

Dealing with “Workampers”

Community owners strive to hire and maintain the best possible staff for operating their RV parks. It is not an easy task. In this job market, it is difficult to find qualified and competent employees. Many park owners therefore turn to “Workampers” to fill in the gaps where necessary.

A Workamper combines part-time or full-time paid or volunteer work with RV or tent camping. Workampers do all kinds of work while traveling in their RVs and may exchange a set number of hours for a site plus hookups and other perks, while others work for hourly wages or salaries. Some work for a combination of site plus wages.

However, employment and residency issues often arise when hiring Workampers. Perhaps the most common issues are:

- 1) Does the Workamper have rights of tenancy?
- 2) Is the Workamper an employee or independent contractor?
- 3) What wages do I need to pay the Workamper?
- 4) Can I give a rent credit to the Workamper in lieu of wages?
- 5) Do I need worker’s compensation for the Workamper?

Does the Workamper have rights of tenancy?

It depends. If the resident signs a registration card or rental agreement, and pays the rent, he or she has a tenancy in the park. If the resident is hired as a Workamper while residing in the park, and paid a salary, the resident has rights of tenancy, notwithstanding his or her employment.

Often times, however, the park owner will hire a Workamper and provide “free housing” or “free rent” as a employee benefit. The right to occupy the RV or space is dependent on continued work for the park. When the employment is terminated, the Workamper is no longer entitled to the fee rent and must vacate (having had no tenancy in the park).

Other issues arise when the person was originally renting a space, then was hired with free rent, and then terminated. The issue is whether the terminated employee still has a tenancy pursuant to his/her previous relationship with the park.

Still other issues arise when the employee-resident has lived at the park for a period of time. After nine (9) months, the employee may claim he/she can only be evicted for cause.

How does one avoid these sticky situations? Get it in writing. Confirm in a written agreement what you are doing. Spell out clearly whether someone is a resident who is also hired to do work for a salary, or make clear the person has no rights of tenancy and is receiving housing incidental to the job. Confirming things in writing at the beginning will help clarify what happens when the job ends.

Is the Workamper an employee or independent contractor?

For years, park owners have argued that their Workampers are “independent contractors” who need not be paid minimum wage. However, effective January 1, 2020, California’s Labor Code § 2750.3 will presume Workampers are employees. Park owners will have the burden of proving in court they are independent contractors. Absent proof that a Workamper sets their own hours, sets their own rates, processes their own payments, is paid directly by clients, has the discretion to decide the number of clients and which clients for whom they will provide services, has their own book of business and schedules their own appointments, etc., they are unlikely to be considered independent contractors.

What wages do I need to pay the Workamper?

California's minimum wage rate for employers of 26 or more employees is currently \$12.00 per hour. It is set to increase to \$13.00 in 2020 and will increase \$1.00 each year until 2022 (Labor Code § 1182.12). In addition, in recent years many California cities have begun to impose a higher minimum wage on employers for each hour worked within the city's geographic boundaries.

Can I give a rent credit to the Workamper in lieu of wages?

Yes, but the amount credited by an employer cannot be more than 2/3 of the fair market rental value of the lodging. Moreover, there are caps on the total amount of credit that can be given, depending upon the type of lodging involved. You should check with an attorney as to the amount of cap restrictions.

Whatever rent credit is given, the total amount of salary plus rent credit given to the Workamper must be equal to or exceed minimum wage.

Do I need worker’s compensation for the Workamper?

Yes. All California employers must provide workers' compensation benefits to their employees under California Labor Code Section 3700. If a business employs *one or more* employees, then it must satisfy the requirement of the law. California Labor Code § 3700.5 makes failing to have workers' compensation coverage a misdemeanor (criminal offense) punishable by either a fine of not less than \$10,000 or imprisonment in the county jail for up to one year, or both. Additionally, the state issues penalties of up to \$100,000 against illegally uninsured employers.

The standard form workers' compensation policy covers "compensation and benefits" due by an employer under the Workers' Compensation Act and gives the insurer the "right and duty" to defend the insured employer in proceedings before the Workers' Compensation Appeals Board. To keep themselves protected from exposure, park owners should contact their insurance brokers and confirm that proper coverage has been obtained and that temporary Workampers are included within their current coverage.

By Dan Rudderow (Principal) and Steve Pornbida (Counsel) of Rudderow Law Group. Dan has more than 23 years of experience in manufactured housing, business and real estate law. Steve Pornbida has practiced real estate and business litigation for 12 years. Robert S. Coldren is Of Counsel to the firm. For questions or comments please contact Dan@rudderowlaw.com or by phone at (949) 565-1344.

CampCaINOW will continue to monitor developments related to the above as they occur. We encourage members to review their policies and procedures with an eye towards the changing landscape, and to reach out for legal assistance early rather than late.