Never Too Early: Olympics 2028 Preparation. Part III: Employment Law Issues

Oklahoma City has embraced high-level sports competition in many ways, from the OKC Thunder to the OKC Spark and OKC Comets professional basketball, softball, and baseball teams. And for the past several years, Oklahoma City has hosted international rowing and canoeing events. With a USL soccer club also set to arrive in 2028, it's no surprise that the city is already gearing up to host softball and canoe slalom competitions for the Olympics Games in 2028.

Part three of this series is designed to help you and other business owners prepare for a huge event like the Olympics, today's topic concerns employment, and what you should be thinking about now to avoid employment-related legal issues when the Olympics come to town.

If you are like most business owners in the downtown area, you may be hoping for a boost in revenue during the summer of 2028. Businesses like hospitality, construction, IT, security, transportation, and retail will all likely see revenue bumps in the leadup to and during the Olympic Games. To protect yourself and your business, you need to analyze carefully the types of additional employees you might need and understand your legal obligations to them.

Types of Temporary Employees

First, ask what type of temporary employee you are hiring. Is the individual a true temporary employee hired directly by your company? Or a temporary employee hired through a staffing agency? It's also possible that the individual is an independent contractor. In each instance, the legal obligations and responsibilities that you have will differ. Or the individual is simply serving as a volunteer to help with the upcoming Olympic Games.

True Temporary Employees: Will the employee trigger benefits eligibility after a certain period of time? For example, under the Affordable Care Act, companies with at least 50 full time employees during the proceeding calendar year are required to provide health insurance. And an employee who averages 30 hours per week or 130 or more hours per month is considered a full time employee.[1] Carefully track the hours worked by these employees to avoid later wage and hour claims. Also assure that proper safety equipment and training is provided to avoid later workers' compensation claims.

Staffing Agency Temporary Employees: If the temporary employees you hire come through a staffing agency, those individuals are considered employees of the staffing agency. That agency will pay for unemployment insurance, benefits (if any), Social Security, and income tax withholding.

Independent Contractors: You cannot simply say "you're an independent contractor." There are legal tests that determine whether someone is an employee or an independent contractor. In general, the IRS looks to three things:

1. Who controls how the work is performed?
2. Is the individual financially independent? Does he or she supply their own tools and materials and can the individual profit from the relationship with your business? A great example would be a catering company that supplies food for events at your business location.
3. Is there a contractual relationship between you and the person doing the work? If you tell the person when to show up and how to do the job, and you supply their tools and materials, the chances are they are not an independent contractor. Other factors, such as providing for benefits and paid vacation make it even more clear the person is a regular employee.

The U.S. Department of Labor applies the Economic Reality Test to see if an employment relationship exists. The goal of the test is to decide if the worker is economically dependent on the employer for work or is instead in business for themself. Factors considered include:

1. Opportunity for profit or loss depending on managerial skill;

2. Investments by the worker and the employer;
3. Permanence of the work relationship;
4. Nature and degree of control;
5. Whether the work performed is integral to the employer's business; and
6. Skill and initiative.[2]

If the person does not meet these tests for being an independent contractor, then the person is an employee. This means that you must treat them in the same way as your other employees. You will need to consider overtime pay for work of more than 40 hours per week, allow for meal breaks, assure proper tax withholding, as well as provide for unemployment and workers' compensation insurance.

Volunteers: The DOL generally does not consider individuals who volunteer or donate their public service, religious, or humanitarian objectives without expectation of pay as employees as long as they are not displacing actual paid workers. Public sector employers may not allow their employees to volunteer to perform uncompensated work for which they are employed.[3]

Teen Employees: The summer timing of the Olympic Games makes for the perfect summer job opportunity for teenagers. But employers need to keep a few things in mind. For teens who are 14-15 years of age, see the kinds of work they are permitted to do. Older teens can be employed more broadly and generally in the same manner as adults, but there are limits when it comes to jobs the U.S. Secretary of Labor has designated as hazardous.[4] For older teens, there are also limits on their ability to drive on the job, even if they have a valid driver's license.[5]

Form of the Job

Second, ask what the form of the job will be. Will the individual work in person or remotely? Since the Covid-19 pandemic, we have all become accustomed to people working remotely. But if you staff up for the Olympics by hiring a remote worker, are you prepared to handle employment tax issues associated with that person's state of residence. How will you monitor the work being performed?

Timing of the Job

Third, consider the timing of the jobs. Will the jobs be created in advance of the competition, for example in the construction industry, or during the Games, in connection with IT and broadcasting or hospitality?

Impact on Permanent Employees

Fourth, consider the impact of the Olympic events on your permanent employees. For example, what if everyone takes the same three days of vacation to attend the Olympic events or to volunteer? What do you need to do now to prevent being unable to operate your business when the Olympic Games come to town? If you do not have a clear paid time off policy, or a policy allowing employees to work as volunteers, put one in place well before the summer of 2028.

A final issue to consider is whether competition for short-term or part-time employees could affect your normal business operations during the summer of 2028. If your business relies on teens or college students during the summer, keep in mind that they will likely have many more options during 2028. You may need to offer more competitive wages or incentives to attract and retain them.

Conclusion

This is a very exciting time for our city and our country, but the Olympics can present challenges for employers. Planning ahead and asking the right questions now can help you avoid difficult issues that may arise in 2028.

This blog was drafted by Allison Garrett and Russell Woody, attorneys in the Spencer Fane Oklahoma City office. For more information, visit spencerfane.com.

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[1] https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act#Identification

[2] https://www.dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship

[3] https://webapps.dol.gov/elaws/whd/flsa/docs/volunteers.asp

[4] WHD Fact Sheet #43, Youth Employment Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations.

[5] YouthRules! Teen Driving Fact Sheet

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