



# Members Bulletin

May 8, 2010, Vol. 2010 #1

Maine Youth Camping Foundation

## SPECIAL ANNUAL STAFF, EMPLOYMENT & REGULATIONS ISSUE GETTING READY FOR THE 2010 SEASON

**This information is not intended as legal or tax advice. Always consult a professional before taking legal or tax action.**

### ***Will the federal HIRE ACT benefit your camp this summer?***

Information on this potential *employer* savings for hiring previously unemployed persons, or persons who worked less than 40 hours total in the previous 60 days before hire, is outlined on the American Camp Assn website:

[http://www.acacamps.org/acanow/news/federal\\_hiring\\_incentives\\_restore\\_employment\\_act.php](http://www.acacamps.org/acanow/news/federal_hiring_incentives_restore_employment_act.php)

### **Define your Season: Unemployment Compensation –Labor Dept Form FX25**

Youth camps are classified as “Seasonal Industries” under the State of Maine Unemployment Compensation Law. The “Season” is set by the camp and must be less than 26 weeks in order to maintain the “Seasonal” classification. Seasonality affects your unemployment tax liability on wages for employees eligible for unemployment benefits. See the next section below for which employees are NOT eligible. Camps are required to list the beginning and ending day of their season on the Maine Department of Labor’s form FX 25. The State Unemployment office sends these out annually in the fall, and it is important to fill this out to protect yourself as a seasonal employer from unemployment claims. If you don’t get a form and you are seasonal, you should contact Lisa @ (207) 621-5127. FX-25 is not downloadable on the web; you must establish an account. The *employment* season is not the same as the *camper* season **FX-25 dates define your employment season and thus the dates should be the same as on the employment contracts for your seasonal employees eligible for Unemployment Compensation. It covers the first day of work for your first eligible seasonal hire to the last day any eligible seasonal employee works.** Here is how this relates to unemployment claims: If eligible seasonal employees complete their contract with you and then file for unemployment, they may be entitled to benefits, but the benefits will NOT be charged to your camp's account (since their unemployment is after the end of your season); it will come from an unemployment pooled account. If they are laid off before the end of their contract (during your season), they may be entitled to benefits and in that case the benefits WOULD be chargeable to your camp's unemployment account. Check with your camp attorney for more information.

### **Full Time Students are not eligible for Unemployment Compensation**

Because full time students are not eligible for unemployment compensation, there is no requirement to pay Federal unemployment taxes (FUTA) or Maine unemployment taxes (SUTA) on the wages for services performed by a full time student if the full time student performed services in the employ of the camp for less than 13 calendar weeks in the calendar year *and*,

- The camp did not operate for more than seven months in the calendar year *and*,
- The camp did not operate for more than seven months in the preceding calendar year *or*,
- The average gross receipts for the camp for any six months in the preceding calendar year were not more than 33-1/3 percent of its average gross receipts for the other six months in the preceding calendar year.

Full time student is defined as—

- An individual who is enrolled as a full time student at an educational institution *or*,
- Is between academic years or terms if the individual was enrolled as a full time student at an educational institution for the immediately preceding academic year or term and there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term.

## Hiring Reminders

- **Pre-offer stage:** Before an employment offer, it is not allowed to inquire about medical conditions & disabilities. It *is* permissible to ask about the ability to do the job. This assumes the job description covers job requirements in quantifiable terms (ex, “can lift at least 30 pounds).
- Job requirements must be consistently advertised to the public and to in-house candidates.
- **Conditional offer stage: With an offer, disabilities relative to a specific job can be discussed.** You must ask the exact same questions of every applicant. Avoid questions on marital status, organizations to which the applicant belongs, etc.
- **Employment “contracts” vs. employment at will.** Be clear that all employment is “at will” which means you can dismiss at any time without cause. It is recommended to confirm in a letter or employee manual, using this or similar language: “Please understand employment is at will. The position can be terminated by either of us without notice.” Use the term “**employment agreement**” rather than “**contract**”. **For key positions**, you may wish to **have** a basic contract (not “at will”) so you don’t get stuck with an important position being vacant in mid-season with no notice.

## Pay Period Requirement & Counselor Exception

Any employee who is NOT a counselor, junior counselor or counselor-in-training or otherwise exempt as described below under “Minimum Wage” must be paid at least the current hourly minimum wage rate. Typically at a camp this includes kitchen, maintenance, laundry and office staff. ALL EMPLOYEES are required to be paid at least every sixteen days. There is a Maine Department of Labor EXCEPTION for camp counselors and junior counselors only which states:

- The camp must prorate the lump sum offered in the contract by at least every sixteen days for the season and establish a regular payday.
- All required deductions must be computed by pay period.
- Counselors and junior counselors must be permitted to draw up to the full amount of each net amount due on each payday or can allow the amount to be held until requested and must clearly understand that they have this option.
- Employees will be provided with a statement each date wages are due indicating the date of the pay period, gross amount, itemized deductions and net amount due.

These steps eliminate the problem of having unsecured paychecks around camp until the counselor can get to the bank, and also allow counselors to draw their total wages at the end of the season if they prefer.

## Maine Minimum Wage now \$7.50/hr – Counselor Exemptions

Current Maine minimum wage is \$7.50 per hour. The following is the exemption from minimum wage & overtime pay for counseling staff reflecting changes made in the law in 2009:

1. "Those employees who are counselors or junior counselors or *counselors-in-training* (new in 2009) at licensed (new in 2009) summer camps; (includes both resident & day camp counselors)
2. employees who are under the age of 18 (formerly 19) and who are employees of summer camps operated by or belonging to corporations or associations existing under the provisions of Title 13, Part 2" (non-profit organizations). *The requirement that the employee be a student as well as under age 18 was dropped in 2009.*

## Rest Breaks for Hourly Wage earners

Maine law requires **hourly wage employees**, (includes all employees required to be paid minimum wage), to have an *unpaid* 30 consecutive minute rest break after 6 consecutive hours of work, if 3 or more people are on duty. A meal time lasting at least 30 consecutive minutes counts as a rest break. An employee and employer may negotiate for more or fewer breaks, but both must agree (this should be put in writing). No coffee, bathroom, or smoking breaks are *required*, but may be offered or negotiated.

## Harassment – Sexual and other

Staff training to prevent harassment should be provided each season. It is illegal for one employee to harass another as well as for a supervisor to harass an employee. The principal of harassment is “unwelcome conduct between persons”. In cases of harassment by a supervisor, the employer may be responsible, even if he/she

doesn't know it is going on. Harassment can encompass lewd or derogatory jokes, swearing, unwanted advances, touching, displaying sexual materials, racial/ethnic remarks and the like. Staff should be trained about harassment and steps to take if they believe they are a victim.

- Once harassment has been reported (or is observed), the camp has to address and resolve the issue.
- A staff person can bypass the employer and go directly to the Maine Human Rights Commission.
- **The best protection is training.**

## **Termination Concerns**

Discrimination against an employee based on race, color, sex (including pregnancy and medical conditions which result from pregnancy), sexual orientation, physical or mental disability, religion, age, ancestry or national origin is illegal in Maine. The major concern for an employer is that termination can result in a lawsuit alleging such discrimination by an employer against the employee. This is just a brief reminder of some key termination considerations.

- Legal experts recommend you always have another person in the room during a termination interview.
- Spoken comments are the ones usually remembered, so choose words clearly and carefully.
- Be direct about reasons for the termination. Lawyers state it is good to let the employee respond and vent feelings, as there are fewer lawsuits when employees are given the chance to talk about the termination and express themselves.
- Keep signed notes on incidents leading up to the termination & about the termination interview; these are part of the personnel file and an employee can request to view their file. The employee may be asked to initial these items and note if they do not agree with the termination. Even if they do not sign the notes, they are still valid documents in the personnel file.
- Re: annual seasonal breaks in service: Past year's performance issues in addition to current year issues can be used for a current termination. Seasonal employees don't get to "start fresh" every season.
- Consider asking the terminated employee to sign a waiver of any claim against the camp if you intend to pay the employee more than wages due at the date of termination.

# **INTERNATIONAL STAFF**

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## **SEVIS and Social Security Procedures for 2010**

### **The Student and Exchange Visitor Information System (SEVIS)**

SEVIS is an internet-based system of the Department of Homeland Security (DHS) that tracks and monitors information on nonimmigrant J-1 exchange visitors. The SEVIS security system tracks J-1 visa holders while in the US.

Within 5 days of arrival in the U.S., it is very important that participants confirm that they have begun their programs and report their U.S. addresses. SEVIS validation is not only important for monitoring purposes, but is also required before the Social Security Administration will process applications for SSNs. This validation process is mandatory and failure to do so will result in cancellation of the visa.

This link provides helpful links on forms needed for international staff as well as tax and other information:

<http://www.internationalymca.org/ICCP/FORMS.shtml>

**In most cases, sponsoring agencies will validate their staff but only after your camp confirms your staff arrivals. It is always the camp's responsibility to notify the staffing agency if an international staff member fails to arrive at camp or leaves early for any reason.**

## **J1-VISA REGULATIONS & PAYROLL ISSUES**

International staff on J-1 Visas must have a US social security number (SSN) before they can be paid for their work at camp. *Previous international staffers should already have an SSN.* Newly entering non-residents often apply for their SSN's within days of arriving in the US and possibly before online Immigration & Naturalization (INS) data is available for them. The Social Security Administration (SSA) expects immediate verification from the INS in most cases. But if the verification is not available online, the SSA must request paper verification before the exchange visitor can be assigned an SSN.

## FEDERAL LAW ALLOWS J-1 VISA HOLDERS TO BE ADDED TO THE PAYROLL WHILE THEY WAIT FOR THE SOCIAL SECURITY CARD.

**Social Security** - All international J-1 visa holders need to apply for a Social Security card. (Returning international staff should already have an SS card.) *A staffing agency may offer this service at their orientation sites, though this practice seems to be phasing out.* These participants will have a confirmation form from the Social Security Administration indicating that they have applied for the number. The Social Security Card will then be mailed to the camp address after it has been processed (which can take several weeks).

It is the camp's responsibility to assist their staff in applying for a Social Security Card if they do not have the opportunity to do so at their agency orientation. See "Applying at Social Social Security offices" (below).

Employers may request their local Social Security Office to do the following:

- Issue a notice acknowledging a non-resident's SSN application while his/her documents are being verified,
- Provide a non-resident with a copy of his/her UNCERTIFIED SSN application,
- Notify a non-resident of the SSN assigned before the SSN card is received in the mail, and
- Send an SSA-7028, Notice to Third Party of SSN Assignments to you, the non-resident's camp employer.

The employer must accept this in lieu of the actual Social Security Number until the Third Party Notice arrives.

**Form SSA-7028: Request for SS number.** Camps with a number of international staff can ask the local Social Security office for a supply of Form SSA-7028 ahead of time; you can complete the form with your address and have the international staff sign Part B, the consent statement, which allows you to receive information about them. The international staff should bring or send the pre-completed form to the SS office when they apply for the SSN. The application will then be coded so *you* will receive the social security number when available.

**Applying at Social Security Offices:** Camps must bring international staff to their regional SSA office to get SSA numbers. The Portland SSA office again requests that you call to make an appointment; they hope to keep waiting to a minimum. (Local number is (207) 771-2851 -You may want to emphasize your pre-camp dates). National SSA phone: 800-772-1213. There are nine (9) SSA field offices in Maine's key cities; to find yours visit [www.socialsecurity.gov/boston/ME.htm](http://www.socialsecurity.gov/boston/ME.htm).

To apply for a Social Security card, staff need to bring social security application forms, passports, J-1 visas, DS2019 form, I-9 cards, and an employment letter or sponsor letter. Call ahead to your Social Security office for a complete list and instructions.

**SEVIS: 10 DAYS IN COUNTRY REQUIRED:** Camp America states that internationals should be in the country for 10 days before applying for social security cards, so that their SEVIS is activated and in the system. A helpful document is at <http://www.socialsecurity.gov/employer/hiring.htm>, entitled "Employers Responsibility for Hiring International workers."

**PAYROLL PROCESSING NOTE:** some computerized payroll systems require a nine-digit number to add an individual to the payroll. Employers may need to create a "dummy number" (such as 000-00-0000) to satisfy their payroll requirements. Once the actual SSN is received, the employer must remember to change this code. The actual Social Security Number will be needed to issue the W-2 form at year end.

### ***Taxes for International Staff (non-resident aliens)***

J-1 Visa holders are exempt from Medicare & FICA payments, however, they are liable for State & Federal income taxes unless exempt. If the employee will earn less than the "Personal allowance" (\$3,650 in 2009) the person is generally not liable for income taxes. It costs the IRS more to withhold the taxes & return them than to process the person as EXEMPT on the W-4. If you code the international staffer as EXEMPT on the W-4, you MUST keep records. It is an IRS opinion that taxes should be waived for people earning less than the personal allowance, but it is not *rule*, so back up documents may be needed if questioned or audited.

**YOUR STAFF MAY NEED TO KNOW:** All non-resident aliens should file a US tax return even if no withholding occurred. Those returning for a 3<sup>rd</sup> year begin to fall into the "substantial presence" group, at which time they can no longer claim non-resident alien status & their tax status changes. See the YMCA International

Camp Counselor website for more info: <http://www.internationalymca.org/ICCP/FAQ.shtml> for answers to many questions on hiring international staff. There is also well written detail about how to define resident vs. nonresident alien status by searching 1040 NR-EZ on the IRS website [www.irs.gov](http://www.irs.gov)

## **INTERNATIONAL NON-COUNSELOR STAFF**

If you employ any international staff in kitchen, laundry, maintenance or other non-counselor positions, you treat them the same way as a local support person, meaning they must be paid at least minimum wage, are eligible for overtime for anything over 40 hrs (time and a half), and need time cards or a schedule that accounts for their hours worked each week. They need to be paid periodically, not exceeding every 16 days just like any other hourly minimum wage employee in Maine. All of these are state laws. Since the amount you will pay them is predetermined by your agreement with their sponsoring agency, *you need to use a formula to demonstrate you've paid them enough and are complying with the state minimum wage law. The formula factors in the value of the employee's room & board (at state specified rates) to determine how much you paid them overall.* Your local Wage & Hour inspector can help you with this formula, or you can contact MYCF for a sample formula. 207-518-9557.

## **OTHER EMPLOYER ISSUES**

**CRIMINAL BACKGROUND CHECKS** Since 2008, there have been requirements in the State Camp Licensing Rules requiring you to determine if an employee has a sexual criminal history. These are spelled out in State Rules 6.A.3 a-b, which follow. ACA accreditation already requires a check of the National Sex Offender Public Registry <http://www.nsopw.gov> Many camps routinely conduct third party background checks as a basic screening tool. The state considers non-compliance with rule 6.A.3 to be a *critical* violation.

6.A.3. Precautions *shall* be taken to avoid the employment or volunteer selection of persons who have been convicted of a sexual offense.

6.A.3.a. Such precautions *shall* include the use of a written employment application form that requires the applicant to provide the following: (1) Name, address, telephone number; (2) employment history; (3) name and address of three references; (4) sexual criminal history; and (5) permission for a background check. For the purpose of meeting this requirement the collection of Social Security numbers must be on a voluntary basis.

6.A.3.b. Prior to hiring any employee, or selecting any volunteer, the youth camp should; (1) review the employment application, (2) check references, (3) interview the applicant, and (4) review the National Sex Offender Public Registry of the US Department of Justice or other relevant available public record information.

**THIRD PARTY BACKGROUND CHECK OPTION:** Numerous options exist. The Chalmers Insurance Agency offers a special rate for background checks through Intellicorp to all MYCF members. The basic fee is \$10 for each background check for criminal & sex offender records; there may be additional fees to search in specific states. Intellicorp now also includes the National Sex Offender Public Registry search in their package. The company reports a number of improvements to their services. If you had an Intellicorp account last year, it is still active; there is no need to re-register. For information contact Bob Doran at Chalmers, 207-647-3311.

## **REMINDER: OSHA REPORTING REQUIREMENT**

The Occupational Safety and Health Act requires certain employers to maintain records of work-related illnesses and injuries. Camps are among the employers who must comply. The required record-keeping log, Form 300, can be accessed online at <http://www.osha.gov/recordkeeping/new-osha300form1-1-04.pdf>. A booklet that includes the forms and describes your requirements can be downloaded. In addition, you must complete the summary form, Form 300A even if no injuries or illnesses occurred during the year. **This summary must be posted at your work site between February & April of each year.** (Not very effective for the camp community, but that is the requirement). Employees, former employees and their representatives have the right to review the OSHA Form 300 in its entirety.

## FEDERAL MILEAGE REIMBURSEMENT RATES FOR 2010

For 2010, the standard mileage rate for the use of a car, van, pickup truck or panel truck is 50 cents, down from 55 cents in 2009.

## MAINE BOARD OF NURSING WEBSITE

For answers about applications for out of state nurses, [www.maine.gov/boardofnursing](http://www.maine.gov/boardofnursing), choose "Licensing & Renewals". 207-287-1133, for questions.

**CAMP STORE TAXES:** Reminder, camps are liable for 5% Maine sales tax for any items sold in a camp store during the summer (food, candy, logowear etc). To apply for a tax number:

<http://mainegov-images.informe.org/revenue/forms/general/reg.pdf>

## OTHER PRE-CAMP NEWS & UPDATES FOR 2010 SEASON

Member camps have previously received detailed emails about these topics. They are listed here as reminders of the changes.

### Swim Area Permit

Camps are one of the few qualified entities in Maine that are allowed to mark a swim area, however, a permit from the State Dept of Conservation is now required to do so. The permit is free for licensed youth camps (thanks to the efforts of MYCA, our sister governmental relations organization). For 2010 an interim permit is being granted. If you have not yet applied for your permit, click here for application details (make link to MYCF web)

### Smoke Detectors & Carbon Monoxide Monitors

The state Fire Marshal provided guidance to camps about the requirements and recommendations for smoke detectors and CO monitors in various camp buildings. The definition of a "dwelling" is given. For full details, click here (link to MYCF web)

### H1N1 Flu

At a recent meeting, Laura Blaisdell, MD, MPH provided an update on the status of H1N1 flu for summer 2010. To date, the CDC in Washington and the State of Maine CDC have not issued updated guidelines for camps. In that absence Dr. Blaisdell notes that:

- while H1N1 flu incidence nationwide is generally low, there are still pockets of flu activity – notably, in the Southeastern US. Internationally, Central America, Southeast Asia, West & Central Africa are areas of flu activity.
- Many campers will now have been immunized, and immunization is still the primary recommendation for prevention.
- Be aware of where H1N1 is active in the US and know where your campers and staff are coming from.
- Ask parents specifically for the H1N1 Vaccination Status.
- Who are your high risk campers (asthmatics) and have they been immunized?

#### If you have a camper with fever:

- Document fever.
- Review vaccination status.

#### If vaccinated, treat per usual.

#### If not vaccinated:

- Isolate and mask camper/staff
- Nasopharyngeal swab for Influenza
- Determine exposure risk (are they from Georgia?)
- Determine if camper is high risk group (<5yo, pregnant, diabetes, asthma, immune-suppression) and if so consider treatment (Tamiflu)
- Test Result will determine plan of action.
- If Positive, watch for secondary infections.

*The Action Bulletin* is a periodic publication for camp members of the Maine Youth Camping Foundation.

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**WWW.MAINECAMPS.ORG**

### Important, continue all camper education on hand sanitation & preventing disease spread from 2009.

For Dr. Blaisdell's full Power Point presentation, click here. (link to MYCF web).

Centers for Disease Control: [www.cdc.gov/h1n1flu/camp.htm](http://www.cdc.gov/h1n1flu/camp.htm)

## Day Camp Health Supervisor Qualifications Expanded

Reminder, in 2009, the Maine Health Inspection program approved the addition of the certification of **Wilderness First Aid with Adult and Child CPR (22 training hours) to the list of persons qualified to be a day camp's health supervisor (rule 5.B.2)** This qualification waiver will remain in effect until the Youth Camp Rules are brought forward for future revision and adoption. Questions, please contact Lisa Brown, Program Director 207-287-5691.

## Speaking of Maine Health Inspection Program

The Department has advised MYCF that this summer it intends to inspect licensed camps that have not been inspected in the last couple of years. If your camp is one of those, remember that the rules have greatly expanded since 2008. A copy of the rules is available at <http://www.maine.gov/sos/cec/rules/10/144/144c208.doc>.

## Required Employment Posters for Maine Businesses

Employers **must display** certain posters in the workplace where workers can see them. *Business Answers* can send you the following posters **free of charge and many can be downloaded**. Call 1-800-872-3838 or 207-624-9818 (in-state), 1-800-541-5872 (out-of-state). For more information about individual posters, call the agencies listed.

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### State of Maine Required Posters

These 9 required posters are available as described above, or can be downloaded from: <a href="http://www.maine.gov/labor/posters/">http://www.maine.gov/labor/posters/</a> . For questions call the ME Dept of Labor: 207-623-7900
<a href="#">Minimum Wage</a>
<a href="#">Child Labor Laws</a>
<a href="#">Regulation of Employment</a>
<a href="#">Occupational Safety and Health Regulations (for public sector workplaces only)</a>
<a href="#">Whistleblower's Protection Act</a>
<a href="#">Video Display Terminal Poster</a>
<a href="#">Worker's Compensation</a>
<a href="#">Sexual Harassment</a>
<a href="#">Maine Employment Security Act</a>

### Federal Government Required Posters

207-780-3344 (US Dept of Labor) Available by phone or by downloading from this site: <a href="http://www.dol.gov/oasam/programs/osdbu/sbrefa/poster/matrix.htm">http://www.dol.gov/oasam/programs/osdbu/sbrefa/poster/matrix.htm</a>
<a href="#">Job Safety &amp; Health Protection</a>
<a href="#">Equal Employment Opportunity is the Law</a>
<a href="#">Fair Labor Standards Act - Federal Minimum Wage</a>
<a href="#">Employee Polygraph Protection Act</a>
<a href="#">Family and Medical Leave Act (for employers with 50 or more employees)</a>

### Optional Posters

<a href="#">Maine Human Rights Act - Equal Employment Rights (optional)</a>	Maine Human Rights Commission 207-624-6050
<a href="#">Equal Pay Poster (optional)</a>	Maine Department of Labor 207- 623-7900
<a href="#">Domestic Violence in the Workplace Poster (optional)</a>	Maine Department of Labor 207- 623-7900