

Six tips for managing  
summer employment



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# Six tips for managing summer employment in 2019

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The summer months provide an abundant supply of students and other temporary workers to meet the peak demands of the season while also giving interns an opportunity to gain experience in jobs requiring a professional or technical discipline.

The summer months also promote a casual atmosphere that can, if not checked, stretch beyond the beaches and fairgrounds and into the enforcement of government rules and regulations pertaining to part-time and temporary help.

To avoid the pitfalls of summer employment and its employment tax myths, we offer a refresher on part-time and seasonal employment.

Top six tips for managing summer employment in 2019	
1	Age certificates are required for minors and their work hours may be restricted.
2	Nonresident-alien summer intern employees need to apply for a Social Security Number. An Individual Taxpayer Identification Number is not acceptable.
3	Wages paid to temporary summer employees are generally subject to unemployment insurance tax.
4	Exceptions to employment and withholding taxes may apply when hiring family members.
5	Whether employees are part-time or full-time, wages paid are reported on the Form W-2 and not Form 1099.
6	The IRS provides an alternative method to lower income tax withholding for part-year employment.

## Tip 1

### Minors require age certificates, and their work hours may be restricted.

Often, school-age children are hired to fill summer jobs, but businesses should be aware that numerous federal restrictions apply, including the limitation on work hours and the requirement to obtain age certificates.

Federal and state laws require that employers obtain age certificates from workers who are known to be under age 18 (or appear to be underage). In general, age/employment certificates secured by state labor departments also satisfy the requirements under federal law, but this is not always the case. For information concerning state age certificates, visit the U.S. Department of Labor (DOL) [website](#).

Note that employers are required to return age certificates to employees upon their termination so that they can be provided to future employers.

Federal law imposes certain work restrictions in the employment of minors. For example:

- ▶ **Minors under age 14.** Employers are prohibited from hiring minors under the age of 14 unless they work for their parents. (See page 3 for explanation of the parent-employer exception.)
- ▶ **Minors age 14 and 15 – hours restrictions.** When school is not in session, minors age 14 or 15 are allowed to work no more than 8 hours per day, 40 hours per week. When school is in session, minors age 14 or 15 can work no more than 3 hours per school day, 8 hours per day on Saturday and Sunday, and no more than 18 hours per week. From June 1 through Labor Day, minors age 14 or 15 can work only between the hours of 7:00 a.m. and 9:00 p.m. (7:00 a.m. and 7:00 p.m. the remainder of the year).

Note that the age and work-hour restrictions do not apply to employees who deliver newspapers to the ultimate consumer and to certain duties performed by minors employed as sports attendants. In addition, there is a very limited “parental exemption” that applies when the parent is the “sole employer” of the child. A “sole employer” is a parent/employer who is a sole proprietor or one parent or both who are 100% stockholders of a corporation for which their child works. This parental exemption does not apply to manufacturing jobs or to those duties listed by the DOL as a “hazardous occupation.”

- ▶ **Minors under age 18.** All minors are prohibited from working in jobs considered to be hazardous. For more information on hazardous occupations, visit the DOL [website](#).

# Six tips for managing summer employment in 2019

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## Exceptions to the minor age certificate and work-hour restrictions

Age and work-hour restrictions do not apply to employees who deliver newspapers to the ultimate consumer and to certain duties performed by minors employed as sports attendants.

In addition, there is a very limited “parental exemption” that applies when the parent is the “sole employer” of the child. A “sole employer” is a parent/employer who is a sole proprietor or one parent or both who are 100% stockholders of a corporation for which their child works. This parental exemption does not apply to manufacturing jobs or to those duties listed by the DOL as a “hazardous occupation.”

In addition to federal requirements, states often impose additional restrictions on the employment of minors.

## Tip 2

### Nonresident-alien summer intern employees need to apply for a Social Security Number.

All employees, including resident and nonresident aliens who are eligible for employment in the US, are required to apply for a Social Security Number (SSN) by completing the [SS-5, Application for Social Security Card](#), and submitting it to the Social Security Administration (SSA) along with documentation the SSA requires for issuing an SSN. (*IRC §6109(d); IRC §301.6109-1(d)(d).*)

- ▶ **Non-US employees.** Because of additional steps the SSA takes to verify the US work eligibility of nonresident aliens, there can be a significant delay in issuing their SSNs. When the process to obtain an SSN is longer than expected or deadlines are approaching, such as the due date to file the Forms W-2, some employers ask nonresident-alien employees to obtain an Individual Taxpayer Identification Number (ITIN) that can be used in lieu of the SSN. This is not an acceptable alternative for dealing with a delay in obtaining an SSN. The IRS prohibits individuals from holding both an ITIN and an SSN, and individuals who are eligible for an SSN are not allowed to apply for an ITIN. (See the instructions for [Form W-7, Application for IRS Individual Taxpayer Identification Number](#).)

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According to the Form W-2 instructions, when an SSN is applied for, employers are instructed to enter “applied for” as the SSN when filing paper Forms W-2 or “000-00-0000” if filing electronically. Employers can obtain an abatement for failing to report a valid SSN on the Form W-2 if it can be demonstrated that solicitations were made for the SSNs of these employees. As a leading practice, some employers ask that an employee provide a copy of the SS-5 filed with the SSA as well as a receipt from the SSA showing that the SS-5 was properly filed and that the SSN is pending. This documentation is maintained in the employee’s file or the employment tax records.

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## Tip 3

### Wages paid to temporary summer employees are generally subject to unemployment insurance tax.

Employers sometimes believe that the wages of summer workers are exempt from federal (FUTA) and state unemployment insurance (SUI), particularly when these workers participate in summer intern programs. The fact is, for unemployment insurance purposes, there is little distinction between students working in the summer and other part-time and seasonal employees. The wages paid to students generally are subject to FUTA and SUI and are reported on the Form 940 and SUI returns.

(*IRS Publication 15, Employer's Tax Guide*; IRC §3306; IRC §3309):

There are a few exceptions to the FUTA coverage as follows:

- ▶ A son or daughter (including stepchildren and adopted children) under age 21, when paid by a parent whose business is a sole proprietorship (or a partnership consisting only of parents)
- ▶ A spouse, when paid by his or her spouse
- ▶ Newspaper carriers under age 18 who deliver newspapers to customers
- ▶ Students working for a private school, college or university, if enrolled and regularly attending classes at the school at which they are employed, and spouses of students if they are advised at the time of hire that (a) the employment is provided under a program to provide financial assistance to the student by the school and (b) the individual is not covered by any unemployment program and is not entitled to unemployment insurance benefits in the event of separation
- ▶ Students enrolled in a full-time program at a nonprofit or public educational institution that combines academic instruction with work experience, giving the student credit for services performed unless the program was established for or on behalf of an employer or group of employers

- ▶ Student nurses for services performed in the employ of a hospital or nurses training school by an individual who is enrolled and is regularly attending classes in a nurses training school chartered or approved pursuant to state law
- ▶ Full-time students for services performed in the employ of an organized camp, if the camp did not operate more than seven months in the calendar year and did not operate for more than seven months in the preceding calendar year
- ▶ Students, scholars, trainees, teachers and similar who qualify as non-immigrant aliens holding F, J, M or Q visas and are working within the scope of their respective visa (IRS Reg. §301.7701(b)-3(b))
- ▶ Aliens performing agricultural labor with H-2A visas
- ▶ Interns and patients working in hospitals
- ▶ Certain members of a fishing vessel

Note that this is not a complete list of employment exempt from FUTA, but rather a summary of the types of job positions exempt from FUTA that are typically held by students or other temporary or seasonal employees.

While SUI laws typically mirror the federal unemployment insurance law as it pertains to student employment, there are exceptions. For example, only a few states exempt services performed by foreign students from the definition of employment for SUI purposes. Also, several states restrict the SUI exemption for work-study students to those under the age of 22. Some states do not provide any SUI exemption for services performed by work-study students. Employers should review the law of the state in which the students are performing services to determine whether their wages are subject to SUI.

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**Several states have special provisions preventing seasonal employees from receiving unemployment benefits.**

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# Six tips for managing summer employment in 2019

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## **Unemployment insurance benefits and seasonal employment**

Several states have special provisions that prevent seasonal employees from receiving unemployment benefits. Since an employer's SUI rate is based partly on the benefits paid to its separated workers, understanding when these exclusions apply is important for industries that operate only during certain months of the year. While the exclusion is commonly associated with agricultural workers, some states also make it available to other industries with seasonal employment (e.g., parks and recreation).

State law generally defines "seasonal" in terms of:

- ▶ The industry, employer or occupation involved
- ▶ The wages earned during the operating period of the employer or industry
- ▶ The work performed by the individual employee

In the applicable states, employers generally qualify or obtain approval for the seasonal employment exemption through a formal procedure of the state unemployment agency. When granted, the exclusion applies for a specified period during the year in accordance with the nature of the seasonal work or operation.

For more information on unemployment insurance and seasonal employment, see the [DOL website](#).

## Tip 4

### Exceptions to employment and withholding tax may apply when hiring family members.

Parents who employ their children are given a small employment tax break. Specifically, the wages of children under 18 are exempt from Social Security and Medicare taxes, and the wages of children under age 21 are exempt from FUTA if the wages are directly connected to services performed for their parent's trade or business. (The Social Security and Medicare exemption extends to children under age 21 if domestic work is provided in the home of the parent.)

The parent's business must be either a sole proprietorship or a partnership in which each partner is a parent of the child.

Because wages paid to children are not necessarily exempt from federal income tax (FIT) or withholding (FITW), they must be reported on Forms 941 and W-2. Parents must obtain a federal Employer Identification Number to report wages paid to their children because Forms W-2 and 941 cannot be filed under the SSN of either parent.

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**Because wages paid to children are not necessarily exempt from FIT or FITW, they must be reported on Forms 941 and W-2.**

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## Tip 5

### Whether employees are part-time or full-time, wages paid are reported on Form W-2 and not Form 1099.

Employers sometimes mistakenly believe that because summer help is part-time and temporary, these workers are independent contractors and not employees. The fact is, whether half-time or full-time, temporary or permanent, minors or adults, employees are employees. Workers meeting the common-law test generally are employees under IRS standards, and hours of work and length of employment are not considered in this test.

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**Whether half-time or full-time, temporary or permanent, minors or adults, employees are employees and not independent contractors.**

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As a consequence, wages paid to part-time and temporary employees are subject to federal taxes (FIT, FITW, FICA and FUTA) and applicable state and local taxes (*IRC §3401(a)(4); IRC §3121(a)*).

In addition, wages, regardless of the amount, are reported on Form W-2, not Form 1099. This reporting requirement holds true regardless of the work performed. For instance, the merry-go-round attendant who makes a few extra dollars by trimming weeds around the concession stands should not expect to receive a Form 1099 for amounts paid to him for weekend weeding. (*Ringling Bros-Barnum & Bailey Combined Shows, Inc. v. Higgins (1951, CA2 NY) 189 F2d 865, 40 AFTR 795.*)

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# Six tips for managing summer employment in 2019

Continued

## Tip 6

### The IRS provides an alternative method to lower income tax withholding for part-year employment.

Most automated payroll systems use some form of an annual estimated wage method of withholding (e.g., percentage method withholding). This method of withholding is somewhat accurate for full-year employment but tends to cause overwithholding from the wages of seasonal employees. In consideration of this problem, the IRS allows employers to use an alternative withholding method for seasonal employees.

To use the method, the employer must obtain a written authorization from the employee that includes the following:

- ▶ The last day of any employment during the calendar year with any prior employer
- ▶ A statement that the employee uses the calendar year accounting period
- ▶ A statement that the employee reasonably anticipates he or she will be employed for a total of no more than 245 days in all terms of continuous employment (no significant interruption in the employment period) during the current calendar year

A term of continuous employment may be a single term or two or more following terms of employment with the same employer. A continuous term includes holidays, regular days off, and days off for illness or vacation. It begins on the first day an employee works for the employer and earns pay. It ends on the earlier of the employee's last day of work for the employer, or if the employee does not perform services for more than 30 calendar days, the last workday before the 30-day period. If an employment relationship is ended, then the term of continuous employment is ended, even if a new employment relationship is established with the same employer within 30 days. (*IRS Reg. §31.3402(h)(4)-1(c); IRS Publication 15-A, Employer's Supplemental Tax Guide.*)

The method for computing federal income tax under this method is as follows:

1. Add to the current-period wages any other wages paid in the current calendar year, ignoring any wages that were paid (a) prior to a termination in employment or (b) prior to any 30-day period where no work was performed. (If an employee received only paid time off in a term of employment, this is considered wages paid for the performance of work.)
2. Determine the number of days in the period represented in (1) above.
3. Divide the total number of days from (2) above by the number of representative days in the employer's regular payroll period. For instance, divide by 7 for weekly, 14 for biweekly, etc.
4. Divide the result in (1) by the result in (3) to determine the pay period wages.
5. Compute the FIT on the result from (4) using either the percentage method or wage-bracket methods of withholding. (Use the employee's most recent Form W-4 to determine marital status and number of personal allowances.)
6. Multiply the result in (5) by the result from (3) to determine the annual withholding.
7. Subtract from the result in (6) from the FITW in the period represented in (1).
8. The result from (7) is withheld from the employee's current period wages.



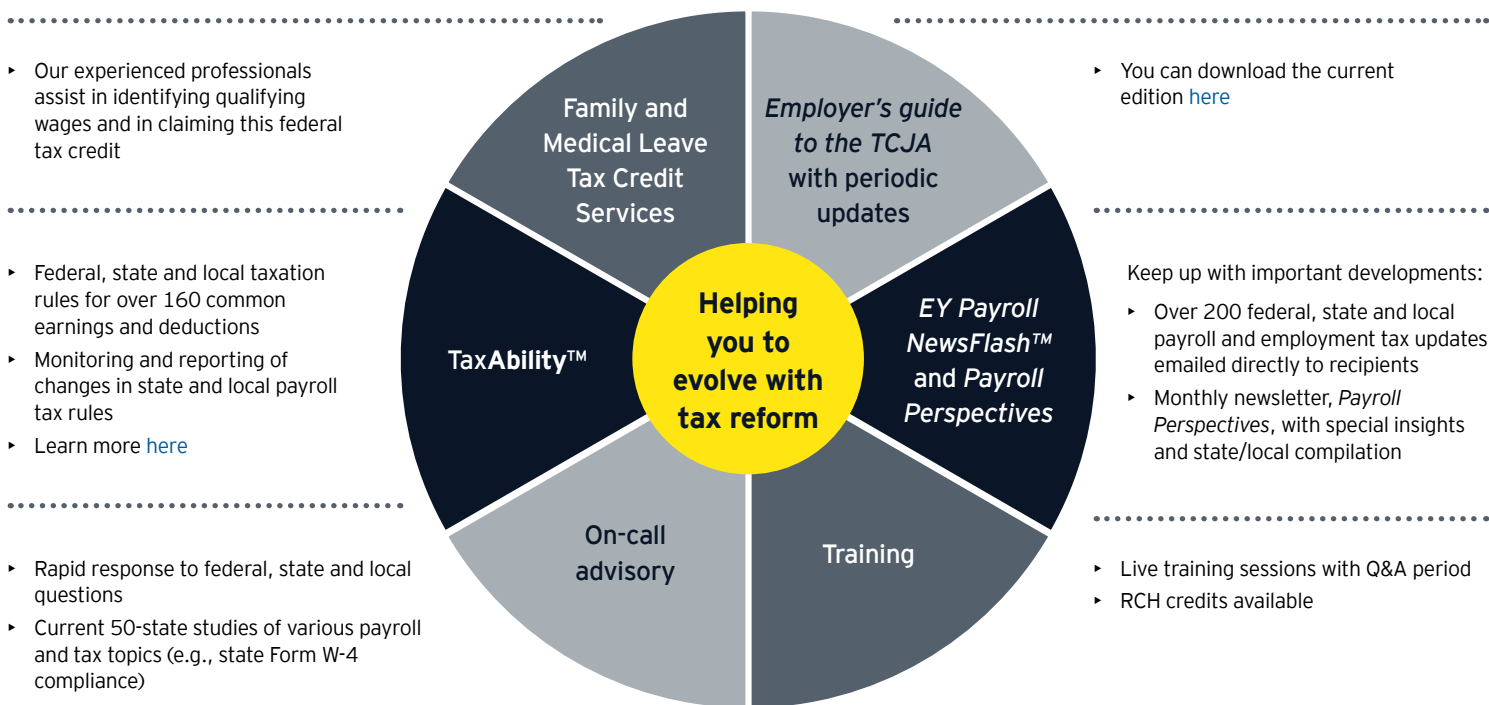
**Example:** Kirsten performs no work from February 1 through July 5, 2019 (156 calendar days). She performs services for the biweekly payroll period July 6-19 and will be paid wages of \$9,000 for the payroll period. Kirsten is married with one allowance. Using the part-year method and percentage method withholding, the federal income tax calculation is as follows:

1.	Add current wages to all wages paid since February 1, 2019 (\$9,000 + \$0)	\$9,000
2.	Number of days between February 1, 2019, and July 19, 2019 (14 days + 156 days)	170
3.	Number of pay periods from February 1, 2019, to July 19, 2019+ (170 days/14 days per pay period)	12
4.	Average wages per payroll period (\$9,000/12 pay periods)	\$750
5.	Amount to be withheld from \$750 for biweekly payroll period [( $\$750 - \$454$ ) $\times$ 10%] [Table 2(b)]	\$29.60
6.	Total to be withheld for all wages paid since February 1, 2019 (\$29.60 $\times$ 12 pay periods)	\$355.20
7.	Remaining FITW to be withheld (\$355.20 – \$0 withheld since February 1, 2019)	\$355.20
8.	Current FITW	\$355.20



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