



The Employer Connection

Helping Employers Connect With the Right Workampers By Using the Tools of Workamper® News

Can Seasonal Workampers Collect Unemployment?

by Greg Gerber

It was a wonderful season where everything just clicked and you're super-happy with the results. While basking in your success, a letter arrives alerting you that a seasonal Workamper filed for unemployment benefits, despite knowing the job was limited in term.

Is That Even Legal?

Christine Taylor, a partner at The Towne Law Firm headquartered in Albany, NY, focuses much of her practice on outdoor hospitality law. That includes business law, labor and employment law, real estate law, estate planning and litigation.

She explained that seasonal employees may be eligible to collect unemployment benefits, regardless of whether they worked full- or part-time, depending on the location.

For nearly seven years, she has led the outdoor hospitality practice at her firm, becoming a resource for park owners who repeatedly rely on her unique industry knowledge and experience. Notably, she grew up in the outdoor hospitality industry and currently co-owns the Catskill Mountains Gilboa KOA in New York with her mother.

"I tell clients I can test in real time the advice I give them," she explained. "As campground owners, we also need to know the law inside and out in order to run a successful business."

Today, Christine is one of a few lawyers in America almost exclusively devoted to legal issues impacting the outdoor hospitality

industry as they apply to business owners. Her clients include campgrounds, glamping destinations, and RV parks throughout the country.

State Law Determines Eligibility

Whether seasonal Workampers can collect unemployment benefits depends on the specific state where the business operates.

Christine noted that while some states have exemptions for seasonal employees, nearly half still allow temporary workers to collect unemployment benefits.

While there are seasonal employee exemptions in some states, nearly half would allow a temporary employee to collect unemployment benefits, Christine said.

"There are federal exemptions for seasonal employees. So, if the state has adopted federal employment law as its standard, then a seasonal employee may not be eligible for unemployment," she explained.

Christine is well-versed in those types of exemptions. When she was younger, her parents ran a business in New York, but close to the Massachusetts border. She worked at a New York campground in summer and a Massachusetts ski resort in the winter.

"Massachusetts did not have to pay unemployment benefits to seasonal employees, but New York businesses were required to do so," Christine said. "That's how nitty gritty employment law is."

Part-time vs Full-time

Employment law makes no distinction between an employee who works full-time or part-time. In fact, if the employee's status changes from full- to part-time, it opens the door to collecting unemployment.

"If someone were a full-time employee during the summer, but suddenly reduced to part-time status, the employee can collect unemployment even though he or she is still working part-time," Christine said. "If an employee is under a certain hour threshold because their job changes from full-time to part-time status, employees can collect both part-time pay and unemployment benefits."

"It would not matter if an employee was always part-time and then became completely unemployed, or if they went from full-time to part-time," she added. "The only thing that changes would be the mathematical calculation used to determine how much money they are going to get."

Terminated for Cause

If an employee is laid off because of a seasonality issue, it is often easy for them to collect unemployment without a problem.

"However, if the employee quit before the end of the season or was laid off for cause, then an argument can be made by the employer to cut off their unemployment obligations," Christine said. "If the person quit even three days before the end of the season, but he or she chose to leave the job first, then a business could object to an unemployment claim."

There is another factor which allows employees to collect unemployment even if they quit early.

"In the legal world, we call it 'construct determination,'" she explained. "It means an employee quit because the employer made the job so intolerable it was basically like firing him or her."

"Of course, if an employee was fired because he or she was caught stealing from the company, the employer would have cause to object to the employee receiving unemployment," Christine said.

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workamper.com/bgchecks

Business Slowdowns

If business is slow and the company needs to reduce staff, it is very likely those employees will still collect unemployment. However, it depends on the ability for a company to rehire the employee, and whether the layoff is temporary or more permanent, Christine noted.

"There is some flexibility based on location and the time frame an employee's job was reduced or eliminated," she explained. "As a general best practice, if you are terminating somebody in some fashion, whether it is a layoff or you just don't like seeing the person every day, then the employee is very likely to collect unemployment."

It is also impossible for employers to put language into a work agreement indicating an employee cannot file for unemployment. Those benefits are a legal right which cannot be swept away by company policy, Christine explained.

However, she said employers could put language in an employment agreement explaining the state has an exemption for seasonal employees which prevents them from collecting unemployment benefits.

"At least that tells workers upfront that unemployment benefits are not available for seasonal employees in the state," she added. "I always advocate for being transparent with your employees because it creates a more harmonious relationship when information is given to them up front."

Contesting Benefits

There is little an employer can do to contest unemployment benefits when an employee is legally allowed to file a claim, Christine noted.

"If there isn't anything challengeable in the claim, then it probably is not worth your time to do anything about it," she explained. "Just read the notice and do what it tells you to do."

"Conversely, if an employee was fired for embezzlement or something like that, then you should fight their unemployment

claim," she added. "In those cases, you need to make sure you stay on top of all the deadline dates and keep those lines of communication open. A hearing will be scheduled to give the employer an opportunity to plead their case."

Most times, the unemployment hearing will not require an employer to be represented by an attorney.

"It's not like I'm turning away work, but it really is an economic issue," Christine said. "Paying an attorney is not going to save you money in the amount of benefits paid out to the employee."

Keep It Legal

Christine said that paying unemployment benefits in one case does not create a liability for benefits in another situation. Each case is different and decided on their own merits.

However, she cautions employers to ensure they are paying employees appropriately in the first place.

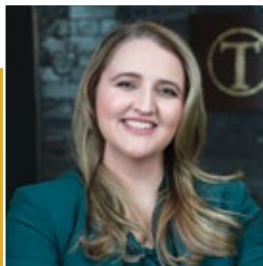
"We still live in a time where some employers try to scoot under the radar legally," she explained.

For example, an employer may claim workers were independent contractors instead of employees, or simply pay them in cash rather than a formal payroll to avoid paying for things like unemployment insurance or Social Security taxes.

"A problem occurs when a business isn't operating correctly as an employer. Then, when someone files for unemployment, it draws attention to the company," she said. "Then the state can start poking around the operation as a whole."

There have been horror stories where employers attempting to save money were held liable for seven years of back taxes, plus penalties and interest after the state determined the business was operating fraudulently in misclassifying workers.

Christine advised, "It is really important that, as business owners, we do everything correctly from a legal perspective so that it doesn't open the door to other types of investigations."



Employers seeking legal advice on any issue are welcome to contact Christine.

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www.townelaw.com



Employer FAQ



Q: How many hours can I ask for?
Can I trade an RV site for work?

A: Do not over-value your site! For-profit employers who offer RV sites, hookups and/or other perks in exchange for labor should be certain that their exchange is proper and fair. The following formula can be used to determine the equivalent hourly wage:

The value of the site (monthly or seasonal rate, not daily or weekly) including hookups and perks (if any) divided by the number of hours worked per month = equivalent hourly wage.

At the very least, the equivalent hourly wage should equal or exceed the applicable minimum wage (\$7.25 in most states, higher in some states). If it does not, wages should be added, or the hours reduced.

In some situations, additional hours may be justified by offering additional perks, light duties and/or an exceptional working/living environment. Workampers at for-profit businesses should never be expected to “pay” more for their site than a long-term customer would be charged. Bottomline: If you want above average Workampers you need to offer above average compensation and working conditions.

For questions about tax or labor law ramifications within your particular state, one resource you can look to is your state’s campground/RV park association.

Building Your Workamper Help Wanted Ad

Ideas of what to include:

- ✓ Contact info. Instructions on how you want the Workamper to inquire or apply with you.
- ✓ RV site or housing. Be sure to mention if it’s part of the compensation.
- ✓ What sort of outcome or experience will the Workamper have if they come to work for you?
- ✓ What’s special in your surrounding area?
- ✓ Start & end dates of the position(s).
- ✓ Number of hours required per week.
- ✓ If solos, couples, families are considered.
- ✓ Compensation & perks. You don’t have to give all the details, but if you do offer wages in addition to an RV site you should note it.
- ✓ Links to websites that help them learn more about your business/operation.
- ✓ Rein it in. If your ad text is at 200 words or more, try trimming it down. Too much text can look overwhelming and may not get read.

More resources, advice and tips are available at Workamper.com
FAQ • Article Index • Media Library • University Courses

New Workamper.com Coming!

A new version of Workamper.com is in the works. We are rebuilding the majority of the existing tools/features, merging and enhancing a few, plus adding new functionality.

Employers will have a new, robust profile page to share more details and photos about their operation. Better options when submitting a help wanted ad. Plus, Workamper resumes are getting a total overhaul to provide more details and better search options for you. We will continue to offer verified work history on resumes too!

This new version of Workamper.com (version 4) will be the best yet! We are focused on providing a system that makes it easier for Employers to develop their brand in the community and effectively recruit their staff.

Until then, we have so many resources and great tools available now - please feel free to contact us so we can help you with making the most of your membership benefits.

The screenshot shows the 'Profile Builder' interface on the Workamper.com website. On the left, there is a navigation menu with options: Home, Notifications Center, Manage Account, MEMBER TOOLS (Profile Builder, Always Active Ad, Ad Submit, Resume Search, Saved Resumes, Job Listings, My Reviews, Magazine Archive), GET HELP (Support, Knowledge Base). The main content area is titled 'Profile Builder' and includes a 'Watch Help Video' button and a 'View Your Profile Page' button. Below these are sections for 'Instructions' and 'Employer Profile Builder'. The 'Instructions' section provides a step-by-step guide on how to build an employer profile, including details on company info, logo, header, about, location, specifics, more details, and photos & videos. The 'Employer Profile Builder' section provides further instructions on how to use the profile page to attract workampers.



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1

Send your help-wanted ad directly to Workampers' email inboxes via the Hotline system at Workamper.com

2

Search our Workamper Resume Database using 18 different criteria filters. Rate and save resumes.

3

Share all the details of your Workamper program in an episode of The Workamper Show podcast.

4

Create a referral program with your existing or past Workampers. Offer awards for applicants or hires.

Take advantage of the tools and resources at Workamper.com