

Part-Time and Temporary Employees - It's About Time

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During busy seasons, many employers use temporary or part-time help to fill in for vacations and seasonal increases in the workload. Students are available and their employment provides a willing worker who gains some valuable work experience. What is a “part-time” employee? What is a “temporary” employee? Curiously enough, our friends at the Department of Labor (DOL) have never graced us with definitions. (Don't worry - they will probably get around to it one of these days!) What is so important about time in the workplace? Well, if Microsoft can get in tons of trouble for misclassification of employees, so can you.

A part-time employee usually works less than 30-35 hours per week on an on-going basis. Many employers use part-timers to perform duties that simply don't require 40 hours per week. In some cases, such arrangements are an accommodation for someone who isn't seeking full-time work or, in today's workplace, those who are transitioning into retirement.

Temporary employees can work a part-time or full-time schedule for a finite, and relatively short, period of time. Temporaries are normally used for special projects or to fill in when regular employees are on vacation or leaves of absence. The length of employment should be established up front. It's best, if you are actually putting a temporary person on direct payroll, to have some sort of written agreement. Be careful not to establish an employment contract, however. If the circumstance that justifies hiring a temp is longer or shorter than anticipated, you will want to have the latitude to conclude or extend the arrangement.

Benefits can become a problem with both part-time and temporary workers. Check the plan documents that govern your health insurance and other fringe benefits, as well as your retirement plan. With some benefit plans, you can address these issues when establishing eligibility requirements. You may be able to exclude certain classes of employees from health insurance coverage, for example, by establishing an hours requirement less than the 30 hours per week customarily used.

Retirement plans are more restrictive because they must comply with IRS and DOL rules. For example, the maximum eligibility requirement for employee contributions to a 401(k) plan is age 21, twelve months of service during which the person works 1,000 hours, and employment on an entry date. A part-timer who continuously works three days a week is likely to be eligible for a 401(k) plan and any employer match as well. In the Microsoft case, it was a stock option retirement program that started the brouhaha. Employees classified as “temporary” and/or “part-time” actually worked past the eligibility for participation. It cost Microsoft close to \$100 million to resolve the issue.

Several years ago, one of our retirement clients began sending 401(k) employee contributions for an employee but did not send the normal matching contribution. When

asked about this anomaly, the client explained that the person was part-time, and even though he had met the age, service and hours requirements for participation, he was “not entitled to benefits.” Most retirement plans can’t work that way. The employee was entitled to matching contributions and, if he continued to work at least 1,000 hours in a Plan year, he would earn vesting credit toward ownership of those contributions. In addition, he would be eligible to receive profit sharing contributions if any were made in the future.

Another highly prized benefit for any employee is paid time-off: vacation, holiday and sick pay; jury duty pay; and time-off for voting. These types of benefits are usually covered by specific state statutes. Military leave and Family Medical Leave are covered under Federal laws. There is usually little or no distinction between classes of employees under state and/or Federal laws. Most employers communicate these benefits in an employee handbook or other written personnel policies.

Problems often arise when a part-time employee works a full-time schedule for a period of time. For example, a part-time clerical person assists the Office Manager who takes a medical leave for several months. During this time, the assistant works longer hours. This may be convenient for you but the part-timer might now meet the definition of full-time and be eligible for benefits. The same is true of a temporary employee who stays on your payroll longer than three or four months.

The key to making the best use of part-time and temporary workers is to monitor hours worked to ensure that, in actual practice, these classes of employees do not become full-time. You should also be familiar with the eligibility requirements of your benefit plans and the impact of any applicable state or Federal laws. Periodically review benefit plan documents and your employee handbook to ensure those documents accurately describe eligibility for benefit plans. Part-time and/or temporary employment can be a win-win arrangement if both parties understand the limitations.

If you have questions on this topic (or any employment-related matter) please feel free to call your HR Help-Line at 800-683- 3440 or e-mail Lesley@taxfavoredbenefits.com.