



## Retail Detail

# “Winter Workerland. . .”: Tips for Supplementing Your Workforce with Seasonal Employees

Hiring seasonal employees is not unlike hiring regular full-time or part-time employees . . . or is it? Indeed, seasonal employees are a breed all their own and consideration of their similarities to and differences from regular employees are noteworthy and critical. Possible missteps, as well as key issues to keep in mind when hiring seasonal employees, are set forth here.

### **The Overlap: Things You Should Do When Hiring Seasonal Employees That You Already Do When Hiring Regular Employees**

Onboarding. Hiring seasonal employees does not relieve you of the commonly perceived administrative actions that accompany engaging new hires. It is easy to mistakenly view the usual process as too burdensome or unnecessary given the expected short service period of seasonal employees. Do not be tempted to fall into this mindset when seasonal hiring begins. Instead, recognize that for purposes of onboarding procedures, an employee is an employee—whether seasonal or not. It is therefore critical that every seasonal worker provide the appropriate documentation for the Form I-9 process. This is particularly important given the current political climate surrounding immigration issues and increased I-9 audits and oversight by the U.S. Immigration and Customs Enforcement Office (ICE). For example, as announced (and discussed in more detail [here](#)), Abercrombie & Fitch recently paid \$1,047,110 in settlement with the ICE’s Department of Homeland Security Investigations over an inadequate Form I-9 process—even though the government’s audit uncovered **no** instances of the knowing hiring of unauthorized workers. Ensuring complete compliance with Form I-9 requirements for all new employees, including your seasonal hires, will avoid this potential pitfall.

Keep accurate time records. The holiday season is a busy time of year for many retailers, and tracking every employee’s whereabouts and time worked is a difficult task. To help avoid disputes and future litigation over compensation for time worked (and to free up your day to focus on matters aside from timekeeping), you should implement a method or system to record when seasonal employees arrive for work, take breaks, and leave for the day. In addition, you are wise to provide training to your seasonal employees—just as you should your regular employees—to clarify timekeeping procedures and the importance of accurately recording all hours worked. Make sure to emphasize that it is unacceptable to clock-in or clock-out a coworker, even with the coworker’s permission.

Pay overtime as necessary. This tip should go without saying, but it is often overlooked. A seasonal employee’s short tenure with an employer does not make him or her any less likely to raise a claim for overtime wages. Accurate time records are the hallmark of lodging a successful defense against such claims. Without accurate time records, a case often hinges on mere

“recollections” to determine how many hours an employee actually worked. You can avoid this danger by implementing a reliable and consistent recordkeeping practice and by paying overtime as necessary.

Provide standard training. Although a seasonal employee may only be with you for seventy-five days or so, he or she can still wreak havoc in the workplace or fall victim to another employee’s misconduct. Thus, the time you pull your seasonal employees away from their work to provide them with equal employment opportunity and anti-harassment training (and any other training that is reasonable under the circumstances) is time well spent. It not only helps you avoid litigation but also helps your seasonal employees understand your expectations and the seriousness of their employment. Training is especially important in retail businesses that hire first-time employees (e.g., minors) who have never been exposed to the work environment and do not have a refined understanding of the potentially serious legal consequences of their improper workplace conduct. With this in mind, you should also consider having seasonal employees acknowledge, in writing, that they have attended the training sessions you arrange.

### **The Divide: Things You Should Do When Hiring Seasonal Employees That Likely Vary from the Practices You Follow When Hiring Regular Employees**

As early as possible during the interviewing process, you should inform potential seasonal employees that their services are needed for only a limited time. This concept cannot be overstated, and you should repeat it frequently. This will help manage expectations and help eliminate any doubt in the minds of seasonal hires as to why they are released from work when the season comes to an end.

Oftentimes, seasonal workers receive less benefits in comparison to their regular employee counterparts. Be up front at the time of hire to explain seasonal benefits and how they differ from regular benefits. Again, this will help reduce misunderstandings or disputes regarding variations in benefits packages.

At the end of the day, like the glass of a snow globe once the snow settles, clarity is key. Clarity as to position. Clarity as to expectations. Clarity as to recordkeeping.

Please feel free to call any of the individuals on our retail industry team listed below for further guidance regarding compliance with these new rules.

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