

Employment Related Issues Dealing w/ Work Campers at Your RV Park/Campground



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Webinar Presented by:

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Who are John & Dyana?



John Pentecost is the Managing Partner of Hart King and has been with the firm since 1988. He is the leader in the firm's manufactured housing practice. With over 30 years of experience dealing with manufactured housing and mobilehome park communities, John has handled numerous eviction and other landlord-tenant based dispute trials. John defends Park owners in all actions ranging from lease disputes to state and federal discrimination issues, Americans with Disabilities Act (ADA) matters, easements, and title and failure to maintain lawsuits.



Dyana Kelley is the president and CEO of CampCalNOW RV Park and Campground Alliance, an advisor to the American Glamping Association, holds a seat on the board of CalTravel and is a member of their Government Relations Committee. As leader of one of the nation's largest state RV associations, Dyana is focused on supporting and promoting CampCalNOW member parks while also creating unity within the outdoor hospitality sector. Dyana works tirelessly to ensure that outdoor hospitality is a valued and recognized segment of travel and tourism nationwide.

Who Are Work Campers and What Do They Do?

- Work Campers are individuals and couples who have chosen a lifestyle that combines any kind of part-time or full-time work with RV Camping. If you eat and sleep in an RV and you conduct any activity in exchange for anything of value, you are a Work Camper.
- Many 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. Some Work Campers operate their own businesses. Some work part-time and some work full-time. Some work seasonally and some work year-round. Some Work Camp primarily for the enjoyment of being active and productive, while others are motivated primarily by the income and benefits, if applicable.
- The following are a list of job titles associated at Campgrounds & RV Parks that Work Campers can typically hold: Activity Director/Entertainer, Camp Host, Assistant Manager, Manager, Park Ranger, Maintenance Supervisor and Membership Sales.

Work Camper Challenges

- Employee vs. Volunteer? – Work Campers are considered “employees” by the IRS. Employees can be paid with money or with something else of value. When they are paid with something else, it is called “barter”. Work campers often barter for a campsite and utilities. That is, they are employees who are paid for their labor with a place to park their RV and usually utilities. When you agree to work X number of hours for a campsite with hook-ups, the campground owner is required to report the fair market value of that campsite with hook-ups to the IRS as income paid to you. Reporting employee's compensation should be a normal, regular part of an employer's business. In addition, payroll taxes must be paid, and hours accounted for to the taxing authorities.
- Warning: California has its own requirements which must be considered in handling compensation. Among these, park operators must have a written agreement with the employee that authorizes the value of housing/site to be applied to an employee's wages. Otherwise, all wages must be paid in money.
- Many RVers work as volunteers. The IRS treats volunteers differently than employees. To be an official volunteer you need to be helping a non-profit, charitable organization or a government agency -- not a private business. The benefits you receive as a volunteer are not taxable.

Work Camper Challenges

- Lastly, some employers require their employees to live on their business premises for the convenience of the employer. If a campground owner requires this as a term of employment, it is for the good of the campground owner. It is therefore not considered a benefit to the RVer. In this case, the value of the RV site is not reported as taxable income (IRS Publication 525, page 7). It is always a good idea to check with a tax or legal professional when having Work Camper related issues.
- A difficult part about determining the expected “hours to work” for each Work Camper is the value of the perks. Therefore, it is up to each Work Camper to select jobs that offer a compensation package that suits his/her needs and come to agreement with the Park. Clear expectations should be documented and adhered to regarding expected hours to work. These should include a statement that employees may not work overtime without prior authorization. All hours worked must be signed off by Work Camper and accounted for by the RV Park owner. As the employer, the Park owner is legally responsible for keeping accurate time records.

Work Camper Challenges

- Workers' Comp Claims – Any injury sustained while working on the premises and makes the injured party not able to “work”. Workers' comp company will ask, “Was this person an employee or independent contractor?” Maybe you never listed them as either, which can cause future problems. Workers' Comp is an issue because typically many people are not paying their work campers in traditional methods through payroll. They are paying them from the value of benefits like a site fee and electricity costs. In California, workers are presumed to be employees.
- Social Security/Disability Benefits – Could possibly be affected and will likely depend on how the compensation for the Work Camper job is reported. Caution: some Work Campers are on social security and do not want the park to report payments as wages. Don't do it. All compensation should be reported.

Work Camper Challenges

- Unemployment Insurance Claims – Unemployment offices will ask, “When did you get paid last? When was your last pay stub?”. If you have no records showing any income was reported to Work Campers, then filing for unemployment insurance traditionally is not possible as there would be no record of employment.
- On-Call Discrepancies – If you have employees and they are at your campground at any given time, they may be called to do a job. Are they on call? How much control do they have over what they do on their own time when they’re not on the clock? In California, employees must be paid for all the time they are required, permitted, or “suffered” to work. If workers are free to engage in personal activities, then they generally only have to be paid for the time they actively work. Best practices dictate that the park should have a written agreement that addresses this issue.

Employers Failure to Pay Wages/ Overtime: Laws and Legal Rules

- For non-exempt employees, time worked in excess of 8 hours in a workday, or over 40 hours in a workweek, constitutes “overtime” under California Labor Code section 510. The law is also clear that “non-exempt” employees must be paid for all time they spend working. This includes all time that they work at the direction of the employer, as well as all time that they are “suffered or permitted to work.” (See Industrial Welfare Commission Wage Order No. 5 applicable to the Public Housekeeping Industry, which includes camps, trailer parks, and business establishments that offer the rental of living quarters.) If an employee works “unauthorized” overtime, the employer may discipline the employee. But they still have to pay for the employee’s time worked.



Employers Failure to Pay Wages/ Overtime: Laws and Legal Rules

- To qualify for an exemption from overtime requirements, an employee must earn annual compensation that is at least twice the minimum wage (the “salary test”) and must spend a majority of his/her time performing job duties that qualify for an exemption (the “duties test”). In 2021, California’ minimum wage for employers with fewer than 26 employees increased from \$12 per hour to \$13 per hour. Two times minimum wage was therefore \$54,080 based on full-time (8 hours per day, 40 hours per week) employment.
- Overtime is payable if the employee works more than 8 hours in a day and/or more than 40 hours in a workweek. In California, overtime rates are time and half, except that employees must be paid double time for hours worked in excess of 12 hours in a workday or in excess of 8 hours on a 7th consecutive day of work in a work week.



Employers Failure to Pay Wages/ Overtime: Laws and Legal Rules

- The absence of clear employee time records makes it difficult, if not impossible, for an employer to contradict the employee's testimony that he/she "routinely" worked more than 8 hours per day and had to work "after hours" without compensation. It also greatly increases the difficulty of supplying wage statements that accurately reflect actual hours worked.
- For these reasons, it is imperative that employers keep careful time records for all employees' hours worked. Without those records, it will be difficult to defend against an employee's claims for alleged "unpaid wages". Work Campers should be treated no differently. Have them sign off on their hours and when they clocked in and out.
- And note, hourly employees must be given wage statements for each pay period that include their hours worked, hourly pay, amount paid, and other required information (employer name and address, employee ID# or last 4 digits of SSN, net pay/gross pay and the dates of the pay period). Failing to do so will subject the employer to monetary penalties.

Questions?



Thank you!



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