



# The 7 Biggest Things Retailer Employers Need to Pay Attention to During the Busy Holiday Season

Insights

12.02.24

The holiday season is a whirlwind for retailers: packed stores, long hours, and the need for extra hands to meet demand. While your focus often centers on sales and customer satisfaction, ensuring compliance with employment laws and effectively managing your workforce are just as critical. From overtime rules to religious accommodations, missteps during this busy time can lead to costly penalties, legal headaches, and reputational damage. To help you navigate the season, here are the seven biggest things retail employers need to pay attention to so you can keep operations running smoothly and stay on the right side of the law.

## 1. Compliance with Wage and Hour Laws – Especially Overtime

The recent injunction that blocked the DOL's increased salary threshold was a relief to many retail employers that were balancing how to respond. However, wage payment issues remain – especially during the holiday rush bringing longer hours and heightened demands on your team. With the increased activity, it's crucial to ensure compliance with wage and hour laws. Pay special attention to overtime rules under the Fair Labor Standards Act (FLSA) and state laws. Even temporary or seasonal workers are generally entitled to overtime pay if they work more than 40 hours in a workweek. Missteps here can lead to significant penalties. Make sure managers understand these rules and track hours accurately.

## 2. Employee Authorizations Can't Be Ignored

With the pace of holiday hiring, it's tempting to cut corners. But skipping proper employment authorizations can land you in serious trouble – especially as we expect a renewed emphasis on immigration compliance with the incoming administration. Ensure your hiring personnel are fully trained in completing I-9 forms correctly and consistently. Remember, you need to verify that every worker is authorized to work in the U.S. Improper documentation or rushing through verifications could lead to costly audits or penalties, particularly since the retail industry is expected to face heightened scrutiny in the coming months.

## 3. Contractor Misclassification is Always a Problem

Many retailers may consider using independent contractors to fill seasonal gaps. However, simply labeling a worker as a “contractor” doesn't make it legally accurate. Both federal and state laws

apply strict tests to determine proper classification, often based on the worker's degree of independence and the nature of the work they perform. Some states impose even tougher requirements. Misclassifying workers can result in hefty fines, back wages, and unpaid taxes. When in doubt, consult your FP attorney before assigning contractor status.

#### **4. Federal and State Laws Restrict Your Minor Workforce**

Holiday breaks bring opportunities for you to bring aboard younger workers, but child labor laws impose tight restrictions. The FLSA, along with state laws, limits the hours minors can work, the tasks they can perform, and the equipment they can use. For example, federal law prohibits 14- and 15-year-olds from working past 7 p.m. on school nights, and many states go further. Review your scheduling practices and ensure compliance with these rules, as violations can result in steep penalties and reputational damage.

#### **5. 'Tis the Season for Religious Accommodations**

Most employers know that federal law requires you to accommodate employees' religious observations, which often involve requests for certain days or blocks of time off from work. Many retail employers are willing to juggle schedules around their employees' religious needs during the rest of the year with little problem. But with increased demands around the holidays – and an increased number of accommodation requests – granting these accommodation requests might make you re-think your decisions. Can you simply deny an accommodation request because your workflow has increased? [A Supreme Court decision from last year made it more difficult for retailers to deny religious accommodation requests because of supposed undue burden.](#) And an EEOC settlement from just a few months ago led an employer to [pay out \\$40,000 after denying a worker's no-Sundays request.](#) So make sure to carefully evaluate each request, document your considerations, and explore ways to make accommodations work without disrupting operations. If in doubt, check with your FP counsel.

#### **6. Did Your Seasonal Workforce Push You Above a Certain Size?**

Most federal and state employment laws apply only to businesses with a certain number of employees. So, your seasonal employee headcount might bring your business under the purview of additional laws. Particularly if you're a small business, you should pay attention to whether hiring seasonal employees will increase your total number of employees and trigger additional legal obligations.

#### **7. Handling the Holiday Hangover: Final Pay and Layoff Compliance**

When the season ends, many retailers scale back their workforce, which comes with legal obligations that can't be overlooked. State laws govern the timing and method of final paychecks, with some requiring payment on the last day of work or within a few days of termination. Failure to meet these deadlines can lead to penalties, including waiting-time fees. If you're conducting larger-

scale layoffs, federal and state Worker Adjustment and Retraining Notification (WARN) Act requirements might apply if the reductions meet certain thresholds. Additionally, some states require advance notice of layoffs, even for seasonal positions. Providing clear communication about the end of employment, offering references or resources for future opportunities, and handling terminations respectfully can protect your company's reputation and foster goodwill among employees who may return for future seasons.

## **Conclusion**

Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the author of this Insight, or any attorney on our [Retail Industry team](#).

## ***Related People***



**Brian Balonick**  
Regional Managing Partner  
412.822.6633  
[Email](#)

## ***Service Focus***

Employee Leaves and Accommodations

Immigration

Wage and Hour

## ***Industry Focus***

Retail