

Alert | Labor & Employment



December 2019

New York Seasonal and Holiday Employees

The holidays are upon us, NYC is bustling with tourists, and, with the typical surge in business this time of year, employers may be thinking about adding a few employees to their December and January schedules. This GT Alert provides important considerations with respect to those seasonal employment offers.

- The non-tip minimum wage in NYC changes on Dec. 31, 2019. If an employer has fewer than 11 employees, the **minimum wage** for all employees increases from \$13.50 per hour to \$15.00; for employers with 11 or more employees, the minimum wage in NYC is already at \$15.00. Therefore, employers with fewer than 11 employees will have to give their seasonal employees a raise on Dec. 31, 2019, if they are not already paying \$15.00 per hour.
- Employers must provide **sexual harassment training** to seasonal workers. City and state sexual harassment policies have been revised over the past few years, and training must now be provided annually. Additionally, training must be interactive. Generally, that means there is an aspect of employee participation, such as quiz questions, or an opportunity for employees to ask questions or provide feedback. Because city and state requirements differ slightly, employers should take care to ensure their training satisfies both laws.
- **NYC's Paid Safe and Sick Leave Law** applies to employees who are employed for hire more than 80 hours a calendar year. Thus, if an employee works 80 hours or less, an employer does not have to provide or calculate paid sick leave. However, if a seasonal employee is rehired within six months, the employer must reinstate previously accrued sick leave, unless the employer pays the employee for the unused sick leave upon their departure. If the employee is rehired within six months of separating

from an employer, the employer shall credit the employee with the total number of calendar days worked before the separation toward the 120-day waiting period. If the employee's break in employment is more than six months, the law does not require the employer to reinstate unused sick leave. The employee would have a zero balance of accrued sick leave on the first day of reemployment and would not be eligible to use sick leave for 120 days after recommencing employment. However, if an employee leaves at the end of January and comes back in November, for example, then all work within the calendar year must be included in determining whether the employee has worked more than 80 hours and is eligible for sick leave under the law.

- **New York's Workers' Compensation Law** applies to employees including day labor, leased employees, borrowed employees, part-time employees, unpaid volunteers (including family members) and most subcontractors. Employers will likely want to obtain workers' compensation insurance for short-term employees, even if the employee is covered by a temporary agency's workers' compensation insurance; generally such insurance will not be required if the employee is employed by a temporary agency so long as that agency provides workers' compensation insurance under which the employer is an additional insured.
- New York is one of a handful of states that require employers to provide **disability benefits** coverage to employees for an off-the-job injury or illness. Employees are eligible if they have worked at least four consecutive weeks.
- Students on a break are often eager to earn a little extra money while they are home. The hours that minors can work depend on age, the type of work, and whether the minor is attending school. New York state has one of the strictest **child labor laws** in the country. Keep in mind that there are different rules depending on whether school is in session. During vacations (school must close for the entire calendar week):
 - Minors under 18 may not work more than eight hours a day, six days a week;
 - Minors 14 and 15 may not work more than 40 hours a week; and
 - 16- and 17-year-olds may not work more than 48 hours a week.
 - Keep in mind, the work must be safe. The youth employment provisions of the **Fair Labor Standards Act (FLSA)** were enacted to ensure that when young people work, the work does not jeopardize their health, well-being, or educational opportunities.

Employers who count on the holidays to bring in that extra profit may want to consider seasonal employees to handle the additional sales. But employers should make sure they are complying with the requisite city and state employment policies, or else a short-term employee could end up costing a lot in the long run!

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