Tips For Hiring Seasonal Employees



It is that time of year: the temperatures are rising and the end of the school year is around the corner – seasonal employers are preparing to hire summer employees.

There are many unique factors that apply to seasonal employment. This blog will explore some of the decisions that employers can make when it comes to seasonal employment.

Fixed-Term vs Indefinite Employment Agreement

Seasonal employees are typically engaged in one of the following ways:

- through “one off” hires, where the employee works for a season and never returns to work for the employer again
- through continuous hires who return year after year to work for the employer

Whether the intention is for an employee to work for only one season or to continue season after season may guide an employer’s decision in terms of whether a fixed-term or indefinite term employment agreement is more appropriate in the circumstances.

Indefinite employment contracts involve continuous service, which is intended to last for an indefinite period of time. This expectation of a continuous, indefinite period of employment includes an expectation that an employee will continue to work for the employer indefinitely unless the employment agreement is terminated by one of the parties.

In contrast, fixed-term contracts are intended to last for a specific period of time or until a specific task/job is completed. Where properly drafted, it is clear when the fixed-term employment is to come to an end.

Issues can arise when an employer blurs the lines between an indefinite and fixed-term contract by having seasonal/term employees return for multiple seasons/terms, or having an employee work beyond the fixed-term in the contract.

When using fixed-term employment contracts, employers should ensure that the fixed-term contract uses clear and unequivocal language that demonstrates the fixed nature of the contract. When a fixed-term employment agreement is properly drafted, an employee is generally not entitled to notice of termination or termination pay where the employment ends at the end of the term in accordance with the agreement.

Inclusion of a Termination Provision

In certain circumstances with seasonal employees, an employer's conduct may establish a definite pattern of recall, consistent with "indefinite" seasonal employment. This concern arises even where the employee enters into a fixed-term contract each year.

The Saskatchewan Court of Queen's Bench in *Asm Sabbir Ahmed v Canadian Light Source Inc.*, 2018 SKQB 320 provides guidance on the issue of consecutive renewal of fixed-term contracts. The Court noted that determining whether employment is for a fixed-term or an indefinite duration is a task of construing the employment contract based on both the wording of the contract and the conduct of the parties. The Court concluded that the employment in question was a true fixed-term, and that there was no evidence upon which the employee could have reasonably expected an extension.

Including a termination provision that would apply in the event a court or regulatory body finds employment to be indefinite, even though the parties have used fixed-term contracts, can potentially reduce the financial cost of such finding.

Acknowledgment of Prior Service

When drafting employment agreements for seasonal employees, employers should consider whether they want to acknowledge the employee's prior service as an employee in previous seasons. An employment agreement can include a provision that explicitly addresses how prior seasons of service will be treated. Depending on the circumstances, it may be possible to acknowledge prior service or agree that prior service is not acknowledged due to a break in employment. **Communicating the end of employment**

It is important that an employer is mindful of avoiding ambiguity when communicating the end of an employee's seasonal employment. Particularly where seasonal employees return season after season, an employer can consider ways in which it can make it clear to the employee that there is no expectation of renewed or continued employment for the next season. An example includes providing each seasonal employee with a Record of Employment upon the termination of the seasonal employment indicating that the seasonal worker is not returning, with no indication of expectation of recall.

Ultimately, each workplace and employment circumstance is unique.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

by Ashton Butler
MLT Aikins LLP