

Seasonal Employees and Benefit Considerations

What rights might a seasonal employee have if their employment is extended beyond 6 months?

Generally speaking, insurance coverage and other benefits contracts specify coverage for full-time regular (not temporary employees or independent contractors) employees. Some provide coverage for part time employees who are engaged to work a minimum number of hours each week on a year-round basis. By extending the period of time a seasonal or temporary employee is working, a situation might develop where a seasonal employee believes they have become permanent, or qualifies on a de facto basis and requests for all the benefits of regular full-time employees.

To avoid this, make sure you document the extension of time for any seasonal employee in their personnel file and state that they are still considered seasonal, not regular. Another way is to keep the seasonal employee's hours below the number of hours required to qualify for full-time regular employee benefits, which is often around 30 hours. Check the terms and conditions of coverage on all benefit plan summaries or with the plan administrator.

What rights might a seasonal employee have if they work a regular short season?

Some benefits are statutory and required if the employer and employee meet the criteria. Examples of these benefits include unemployment compensation, workers' compensation, and Family and Medical Leave Act coverage.

Regardless of the number of hours worked each week or seasonal status, any employee who earns a sufficient amount from the employer as calculated under the for-

mulae is covered for workers' compensation (if they are not an independent contractor). When a former employee files for unemployment, weekly and maximum benefit amounts are calculated using wages paid during the "base period." The base period is the first four of the last five completed calendar quarters at the time the claim for UI benefits is filed.

Unemployment benefits in Colorado also use a base period formula. For unemployment, a worker must have made approximately \$866 or more in the last six months, and not less than \$50 a week average in the last year. These figures are approximate, so check the Colorado benefit calculator for detailed information.

Does the "FMLA" apply to seasonal employees of counties?

The FMLA applies to all local governments, regardless of the number of employees and regardless of the number of seasonal employees. Whether a particular employee qualifies is spelled out in the regulations. Part-time, temporary, and seasonal employees who have been employed at least 12 months and who have worked at least 1,250 hours during the past 12 months are also eligible to take FMLA leave. FMLA leave may only be claimed during active assignments which would be the period of active duty, not in periods of unemployment.

The 12 months an employee must have been employed by the employer need not be consecutive months so long as:

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1. The break in service was less than seven years, OR
2. If it was due to fulfillment of National Guard or Reserve military service OR
3. There is a written agreement to rehire the employee signed by the employer.

If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation) during which other benefits or compensation are provided by the employer (e.g., workers' compensation, group health plan benefits, etc.), the week counts as a week of employment. If an employer chooses to recognize employment periods seven years or more prior, the employer must do so uniformly, with respect to all employees with similar breaks in service.

What This Means For Counties

To avoid statutory duties to seasonal employees, care must be taken in tracking the statutory thresholds, avoid use of temporaries in ways that extend required benefits, and scheduling use of temporary or part time employees to conform to budget plans.

For more information, contact your Loss Prevention Representative at 303-861-0507.