



Employer Advisory Council of Orange County, Inc.

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New Developments in Employment Law

Update

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EAC Update

WELCOME TO THE HOLIDAY SEASON! REMINDERS FOR HIRING SEASONAL EMPLOYEES

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Last week, the Wall Street Journal reported that holiday season hiring started as early as June this year. If your company is one of the many that substantially increases its workforce for the holidays, keeping the following practices in mind throughout the season can help to ensure smooth operations and avoid any unnecessary risks.

1. Ensure you have a proper Form I-9 for each of your employees.

As we noted in a previous legal alert, USCIS last issued a new Form I-9 in July 2017, which became the mandatory version for new hires last year. You may still rely on reverification of a previously-completed Form I-9 in appropriate circumstances, such as when an employee's employment was not terminated since he or she was last staffed with the company, or when an employee is rehired within three years from the date that he or she completed the last Form I-9 for your company. The Form I-9 instructions provide detailed instructions on how to handle "Rehires."

2. Review your timekeeping procedures.

The new influx of workers with the holiday season provides an opportunity to review whether they – and others in the same job – are accurately keeping time and receiving overtime pay when appropriate. The company should remind all managers and employees that the falsification of records is prohibited and that all time worked must be recorded. Managers should be encouraged to foster a culture in which these rules are carefully followed.

It is acceptable for you to require your employees to obtain permission before working overtime, but unapproved overtime must still be paid to avoid a violation of the Fair Labor Standards Act (FLSA). (Notably, this requirement does not prevent you from disciplining an employee for failing to follow proper procedures.) For a brief review of some key terms of the FLSA and recent opinion letters, see our previous legal alert on new wage and hour opinions.

3. Check your local laws regarding paid time off and offer other benefits required by law.

Many cities and states now require that employers provide their employees paid time off for certain reasons. Typically, employees will accrue paid time for family leave or sick leave based on the number of hours worked. You should check whether any such laws apply to your business, as even seasonal and part-time employees may be eligible.

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Additionally, temporary employees may be eligible to receive health and other benefits under your plan documents, and employees who work 30 hours or more per week may need to be offered healthcare coverage under the Affordable Care Act. To avoid penalties, you should carefully ensure that all benefits for which an employee may be eligible are provided to him or her.

4. Make the length of your employees' employment clear.

Before each employee is hired, ensure that he or she is aware of the expected duration of the relationship. Although the employment of an at-will employee can be terminated at any time, clear communication can prevent frustration or misunderstanding from your temporary employees when their employment ends. To the extent that an employee will be retained beyond the season for which he or she was initially hired, you should assess whether the employee has become eligible to receive additional benefits.

5. Conduct training for your entire workforce.

You should provide at least basic anti-discrimination and anti-harassment training to all of your new employees. It is also important to ensure that every employee has a copy of your policies and procedures and knows how to make a complaint. Taking this affirmative step to ensure that all employees know to whom they should report suspected or actual improper conduct provides a significant amount of protection to your company.

If you do not have any efficient and effective training on hand, your legal counsel can develop training programs designed specifically for your workplace, including ones that can be successfully implemented for a temporary workforce.

Conclusion

With proper safeguards in place, seasonal employees can keep your operations running smoothly throughout the busy holiday season without creating significant legal risk or liabilities.

If you have any questions regarding this alert or your employment practices, please feel free to contact the authors of this Alert, John Monroe at (404) 888-3881 or jmonroe@fordharrison.com, Kristina Griffin at (404) 888-3856 or kgriffin@fordharrison.com.

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