



CONSIDERATIONS FOR BUSINESSES WITH SEASONAL HIRING

Even though we are still enjoying the long, warm days of summer, businesses that see an uptick around the holidays are already planning for seasonal hiring needs. An influx of new employees and the most hectic time of the year create an environment where it is easy to make costly mistakes by overlooking employment law compliance. If your business makes holiday hires, it is a great time to review your employment policies. Below are a few things to start thinking about now:

Sexual Harassment Training

This year California expanded sexual harassment training requirements to include all employers with 5 or more employees and to require training for both supervisory and non-supervisory employees. If seasonal hiring is typical for your business or industry, seasonal employees count toward the employee threshold. Seasonal employees must receive sexual harassment training within 30 calendar days of hire or within 100 hours worked. The good news for this year—the training requirement for seasonal employees goes into effect on January 1, 2021, so if your need for seasonal hires ends by December 31, you still have another year to put a training program in place for seasonal hires. Regular staff must receive training by January 1, 2021, or within 6 months of hire, with refresher training offered every two years.

Seasonal Hires May Change Your Minimum Wage Rate

Under California's differential minimum wage structure, in 2019 employers with 25 or fewer employees must pay a minimum wage of \$11/hour. Employers with 26 or more employees must pay a minimum wage rate of \$12/hour. If seasonal hires push your employee count to 26 or more, your business must pay the higher rate for any pay period or partial pay period with 26 or more employees. If the number of employees later drops to 25 or less and you wish to drop back to the lower rate, you must give advance notice and include the information on a pay stub. Some cities and counties in California have enacted living wage ordinances. If your business is located in one of those cities or counties, you should review the applicable ordinance with an attorney to determine if there is a differential wage rate and how the ordinance treats seasonal employees.

Paid Sick Leave

Seasonal employees are entitled to PSL any time they work for the same California employer for 30 or more days in a year. Like other employees, accrual begins on the first day of work and accrued PSL may be used beginning on the 90th day of employment. If the seasonal employee has worked for your business previously and their last date of separation is less than a year prior to re-hire, their previously accrued and unused

sick leave reinstates. Also, keep in mind that local PSL ordinances may impose greater obligations than state law.

Treating Seasonal Employees as Independent Contractors

Because a seasonal employee may only be with your business for a few weeks or months it might be tempting to classify him or her as an independent contractor. Proceed with caution! Last year's California Supreme Court decision in the Dynamex case means that many independent contractors have been misclassified. If your seasonal hire's work is within your usual scope of business, chances are he or she is an employee. Even if your seasonal hires are doing work outside your normal scope of business, other factors listed by the California Supreme Court might still mean they are employees and not independent contractors.

Make Sure Supervisors Know Basic Labor Law Requirements

Depending on your business, the personnel you put in charge of managing seasonal hires might have little regular experience managing hourly employees. A quick review of the basics such as how clocking in and out should work and how often meal and rest breaks are required can go a long way toward reducing the risk of common wage and hour claims, especially if your business lacks professional human resources personnel on staff.

Update Your Employee Handbook

We recommend that employers update their employee handbooks annually to ensure they are compliant with any new laws. For employers that hire seasonal workers, there are also other considerations. For example, there might be certain benefits or perks that you give to regular personnel, like paid holidays or vacation days, but don't wish to extend to short term hires.

Staffing Agencies

If your business uses a staffing agency for seasonal hires, some obligations like sexual harassment training might fall to the staffing agency by law. However, as to other obligations, like payment of wages, your business would be considered a joint employer. Staffing agency employees might also change your obligations toward your direct hires. For example, staffing agency employees still count toward the five employee threshold for sexual harassment training for direct hires and also count toward the 26 employee threshold for higher minimum wage under state law.

How Can We Help?

Whether your business is already subject to existing sexual harassment training requirements for larger employers, will become subject to sexual harassment training for the first time under the expanded requirements, or now needs to train non-supervisory employees due to the new expanded requirements, we can help! We offer on-site sexual harassment training for both supervisory and non-supervisory employees. We can also help you revise your employee handbooks and written policies, or answer other questions you might have. Contact any member of our Employment Group for more information.

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