issues when employees overserve patrons. Establishments become an easy target where the employee who served the individual was not properly trained on the company’s alcohol policies or how to identify individuals who should not be served.

Tip Credits

Oregon is in the minority of states that do not allow employers to take a tip credit. In other words, an employer whose employees receive tips cannot pay employees below minimum wage on the basis that an employee’s tips would otherwise push them over the minimum wage. Employers must pay the entire applicable wage, at a minimum, regardless of any excess income that an employee might earn through the receipt of gratuity.

As a refresher, the minimum wage recently increased to \$11.25 per hour in “Standard Counties” including Deschutes County; to \$12.50 per hour in the Portland Metro area; and to \$11 per hour in “Non-Urban Counties” including Crook County and most of Eastern Oregon.

Final Paychecks

An easy way for employers to find themselves in hot water is through non-compliance with Oregon’s final paycheck statute. It doesn’t matter whether the employee has been there for six years or six weeks — upon separation of employment, employees must be paid all wages earned within

the time required by statute.

The general rules concerning final paychecks are as follows:

1) If the employee is terminated either by the employer or by mutual agreement, all wages owed are due to the employee no later than the end of the first business day following the termination.

2) If the employee quits, all wages become due and payable immediately if the employee has given the employer at least 48 hours’ notice of their intent to quit (excluding Saturdays, Sundays and holidays). If the employee quits without giving 48 hours’ notice, the wages are due within five days (also excluding Saturdays, Sundays and holidays) or on the next regularly scheduled payday — whichever is sooner.

3) Of particular note — where an employee does not give 48 hours’ notice of their intent to quit, and the employer typically requires the employee to submit time records to determine the amount of wages owed, the employer must pay the employee the wages that the employer estimates are owed within five days. Once the employee submits the time records, the employer must pay any additional wages owed within five days.

Although these are the general rules, there are some distinct rules applicable to particular seasonal positions, such as seasonal farmworkers and employees of state and county fairs. Employers should consult with an employment attorney with respect to any specific final paycheck inquiries.

By staying on top of policies, trainings and payroll procedures, seasonal employers can ease the stress of high turnover and greatly mitigate their risk of legal exposure.

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