LEFT OUT IN THE COLD: EXPLORING THE VULNERABILITIES OF SEASONAL WORKERS IN THE SKI INDUSTRY

Shannon Warren*

TABLE OF CONTENTS

I. Introduction ............................................................................................................. 1

II. An Overview of the Ski Industry, Its Workers, and Their Vulnerabilities................................................................. 5
   A. The ski industry relies on a seasonal workforce. .................. 5
   B. Ski-industry employers' reliance on temporary visas for foreign seasonal workers makes both foreign and domestic workers more vulnerable................................................................. 7
   C. The compensation and benefits seasonal ski workers receive is inadequate to protect their particular vulnerabilities.......... 10

III. Ski-industry employers' Obligations to Seasonal Workers.... 12
   A. Generally, the law provides no additional protections for seasonal workers. .............................................................. 13
      1. The At-Will Doctrine......................................................... 13
      2. Contingent Employment and General Legal Protections for Employees...................................................................... 14
      3. Legal Protections and Vulnerabilities Particular to Seasonal Workers................................................................. 18
   B. Unlike most seasonal workers, migrant and seasonal agricultural workers are protected under the Migrant and Seasonal Agricultural Workers Protection Act.................. 21
      1. Legislative History & Intent ................................................. 22
   C. Similar to migrant and seasonal agricultural workers, seasonal ski workers are particularly vulnerable. ......................... 24

IV. The Case for Increasing Employee Loyalty and Protection for Seasonal Ski Employees .................................................. 26

* J.D. Candidate, University of Denver Sturm College of Law.
A. Seasonal ski employees and ski-industry employers invest economically, emotionally, and psychologically in one another. ................................................................................................................................. 26

B. Employee loyalty is essential for ski-industry employers and internal branding is an important tool to foster loyalty........... 28

C. Ski-industry employers should provide clear expectations and transparency to seasonal ski employees in addition to internal branding efforts to build employee loyalty and to enhance recruitment .................................................................................................................................. 30

1. Guaranteed hours and terms of employment ......................... 32
2. Transparency....................................................................................... 32
3. On-site Medical Visits and Preventive Treatments ............ 35
4. Cash Signing Bonuses ................................................................. 35

V. Conclusion ................................................................................................. 36
I. INTRODUCTION

For many skiers and snowboarders, working for a season or two at a ski resort is a rite of passage. For Emilie and Colin Clarke, it was a dream come true.\(^1\) The couple, now married, were both ski instructors at Beaver Creek, Colorado\(^2\) during the winter of 2010 when they met during cookie time -- the magical time each afternoon, when ski lessons conclude, groups of children meet at the base of the mountain, and bakers clad in white chef's uniforms carry trays of the resort's signature freshly-baked chocolate chip cookies to delighted children and hungry ski instructors. Emilie and Colin both enjoyed their ski instructor jobs so much that they decided to stay in the Vail Valley for several years. Colin worked in hospitality and eventually got a management position at a luxury hotel in Vail, Colorado. Emilie found part-time work at a different hotel and also worked at a preschool, where she became a teacher.

Stories like the Clarkes' demonstrate the idyllic side of seasonal employment in the ski industry. Emilie and Colin were young college graduates who used seasonal jobs at a ski resort to launch a new adventure. Although they worked hard to make ends meet, they now look fondly on their time working as seasonal ski employees after having moved to Denver to start a family.\(^3\) In fact, ask almost any person who spent a season working at a ski resort, and they will tell you that it was one of the happiest times of their lives.\(^4\)

At the other end of the spectrum, however, are the employees in Colorado who, in the winter of 2017, waited in lines to eat at soup kitchens set up by the ski resorts, local churches, and

---

\(^1\) Telephone Interview with Emilie Clarke, Former Ski Instructor, Beaver Creek (Dec. 7, 2018).

\(^2\) This article discusses examples of seasonal ski workers in other mountain states such as California, Idaho, Montana, Washington, and Vermont, among others.

\(^3\) This article uses the term seasonal ski employees interchangeably with seasonal ski workers to refer to individuals who work during the winter season at a ski resort or in a ski-resort town.

\(^4\) This assertion is based on the author's interviews with people who worked in seasonal jobs at Vail, Beaver Creek, Keystone, Copper Mountain, and Winter Park ski resorts in Colorado.
6 See Id.
7 See Id.
8 See Part II, infra.
9 See James Brooke, \textit{Foreigners Flock to Slopes to Work, Not Ski}, NEW YORK TIMES, Dec. 29, 1995, https://www.nytimes.com/1995/12/29/us/foreigners-flock-to-slopes-to-work-not-ski.html (discussing foreign workers who do the ski-resort jobs American college students do not want, such as cleaning). The demographics of seasonal ski workers is understudied, and the author was not able to find statistics regarding seasonal workers who are driven to seasonal ski jobs by economic necessity because much of the author's factual research is limited to information she learned from interviews.
10 Telephone Interview with Harrison Gully, Ski Instructor, Winter Park (Dec. 10, 2018).} Ski-resort towns depend mainly upon revenue from winter tourism to run their businesses throughout the year.\footnote{6 See Id.} And when the snow is low as it was in the winter of 2017, lifts do not open, lessons are not booked, restaurants are not full, retail stores have fewer customers, and employers send workers home for the day without an opportunity to earn their pay.\footnote{7 See Id.} Although all business owners and workers in ski-resort towns are affected by the ebbs and flows of natural phenomena, seasonal ski workers are particularly vulnerable. Ski resorts in Colorado and all over the country hire thousands of seasonal workers each winter to run ski lifts, teach ski and snowboard lessons, groom trails, make snow, serve food and beverages, work in hotels and spas, and sell gear and apparel in retail stores.\footnote{8 See Part II, infra.} While many of these employees may be like Emilie and Colin, young college students or graduates called to the job by a love for skiing and the mountains, some of the thousands of employees hired each season to work in the ski industry are in part driven by economic necessity -- searching for opportunities to make a living in the tourism industry with little education and few skills.\footnote{9 See James Brooke, \textit{Foreigners Flock to Slopes to Work, Not Ski}, NEW YORK TIMES, Dec. 29, 1995, https://www.nytimes.com/1995/12/29/us/foreigners-flock-to-slopes-to-work-not-ski.html (discussing foreign workers who do the ski-resort jobs American college students do not want, such as cleaning). The demographics of seasonal ski workers is understudied, and the author was not able to find statistics regarding seasonal workers who are driven to seasonal ski jobs by economic necessity because much of the author's factual research is limited to information she learned from interviews.
10 Telephone Interview with Harrison Gully, Ski Instructor, Winter Park (Dec. 10, 2018).} Further, many seasonal ski employees travel from other states and even other countries to work in ski-resort towns.\footnote{10 Telephone Interview with Harrison Gully, Ski Instructor, Winter Park (Dec. 10, 2018).}
the hardest. They already have paid to travel to the resort, and most are required to pay first and last month's rent up front, even though they have not yet earned a paycheck.\(^{11}\) Further, their wages are relatively low, especially given the high cost of living in mountain resort towns.\(^{12}\) Most importantly, seasonal ski workers move to the ski resort towns to work, but are not guaranteed a set amount of hours of work each week or even start and end dates for their jobs.\(^{13}\)

Although many low-wage workers struggle to make ends meet in cities with high costs of living, seasonal ski workers are distinct from other low-wage workers and are more vulnerable for three reasons. First, they move from other cities, states, and countries to secluded mountain towns that are far from their social networks and where their employers are the main business.\(^{14}\) Second, they are more likely to sustain both short and long-term injury because of the dangerous nature of their work.\(^{15}\) Third, unlike seasonal workers in cities, they cannot find employment throughout the year in their mountain communities.

Ski-industry employers also face a dilemma with respect to their seasonal employees. Each winter, they must hire thousands of employees to run their ski areas and to engage ski-resort guests.\(^{16}\) Because there is not a sufficient number of available workers in the communities in which ski areas are located, employers must recruit seasonal ski workers nationwide and even internationally, and cannot offer them continued employment after the winter season has concluded.\(^{17}\) Resorts are consistently understaffed and rely in part on guest-worker visas to obtain enough employees run their

\(^{11}\) See Blevins, supra note 5; see also Gully interview, supra note 10.

\(^{12}\) Telephone Interview with Kirk Sjolund, Former Manager, Undisclosed Hotel in Vail (Dec. 11, 2018).

\(^{13}\) See Gully interview, supra note 10.

\(^{14}\) Gully interview, supra note 10.

\(^{15}\) See Delia Roberts, Injury Prevention for Ski-Area Employees: A Physiological Assessment of Lift Operators, Instructors, and Patrollers, Biomed Research Int'l, July 25, 2013, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3741908/ (stating that "[s]nowsport resort workers have one of the highest occupational injury rate classifications of all sectors.")

\(^{16}\) See Part II(A), infra.

\(^{17}\) Blevins, supra note 17.
winter operations. In 2016, Aspen sought to hire 2,500 seasonal employees to staff its four mountains, and Vail Resorts sought to hire more than 10,000 seasonal employees. These employees represent the face of ski-industry employers in an industry that depends upon customer service. Ski-industry employers must therefore find a way to induce loyalty from their seasonal ski employees to build value for their brands. The value of employers' guest experience depends upon the loyalty and brand performance of this transient employee population.

This paper will explore the relationship between ski-industry employers and seasonal ski employees, and will argue that ski-industry employers should provide additional incentives and benefits in addition to what is required by law to address seasonal ski employees' particular vulnerabilities. Part II will describe the ski industry, its seasonal workers, and the ways in which they are particularly vulnerable. Part III will discuss the legal obligations employers owe to seasonal workers, and will compare seasonal ski workers to the seasonal agricultural workers covered by the Migrant Seasonal and Agricultural Workers Protection Act (MSAWPA). Part IV will discuss the relationship between ski-industry employers and seasonal employees, will emphasize the importance of employee loyalty in the ski industry, and will suggest ways in which ski-industry employers may voluntarily offer more employment benefits and protections to seasonal ski employees to induce loyalty and to attract workers. Part V will conclude.

---

18 Id.; Part II(B), infra.
20 See Part IV, infra.
21 Id.
22 See Part IV(B), infra.
II. AN OVERVIEW OF THE SKI INDUSTRY, ITS WORKERS, AND THEIR VULNERABILITIES

A. The ski industry relies on a seasonal workforce.

The ski industry is important for both the economies of the mountain states in which ski resorts operate and the companies that own and operate the resorts. Further, the resorts could not operate without the labor of the seasonal workers. In 2015, an industry report concluded that $4.8 billion of economic activity was attributed to the ski industry in Colorado alone.24 Ski-industry employers are typically large corporations such as Alterra Mountain Company, Boyne U.S.A, Inc., Powdr Corp., and Vail Resorts, each of which own and operate at least nine ski resorts in North America.25 These firms do not suffer a significant downturn in the value of their companies when operations are below normal because of low snow.26 They use strategies such as pre-season pass sales and ownership of a diverse portfolio of related lines of business to ensure steady earnings throughout the year despite weather conditions.27 For example, Vail Resorts, a publicly-traded company that owns and operates twelve ski resorts, also owns and operates hotels, a real-estate business, transportation operations, and retail stores.28

Ski-area operations on the other hand, take place only during the winter season. Because ski areas are predominantly in towns that are dependent on winter tourism, the employers must draw in workers from other cities, states, and countries to run their resorts. Ski-industry employers use Internet campaigns and national job fairs to recruit seasonal workers from all over the world. Each year, the workforce of the United States (U.S.) ski industry fluctuates by 70,000 employees during its busiest month (January) compared to its slowest month (May).

Seasonal ski employees maintain the day-to-day operations of the ski resorts. They can be grouped into roughly three categories: operations; safety; and hospitality. Operations workers operate ski lifts, groom trails, make snow, and teach ski and snowboard lessons. Safety workers provide emergency medical care and maintain the safety of the ski resort by disciplining dangerous skiers and snowboarders and roping off unsafe areas.

---


Hospitality workers serve food and beverages, run hotels, provide spa services, and clean bathrooms, lodges, and hotel rooms.\textsuperscript{33} Without these seasonal workers, the resorts could not operate. Perhaps more importantly, seasonal ski workers engage resort guests in front-line customer service, thus representing each resort’s brand to its customers. In an industry that sells experiences rather than products, ski resorts’ brands are crucial to the value of the companies that operate them.\textsuperscript{34} This paper will discuss the importance of employee loyalty and engagement in Part IV, and will suggest ways in which ski-industry employers may encourage such behavior from employees.

\textbf{B. Ski-industry employers’ reliance on temporary visas for foreign seasonal workers makes both foreign and domestic workers more vulnerable.}

Similar to other industries that require seasonal workers, ski-industry employers rely on short-term guestworker visas to bring in employees from other countries.\textsuperscript{35} Ski-industry employers use the H2-B Visa and the J-1 Visa to bring guestworkers to their resorts. H2-B Visas are issued by U.S. Citizenship and Immigration Services (USCIS).\textsuperscript{36} H2-B Visas are difficult for employers to obtain because employers must first prove that (1) there are not enough willing and qualified domestic workers to fill their jobs, (2) hiring foreign labor would not negatively impact

\begin{itemize}
\item \textsuperscript{34} See Part IV, infra.
\end{itemize}
U.S. workers, and (3) the employer's need for workers is temporary. USCIS also places a statutory cap on how many H2-B visas may issue during the fiscal year. Although ski-industry employers have been able to sponsor these visas for workers in the past, the visas have become more difficult to obtain in the current political climate. Employers thus have turned to the J-1 Visa to sponsor foreign workers to fill their seasonal jobs.

About 7,000 J-1 Visa workers are employed in U.S. ski resorts. At Squaw Valley Ski Resort near Lake Tahoe, J-1 Visa workers make up twelve to fifteen percent of the staff. These visas differ significantly from H2-B visas in two ways. First, they are issued through the U.S. Department of State rather than USCIS. Second, the primary purpose of the J-1 Visa Program is to facilitate cultural exchange between young exchange students and learners and the American public. Conversely, the H2-B program was designed to help U.S. employers meet labor shortage needs by sponsoring foreign workers for temporary and seasonal jobs. Moreover, the H-2B Visa program is overseen by the Department of Labor (DOL) and has stronger protections for workers. Critics argue that many employers use J-1 Visa workers for cheap labor rather than to sponsor students of American

37 Id.
38 Id.
40 See Martin, supra note 35.
41 Id.
Some J-1 Visa ski employees have commented that they work in jobs with few opportunities to interact with Americans and receive the worst shifts and jobs, while others have had ideal experiences.\textsuperscript{47}

Domestic employees are also vulnerable to exploitation under the current guestworker visa scheme. Employment and immigration law scholars have theorized that employers may use guestworker programs to keep wages low and demand high productivity, thus degrading the types of jobs they seek guestworkers to fill so that U.S. workers will not apply for the jobs.\textsuperscript{48} Guestworkers typically have even less bargaining power than domestic employees because they frequently "have the choice between destitution in their home countries and temporary work in the U.S." \textsuperscript{49} They will work for lower wages and under worse conditions than domestic workers would demand for the same job because of their economic lack of choice.\textsuperscript{50} For example, a study by the Economic Policy Institute concluded that wages in fifteen occupations with large numbers of H-2B Visa workers remained stagnant between 2004 and 2014.\textsuperscript{51} Moreover, employers in industries with more money and lobbying power have greater access to workers using guestworker programs.\textsuperscript{52} Professor Jennifer Lee calls this process a self-feeding loop.\textsuperscript{53} In this self-feeding loop, employers request guestworkers to fill jobs, and as more guestworkers enter an industry, the employers are able to degrade wages and working conditions because they do not need to attract U.S. workers.\textsuperscript{54} Thus, in industries with high numbers of guestworkers such as the ski industry, wages and working

\begin{footnotes}
\textsuperscript{47} Segerstrom, \textit{supra} note 45.
\textsuperscript{49} Garcia, \textit{supra} note 48, at 29.
\textsuperscript{50} Lee, \textit{supra} note 44, at 10.
\textsuperscript{51} \textit{Id.} at 11.
\textsuperscript{52} Garcia, \textit{supra} note 48, at 50.
\textsuperscript{53} Lee, \textit{supra} note 44, at 6.
\textsuperscript{54} \textit{Id.}
\end{footnotes}
conditions may be depressed below what they would be if employers had to bargain with domestic workers.\textsuperscript{55}

C. The compensation and benefits seasonal ski workers receive is inadequate to protect their particular vulnerabilities.

Ski-industry employers often provide seasonal employees with more compensation and benefits than are required by law. For example, they pay more than the minimum wage, offer opportunities for subsidized housing, and give employees free ski passes. Recently, Vail Resorts raised its minimum wage to $12.25 per hour, and Aspen raised its minimum wage to $13.50.\textsuperscript{56} Other benefits ski-industry employers provide seasonal employees include free ski passes, free or reduced shift meals, free helmets and uniforms, and discounts on lodging, gear, and food.\textsuperscript{57}

However, many seasonal ski employees must still work two or three jobs to make ends meet.\textsuperscript{58} By all accounts, the lack of affordable housing in ski-resort towns is the biggest problem, even though employees typically make above minimum wage.\textsuperscript{59} And while many employers provide reduced-cost housing options, those options are often limited. Some require employees to share a bedroom.\textsuperscript{60} Vail Resorts recently collaborated with city officials to rebuild one housing unit in Vail, years after residents reported

\textsuperscript{55} See Id. at 19.


\textsuperscript{57} See Clarke interview, supra note 1.

\textsuperscript{58} Telephone Interview with Former Ski Patroller, Keystone Resort (Oct. 4, 2018).


mold, missing floor boards, and leaky ceilings and windows. Given the low wages these workers earn and the fact that they do not know when they will begin and end working, it can be difficult for them to find suitable housing elsewhere because landlords typically require tenants to commit to year-long leases.

Aside from insufficient housing options and a livable wage, seasonal workers may not have access to employer-subsidized medical insurance, despite working in jobs that make them more likely to develop long-term health problems, such as skin cancer. Further, the active nature of many ski resort jobs puts employees at risk of developing medical conditions. For example, one Keystone ski patroller has had three ACL repairs during his tenure with the resort. Additionally, seasonal employees do not get paid time off for illness or any other reason, and are often pressured to work even when they are sick.

Finally, seasonal ski employees are hired for the winter season, but do not receive any guidance from their employers with respect to (1) the duration of their employment; (2) how many hours they will work per week; and (3) what will happen if they do not get work. Seasonal ski employees must move to the ski resort, provide first and last month's rent to their landlords, sign a lease for the entire ski season, and plan to arrive to work each day,

---

62 See Clarke interview, supra note 1.
64 See Keystone Ski Patroller interview, supra note 58.
65 Id.
66 See Gully interview, supra note 10; see also Clarke interview supra note 1.
even though they may be sent home without pay. For example, ski-school workers often do not work unless enough guests sign up for lessons. Employers require all scheduled employees to come to work each day and frequently send employees home because there are not enough students enrolled. Employers will often tell employees that they will try to give them at least thirty hours per week and will provide a flexible schedule so that employees can get another job, but if there is not enough snow or if there are not enough guests, they do not work.

Although seasonal ski workers receive relatively good compensation and benefits compared to other low-wage workers, they are particularly vulnerable because of the lack of clarity with respect to the duration and scope of their employment, the physically strenuous and risky nature of their work, and the lack of affordable housing and other work opportunities in the communities where they live when the snow is low. The next part of this paper will discuss ski-industry employers’ legal obligations to seasonal employees, and will identify some gaps in protection for these employees under the law.

III. Ski-industry employers’ Obligations to Seasonal Workers

Despite their vulnerabilities, seasonal ski workers lack protection under the law because they are often excluded from statutory protections. Employment law scholars have written about a category of workers similarly excluded from statutory protections called contingent workers. This section will first posit that seasonal ski employees are contingent workers and will explore how contingent workers are vulnerable under the law. It then will compare seasonal workers to other types of contingent workers and identify ways in which seasonal ski workers are even more vulnerable than other types of contingent workers. Finally, it

---

67 See Gully interview, supra note 10; see also Clarke interview supra note 1.
68 See Clarke interview supra note 1.
69 Id.
70 See Part III(A), infra.
will examine statutory protections in place for seasonal workers in agriculture and will identify ways in which seasonal ski workers are both similar to and different from seasonal agricultural workers.

A. Generally, the law provides no additional protections for seasonal workers.

1. The At-Will Doctrine

In the United States (U.S.), most employment relationships are at-will, which means that either the employer or the employee may terminate the relationship at any time and for any reason. In this sense, most employment relationships in the U.S. are temporary in that they may end at any time. However, under the traditional employment model, there is an implicit understanding that the employer will provide continuous, full-time employment so long as the employee performs satisfactorily and the employer needs their work. Much of current U.S. law is based on the presumption that employment relationships are full time and continuous, which leaves part-time and temporary workers exposed to risks that their traditionally-employed colleagues do not face.

Employers in the U.S. have increasingly offered nontraditional forms of employment, such as temporary and part-time employment, to save costs and respond to market demands. Employment law scholars use the term contingent workers to describe those workers who fall outside of the traditional full-time, continuous model of employment. Among those scholars

75 Befort, supra note 73 at 158.
describe as contingent workers are (1) part-time workers, or those who work fewer than forty hours per week and (2) temporary workers, or those who do not expect the duration of their employment to be ongoing. These workers often receive reduced pay and benefits compared to their traditional colleagues and receive fewer protections under the law.

Many seasonal ski workers are both temporary and part-time workers, and therefore are subject to the same lack of protections under the law. This article will address protections and vulnerabilities particular to seasonal employees further in section three of this part.

2. Contingent Employment and General Legal Protections for Employees

Federal and state statutes mandate employers to protect employees by providing: (1) minimum wages and extra payment for overtime; (2) unpaid medical and family leave; and (3) safe working conditions. Other federal statutes provide a cause of action for employees who have been discriminated against by their employers and who have been retaliated against by their employers for protected activity. Federal law also protects employees’ right to engage in collective bargaining and the agency to regulate the relationship between collective bargaining units and employers. State laws provide insurance schemes and exclusive remedies for employees to be compensated when they are injured at work. Recent federal legislation provides incentives for

76 See Summers, supra note 72, at 504. Much of the scholarship concerning contingent workers focuses on the role of intermediary employee leasing firms and on misclassification of employees as independent contractors. This article does not address either of those issues because they are not implicated by the factual research on seasonal employees in the ski industry.
77 See Befort, supra note 73 at 164.
84 See Glynn, Sullivan, & Arnow-Richman, supra note 71, at 895.
employers to provide health insurance and other benefits such as retirement savings plans and regulates how employers administer those benefits.\textsuperscript{85}

Although contingent workers are protected by some of the same laws as their traditionally-employed colleagues mentioned above,\textsuperscript{86} there are gaps in their protection. These gaps pertain to: (1) their rights to organize as a collective bargaining unit; (2) their eligibility for job security during unpaid leave; and (3) their access to employer-funded retirement plans.

Organization into collective bargaining units, or unions, is a means for employees to gain more bargaining power with respect to the terms and conditions of their employment and enter into generally applicable employment contracts, or collective bargaining agreements, to receive more favorable terms of employment than they likely would receive as individuals.\textsuperscript{87} However, contingent workers may not have access to the collective bargaining process. For example, temporary and part-time employees may be excluded from the employee bargaining unit because they do not share "a sufficient community of interests" with more permanent employees.\textsuperscript{88} Further, the rise of contingent workers may weaken the roles of unions generally, thus diminishing all employees' access to the collective bargaining process.\textsuperscript{89} In fact, some employers hire contingent workers to affirmatively avoid unionization amongst their workforce.\textsuperscript{90} Finally, contingent workers are more difficult to organize because many workers do not see the benefits of unionization with respect


\textsuperscript{86} Note that this article assumes that seasonal ski workers are classified by their employers as employees rather than independent contractors, and does not argue that contingent workers whose employers classify them as independent contractors are entitled to the same protections under the law as traditional employees.


\textsuperscript{88} Befort, supra note 73, at 169–70.

\textsuperscript{89} Id. at 169.

\textsuperscript{90} Id. at 170.
to a short-term employment relationship.\textsuperscript{91} In the ski-industry context, one report noted that an effort to unionize ski school instructors at Beaver Creek ski resort failed because of the difficulty of gaining support from the part-time instructors.\textsuperscript{92}

Second, contingent employees, especially part-time employees, are less likely to have access to medical and family leave under the Family and Medical Leave Act (FMLA) because the threshold requirement for an employee to be covered under the Act is that the employee must have been employed for at least twelve months and must have worked at least 1,250 hours within a twelve-month period.\textsuperscript{93} Temporary employees do not have the kind of long-term employment relationship contemplated by the FMLA and are therefore not entitled to protection under it. Similarly, part-time employees who do not meet the 1,250 hour requirement do not receive protection under the FMLA. The FMLA provides workers legal protection to take up to twelve weeks unpaid leave during a twelve-month period for family and medical events.\textsuperscript{94} It requires employers to restore employees to their jobs upon return and to give employees the same benefits during their leave they would receive while working.\textsuperscript{95} Although the requirement to provide leave is unpaid, it gives employees the security to take time off from work to deal with important events in their personal lives. Temporary and seasonal employees lack the security provided by the law in this respect.

Finally, contingent employees may not have access to retirement plans that employers voluntarily provide for traditional employees. Employers are not required by law to provide retirement plans to their employees, but the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code

\textsuperscript{91} Id.
\textsuperscript{92} Scott Miller, \textit{Beaver Creek Instructors Won't Unionize}, \textit{Vail Daily}, March 18, 2016, https://www.vaildaily.com/news/beaver-creek-instructors-wont-unionize/ (noting that organizers gathered enough signatures to prompt a hearing before the National Labor Relations Board from the full-time ski instructors at the resort, but not from the part-time ski instructors, a larger group).
\textsuperscript{94} 29 U.S.C. § 2612(a)(2002).
\textsuperscript{95} 29 U.S.C. § 2614(a)(2002).
(IRC) provide tax incentives for employers who do so. When employers choose to take advantage of such tax benefits and offer qualified retirement plans under ERISA and the IRC, they are required to comply with rules regarding employee eligibility and coverage. For example, employers may designate which types of employees can participate in their retirement plans, but their designation of eligible employees must cover a cross-section of types of employees and generally must not require employees to work for longer than a year to become eligible to participate in the plan. Further, employers may require an employee to participate in the plan for up to seven years before the plan becomes fully vested.

The rules require employers to administer plans in a way that does not provide retirement plans only or primarily for highly-compensated employees. Highly-compensated employees include those who earn more than $120,000 per year or who owned more than five percent of the employer’s business during the year or the preceding year. However, the rules do not contemplate employees who are excluded by the terms of the plan in calculating whether the plan favors highly-compensated employees. Employers may exclude employees who have (1) completed fewer than six months of service; (2) who normally work less than seventeen and one half hours per week; and (3) who normally do not work more than six months per year. Employers who hire many excludable employees under these rules effectively may violate the prohibition against favoring highly-compensated employees. Seasonal and part-time employees would likely fall under the excludable employees category because part-time employees may work fewer than seventeen and one half hours per week, and seasonal employees likely work fewer than six months.

---

97 See id.
100 Christina & Culp, supra note 96.
101 26 U.S.C § 414(q)(1).
102 26 U.S.C., § 411(a).
103 26 U.S.C § 414(q)(5).
per year. Temporary employees on the other hand are less likely to be excludable under this definition and may receive retirement plan benefits from their employers as mandated by these statutes.

3. Legal Protections and Vulnerabilities Particular to Seasonal Workers

Seasonal workers may lack even more protections than temporary and part-time workers. Their seasonal status may disqualify them from protections afforded to other contingent workers such as temporary and part-time workers. For example, as mentioned in the previous section, seasonal workers can be easily excluded from their employers' definitions of covered employees under their retirement plan benefits. Two other examples of such a gap in coverage are with respect to health insurance and unemployment insurance.

i. Health Insurance

Health insurance is an important benefit for working Americans.\textsuperscript{104} Many employees fall into debt because they do not have health insurance and incur high medical costs.\textsuperscript{105} Low wage earners are particularly susceptible to this problem because it is a bigger economic burden for them to purchase health insurance for themselves and their families if their employers do not provide it.\textsuperscript{106} Employers are not required to provide health insurance for their employees.\textsuperscript{107} However, the Affordable Care Act (ACA) incentivizes employers to do so by placing penalties on applicable large employers (ALEs)\textsuperscript{108} who do not provide minimum coverage health insurance if at least one of their full-time employees buys health insurance from another provider that is subsidized under the


\textsuperscript{105} \textit{id.}

\textsuperscript{106} \textit{id.}

\textsuperscript{107} \textit{id.}

\textsuperscript{108} Applicable large employers (ALEs) are employers who have more than fifty employees.
Act. Employers are therefore highly incentivized under the ACA to provide health insurance for their full-time employees, and if they offer to do so they must offer it within thirty days of hire. This provision of the ACA is called the employer mandate.

ALEs are not required to provide health insurance to seasonal employees. However, the ACA defines a seasonal employee as one who normally works for four months or less. The ski season generally begins in November and ends in March, which is five months. Employers can likely escape liability under the ACA even if they hire seasonal employees to work more than five months under the look-back measurement method. Using the look-back method, employers who hire seasonal employees will likely not be liable under the employer mandate if (1) the employees worked fewer than six months; (2) the employment is terminated at the end of each season; and (3) the employees' break in service was at least thirteen weeks (roughly three months).

Although part-time employees likely would be permissibly excluded from their employers' health insurance coverage under these rules, temporary full-time employees would not unless their employers expected them to work for fewer than four months. In that sense, the employer mandate favors temporary full-time workers over seasonal workers because employers are more likely to provide them health insurance.

ii. Unemployment Insurance

The federal statute that caused the creation of the federal and state unemployment insurance systems was enacted in the wake of the great depression when states' resources were drained in coping with the high levels of unemployment. Unemployment

---

109 26 C.F.R. § 54.4980H–4((1).
110 Michael D. Hahn, 'Tis the Season: How do Seasonal Hires Fit Within the ACA's Employer Mandate?, 24 No. 12 Wis. Emp. L. Letter 2 (December 2015).
111 Id.
112 Id.
113 Id.
114 Id.
116 Rex Williams, Seasonal Unemployment Compensation: Insurance of a Known and Certain Loss, 4 San Joaquin Agric. L. Rev. 75, 81 (1994).
compensation law is designed to "act as a buffer or a hedge against the unexpected loss of one's livelihood."\textsuperscript{117} Under federal and state unemployment compensation schemes, employers pay into an insurance fund for each employee, and employees who involuntarily lose their jobs and are not fired for misconduct receive compensation for a fixed period of time, subject to certain limitations.\textsuperscript{118}

Some states, such as Colorado, restrict seasonal employees from receiving such employment security, and allow seasonal employers to limit their contributions to the unemployment insurance fund.\textsuperscript{119} Other mountain states, such as New Mexico and West Virginia, have similar provisions.\textsuperscript{120} In Colorado a seasonal employee only may receive unemployment compensation during the normal season he or she is employed.\textsuperscript{121} The employee may not, for example, receive unemployment compensation during the summer for a job that normally lasts only during the winter and spring seasons. A seasonal industry means "an industry or functionally distinct occupation within an industry which, because of climatic conditions or the seasonal nature of the employment, customarily employs workers only during a regularly recurring period or periods of less than twenty-six weeks in a calendar year."\textsuperscript{122} Twenty-six weeks is roughly six months and the ski season is generally five months. Therefore, ski-industry employers likely qualify as seasonal employers in Colorado.

The rationale behind restrictions on seasonal workers' ability to receive unemployment compensation is that the end of seasonal employment is a known and certain risk, whereas other types of employment are not.\textsuperscript{123} The same could be said however, of temporary employees. Temporary employees may have a harder time succeeding on a claim for unemployment compensation than

\textsuperscript{117} Id. at 78.
\textsuperscript{118} Glynn, Sullivan, & Arnow-Richman, supra note 71, at 888–89.
\textsuperscript{119} Williams, supra note 116, at 91.
\textsuperscript{120} Id. at 91, n.89.
\textsuperscript{121} C.R.S. § 8-73-104(1).
\textsuperscript{122} C.R.S. § 8-73-106.
\textsuperscript{123} Williams, supra note 116, at 95–96.
traditional employees, but they are not expressly excepted from statutes.\textsuperscript{124}

Contingent employees receive fewer of the sparse employment protections provided by the law than traditional employees, and seasonal employees receive even fewer protections than temporary and part-time employees, especially with respect to employer-subsidized healthcare coverage and unemployment insurance. The next section will explore one type of seasonal worker for whom lawmakers saw fit to provide additional protections: the migrant and seasonal farmworker.

\textbf{B. Unlike most seasonal workers, migrant and seasonal agricultural workers are protected under the Migrant and Seasonal Agricultural Workers Protection Act.}

The Migrant and Seasonal Agricultural Workers Protection Act (MSAWPA) provides additional protections for seasonal workers in agriculture. The MSAWPA provides protections by imposing requirements for working conditions, for recordkeeping, for transportation, and for disclosure of terms and conditions of employment.\textsuperscript{125} Historically, the predecessor to the MSAWPA was enacted in reaction to Americans' pressure on their representatives to protect farmworkers.\textsuperscript{126} In 1960, the documentary \textit{Harvest of Shame} exposed the vulnerabilities of farmworkers to the American public.\textsuperscript{127} The documentary brought public awareness to farmworkers' poverty, exploitation, and squalid living conditions.\textsuperscript{128} This article does not argue that seasonal ski

\begin{footnotesize}
\textsuperscript{124} See C.R.S. § 8-73-104((1).

\textsuperscript{125} Marc D. Stanley, \textit{Rodents for Roommates: Liability Under the Migrant and Seasonal Agricultural Worker Protection Act's Housing Provision}, 15 Drake J. Agric. L. 341, 346 (2010).


\textsuperscript{127} Id.

\end{footnotesize}
employees endure the same indignities as migrant farmworkers with respect to their working conditions and treatment, or that they are as economically vulnerable as many farmworkers. Rather, this article seeks to draw a comparison between seasonal ski employees and farmworkers with respect to the seasonality and uncertainty of their employment. This section will explore those similarities and explain the differences.

1. Legislative History & Intent

In response to the public outcry against the treatment of America's farmworkers, legislators enacted the Farm Labor Contractor Registration Act (FLCRA), which aimed to "curb the abuses of farm labor contractors who were exploiting the vulnerabilities of illegal immigrants working as migrant workers." FLCRA and its 1964 amendments required farm labor contractors to register with the Department of Labor and prohibited unregistered persons from acting as farm labor contractors. It also imposed substantive obligations and prohibitions on farm labor contractors and on persons furnished farmworkers by contractors; granted corresponding substantive rights to farmworkers; and created mechanisms for implementation and enforcement of the act. MSAWPA repealed and replaced FLCRA in 1983, primarily to make farm labor contractors and farm employer jointly liable for violations of the act. Under FLCRA, courts often found FLCs to be independent contractors and would not hold farmers liable for violations of the act.

In its report to the Senate Committee on Labor and Public Welfare, the Subcommittee on Public Welfare set forth findings regarding why migrant farmworkers were particularly vulnerable

---


132 Id.
(the 1961 Report). First, the 1961 Report announced that American farmworkers had been excluded from the "basic standards of social security" afforded to working Americans by the New Deal employment legislation. It reasoned that natural catastrophes that wipe out crops forced farmworkers to stand in bread lines when there was no work, that their pay was grossly inadequate to ensure a basic standard of living, that they had unsanitary living conditions, and that they had bad health and poor medical care.

The 1961 Report identified several ways in which migrant farmworkers were vulnerable with respect to the seasonal nature of their employment. First, they were not entitled to minimum wage and overtime provisions under the Fair Labor Standards Act and received grossly inadequate pay. Second, they did not have access to adequate housing. Third, they did not have collective bargaining rights. Fourth, they did not have guarantees with respect to the wages they would be paid, the number of hours they would work, or the length of time they would be employed. Fifth, farmworkers did not have sufficient access to health services and medical care, and were thus a strain on hospital resources when they required urgent treatment. Sixth, farmworkers were not eligible for unemployment insurance in most states, even though the seasonal nature of their work and low pay made susceptible to the type of economic strain the unemployment scheme was created to address. Finally, the 1961 Report concluded that the inadequate assurances and job security for farmworkers caused instability and insecurity for farmers generally.

134 Id.
135 Id.
136 Id.
137 Id.
138 Id.
139 Id.
140 Id.
141 Id.
142 Id.
C. Similar to migrant and seasonal agricultural workers, seasonal ski workers are particularly vulnerable.

Seasonal agricultural workers are different from seasonal ski workers in several respects. First, seasonal ski workers typically work directly with their employers, whereas farmworkers must go through farm labor contractors, who often take advantage of their lack of education and language skills. Farm conditions and housing conditions can be squalid, whereas ski resorts are some of the most luxurious places in the world. Finally, seasonal ski workers make well above the minimum wage, whereas farmworkers may be paid piece-rate.\textsuperscript{143}

However, seasonal ski workers are similarly vulnerable to agricultural workers in many respects. First, the duration and scope of their employment is indefinite. Both jobs depend upon natural phenomena such as snow and frost. Second, both types of workers must travel to the remote locations in which they work. Because migrant and seasonal workers must travel to the farms where they are hired to work and those rural areas do not have enough affordable housing to accommodate workers, the MSAWPA not only mandates that employers provide housing for migrant farmworkers, but also governs the conditions of the housing.\textsuperscript{144} Although ski-industry employers are not required to provide subsidized housing, they often do so to attract more employees. Fourth, both types of workers are ineligible for unemployment compensation in states such as Colorado that do not provide unemployment compensation for seasonal jobs. Fifth, both jobs are physical and put workers at risk for injury. Finally, both workers lack access to collective bargaining processes because of the temporary nature of their jobs and the transient nature of their populations.

This paper posits that seasonal ski workers are vulnerable in ways that should be studied further. If mountain states choose to study seasonal ski workers' conditions, they may determine that a legislative response is necessary to protect workers. Absent such

\textsuperscript{144} See Stanley, \textit{supra} note 125, at 346.
legislation, seasonal ski workers do not enjoy any of the extra protections afforded to seasonal farmworkers, despite being similarly vulnerable. The next part will discuss the nature of the employment relationship between seasonal ski workers and their employees and will suggest ways in which employers voluntarily may improve the conditions of their employment.

IV. THE CASE FOR INCREASING EMPLOYEE LOYALTY AND PROTECTION FOR SEASONAL SKI EMPLOYEES

Ski-industry employers are not required to provide protections and benefits to address seasonal ski workers' vulnerabilities identified in this article. However, many ski-industry employers may be motivated to provide such protections to remedy two issues regarding their seasonal workers. First, employers struggle to recruit enough seasonal workers to staff their resorts each winter and must rely on temporary guest visa programs that are vulnerable to revocation and limitation by the executive branch. 145 Second, because ski-industry employers rely heavily on seasonal ski employees to shape guests' experiences and guest loyalty, they must induce loyalty and brand performance from their employees. 146 Therefore, ski-industry employers must strike a balance between providing sufficient security and incentives to attract seasonal employees and to induce loyalty, and maintaining the flexibility they require to manage their seasonal employees. 147

146 See Part IV(A), supra.
147 See Part III(A)(3), supra. Eligible employers are not required to provide health insurance for seasonal employees or to pay as much into the Colorado state unemployment insurance scheme for seasonal employees. However, if employers change their relationship with seasonal employees so as to alter their seasonal status, they will likely incur additional legal obligations to provide health insurance and to contribute more to the Colorado unemployment insurance scheme.
This part will analyze the employment relationship between ski-industry employers and employees and will emphasize the importance of employee loyalty in the ski industry. It then will offer suggestions for ways in which ski-industry employers may offer seasonal employees benefits and protections that not only help them recruit workers, but also increase employee loyalty and the value of their product without incurring additional legal obligations.

A. Seasonal ski employees and ski-industry employers invest economically, emotionally, and psychologically in one another.

The historical roots of the employment relationship may provide some helpful insight to this issue. At English common law, rules governing employment and family relationships shared the same roots in master-servant law.\textsuperscript{148} As the nature of the economy shifted and employment outside the home became more prevalent, the two areas of law split and employment law focused on the contractual nature of the relationship whereas family law focused on the status of the relationship.\textsuperscript{149} The U.S. adopted the at-will rule, which is underpinned by free market economic principles and presumes that "both the worker and the employer are equally free to quit at any time in order to maximize their gains on the market."\textsuperscript{150} At the heart of this principle is the idea that workers exchange their labor in return for money and, more importantly, that workers have equal bargaining power. However, the law has repudiated the idea that labor is a commodity.\textsuperscript{151} Professor Ruben Garcia theorized that the globalization of economic exchange, including the exchange of labor, has exacerbated the commodification of labor, despite the fact that labor is not treated as a commodity under the law.\textsuperscript{152}

The reluctance to treat employment as a purely economic exchange belies the principle that the employment relationship

\textsuperscript{149} \textit{Id.} at 181.
\textsuperscript{150} \textit{Id}.
\textsuperscript{151} Garcia, \textit{supra} note 48, at 37.
\textsuperscript{152} \textit{Id.} at 32–33.
includes an intangible interpersonal element that cannot be given justice under a rule that treats it as a pure exchange of labor for money. Moreover, individual employees very rarely have the same bargaining power as their employers when entering into the employment relationship, especially temporary or seasonal workers. Absent any law setting forth the basic parameters of the relationship, employers often have more power to define the employment relationship in a way that benefits their interests. Employees thus are unprotected by a law that presumes they have equal ability to quit their jobs at any time to find a better alternative on the market.

One important consideration that the current law does not take into account is the investment that employees make in their employers, and the extent to which employers often encourage employees to do so. Professor Marion Crain argues that, similar to family relationships, employees often invest emotionally and psychologically in their employers. Moreover, they build their social identities and communities around their employment. With that in mind, it is unfair for one party to be able to sever the relationship without some form of security such as notice.

In the context of seasonal workers in the ski industry, the issue is not the lack of notice regarding employees' termination, but rather the lack of notice regarding the duration of their seasonal employment, their schedules during the season, and their post-season employment opportunities. Seasonal ski employees invest in their employers both economically vis-a-vis relocation expenses and by foregoing the opportunity to pursue other employment, often with no guarantee from their employers regarding how many hours they will work and what their start and end dates will be.

---

153 Id. at 37.
155 See Crain, supra note 148, at 199.
156 Id. at 200.
157 Id.
158 Arnow-Richman, supra note 154, at 8 (proposing a "pay-or-play" alternative to the at-will rule that, absent employee misconduct, would require employers to provide notice of termination or provide equivalent pay and benefits to the employee during the constructive notice period).
B. Employee loyalty is essential for ski-industry employers and internal branding is an important tool to foster loyalty.

Ski-industry employers sell the experience of skiing to their guests. In fact, Vail Resorts' mission statement is "Experience of a Lifetime." Relatedly, the firm's employee-facing, or internal, brand also incorporates "Experience of a Lifetime." That is because the experience that the firm sells to guests depends upon employees not only buying into the "Experience of a Lifetime" brand, but also living the brand in their daily interactions with ski-resort guests. Employee loyalty correlates closely with customer loyalty. Employers carefully cultivate their employees' brand performance, or the extent to which employees embody their employers' brands to the outside world, using tools such as internal branding. The term internal branding refers to employers' use of internal communications and publicity channels such as employee-facing websites, newsletters, social media, events, trainings, and promotions to increase goodwill, morale, and brand awareness amongst employees.

---

160 VAIL RESORTS CAREERS, https://jobs.vailresortscareers.com/ (last visited Dec. 13, 2018). The home page of the Vail Resorts career website includes an image of skiers hiking a ride on which the words "Very Few Careers Include the Experience of a Lifetime" are superimposed. The term internal brand refers to the brand the employer portrays to its employees.
161 See Marion Crain, Managing Identity: Buying into the Brand at Work, 95 Iowa L. Rev. 1179, 1198–99 (2010) (explaining that firms that sell experiences such as Walt Disney use internal branding efforts to engage their employees and guide their performance in guest-facing interactions).
163 Crain, supra note 161, at 1198–99.
164 See, e.g., Jen-Te Yang, Chin-Sheng Wan and Chi-Wei Wu, Effect of Internal Branding on Employee Brand Commitment and Behavior in Hospitality, 15 Tourism and Hospitality Research 267, 269 (2015). This assertion is also based on the author's professional experience as an internal communications specialist.
Firms’ brands are often their most valuable assets and experience-based firms must find ways to control their most influential tools for shaping their brands: their employees. Ski-industry employers are no exception. On a typical visit to a ski resort, a guest will interact with seasonal employees frequently throughout the day. Employees will show the guest where to park, scan her ticket, give her information about the trails or give her a lesson, and serve her lunch or a beverage. The guest's loyalty to her selected ski resort depends upon the quality of the interaction with the employees. Similar to external marketing efforts, ski-industry employers must carefully manage their internal brands.

Managing the internal brand can be difficult during a time in which employers provide fewer expectations of job security for their employees. Employment law scholars have commented that the nature of the employment relationship has shifted from the model under which employees invested time and loyalty into their employers and were rewarded by promotions and pension vesting. Under the new employment model, employers do not provide expectations of permanent employment, but rather give employees opportunities to enhance their marketability by providing training opportunities and giving them autonomy to manage their own benefits options. This shift away from rewarding employee longevity may give employees less reason to remain loyal to their employers. Inventing ways to win employee loyalty can be especially problematic for employers whose product is experiential, such as ski resorts, because their product value depends on their employees exhibiting loyalty to customers.

To address the problem of employee loyalty during a time when employers are shifting away from the model of exchanging

---

165 Id.
166 This assertion is based on the author's personal experience as a guest at a ski resort.
168 Crain, supra note 161, at 1188; see also Id. at 540.
169 Crain, supra note 161, at 1190.
170 Id. at 1196.
job security for loyalty, employers have looked to the theory of organizational citizenship behavior to shape employees' behavior in the workplace. Disney has become a leader in garnering employee loyalty through internal branding. A firm's internal brand is not only a marketing effort directed toward its employees, but it is also "a systematic recruiting, training, development, and compensation program that fosters a psychological commitment to the firm and a 'consciousness of kind' that translates into deeper attachment to the firm." Disney's internal brand is so strong that it motivates its employees to perform its values every day, providing excellent customer service and on-brand experiences to its guests. Similarly, ski-industry employers may use internal branding efforts, coupled with setting and fulfilling carefully crafted expectations for its employees, to bolster their employee loyalty.

C. Ski-industry employers should provide clear expectations and transparency to seasonal ski employees in addition to internal branding efforts to build employee loyalty and to enhance recruitment.

Although employment at-will is the default rule governing employment relationships, commentators have noted that the rule is so contrary to Americans' societal notions of justice that most employees think they may only be terminated from their employment if their employers have good cause. Similarly, interviews with current and past seasonal ski workers have revealed that workers believe they are guaranteed work for a certain amount of hours per week until the end of the season, when in fact they are not. Employers may fail to provide seasonal ski

---

172 Crain, supra note 161, at 1198–99.
173 Crain, supra note 161, at 1199.
174 Id.
176 See Gully interview, supra note 10; see also Clarke interview, supra note 1.
workers with expectations regarding their schedules, housing opportunities, and opportunities for continued employment without violating the law, but employers’ failure to provide clear expectations with respect to these basic working conditions likely would violate the employees' notions of fairness and thus breach the employees’ perceived psychological contract with their employers.\footnote{See Stone, \textit{supra} note 167, at 558.}

Given the importance of employee morale and engagement, especially for experience-based firms such as those in the ski industry, employers voluntarily should provide protections and benefits to employees in addition to those required by law. This paper identified several legal protections that exclude seasonal ski workers such as: (1) collective bargaining; (2) family and medical leave, (3) employer-sponsored retirement savings, (4) health insurance, and (5) unemployment insurance.\footnote{See Part III, \textit{supra}.} This paper also argued that, in addition to their lack of legal protections, seasonal ski employees are particularly vulnerable relative to other types of seasonal employees and that their compensation and benefits are inadequate to protect their particular vulnerabilities because of: (1) the high cost of living and scarcity of housing in mountain communities; (2) uncertainty with respect to the hours they will work and for how long they will be employed; and (3) their lack of access to health insurance despite the physical risk of their jobs.\footnote{See Part I, \textit{supra}; see also Part II(C), \textit{supra}}

This section proposes several ways in which ski-industry employers should address their seasonal ski workers' particular vulnerabilities to increase employee loyalty and recruitment. This paper does not argue that ski-industry employers do not already provide seasonal employees benefits in addition to what is required by law, but rather suggests protections and benefits that specifically address seasonal ski workers' particular vulnerabilities identified in this paper. First, ski-industry employers should provide certainty with respect to the duration of employment and the number of hours employees will work. Second, employers should provide employees with transparency and opportunities to be heard with respect to important employment benefits or lack.
thereof. Additionally, ski-industry employers should consider providing some additional incentives such as on-site preventive medical treatments and cash signing bonuses to increase loyalty among employees.

1. Guaranteed hours and terms of employment

Given the benefits to employers under the at-will rule, it is not surprising that they hesitate to alter their employment relationships with employees. Moreover, ski-industry employers cannot guarantee that they will have work for all seasonal employees throughout the season because of the ever-changing nature of snow conditions. However, ski-industry employers can still create expectations that give them the flexibility they require while providing employees with increased certainty. For example, employers may guarantee that they will provide a minimum weekly base pay for the majority of the season, regardless of how many hours employees work. They may accomplish this by forecasting their personnel needs based on past seasons and hiring seasonal ski employees in waves, with the most employees' terms beginning at the beginning of the typical busy season and ending a month or so before the end of the ski season, with an option for the employee to extend her term on an as-needed basis. Further, they may offer options to pay part of employees' remaining lease obligations if they cannot provide work until the end of the season. This is particularly cost-effective for employers who own the employee housing units and would not have to pay lease obligations to third parties.

2. Transparency

Organizational management researchers have found that employees' organizational citizenship behavior, or engagement with their employer's brand, can be motivated by their perception

---

180 See Matheny & Crain, supra note 175, at 1748.
181 See, e.g., Arnow-Richman, supra note 154, at 3.
of their employer's fairness. Further, procedural justice is as important to employees as actual fairness. Ski-industry employers may increase employees' perceptions of fairness by providing transparency with respect to employment benefits that are important to them such as: (1) the employer-subsidized housing process; (2) opportunities for continued employment after the ski season; (3) lack of access to unemployment insurance; (4) health insurance options; (5) access to retirement savings plans; and (6) access to leave.

Housing is the most visible and biggest problem for seasonal ski employees. Not only is it difficult to find available short-term housing for the ski season, but any available housing is often unaffordable for employees. And although employers such as Vail Resorts have invested a great amount of time and money into developing more subsidized housing for their employees, it is still not enough to house all of them. A solution that provides affordable housing for all seasonal ski workers would be ideal, but likely is not feasible. However, employers may garner trust and loyalty from their seasonal employees by simply providing more transparency with respect to their investments in affordable housing and the procedures for employees who wish to take advantage of subsidized housing.

With that in mind, ski-industry employers may offer solutions as simple as posting the subsidized-housing procedures on their internal and external websites and training managerial staff members to explain the procedures to employees. Further, they may provide monthly or quarterly updates regarding their investments in affordable employee housing, with the opportunity to provide feedback through town halls, internal social media websites, or other communications channels. These measures are cost effective and likely would increase employee trust and loyalty.

---


Second, some ski-industry employers run downhill mountain bike and other entertainment operations during the summer and have opportunities for continued employment after the conclusion of the ski season. In the interest of fairness, employers should provide seasonal ski employees with information and processes for obtaining these jobs through the internal communications channels mentioned above. Ski-industry employers may also follow the model of Vail Resorts in providing scholarship opportunities for employees to pursue continued education after the winter season has concluded.\textsuperscript{184}

Third, many seasonal ski employees believe they are eligible for unemployment insurance after the ski season has concluded, when in fact seasonal workers may be excluded from obtaining compensation for unemployment insurance in Colorado, the state with the most seasonal ski workers.\textsuperscript{185} This misconception is one that ski-industry employers should correct to build trust with their seasonal ski workers.

Finally, although ski-industry employers likely will find it impracticable to provide health insurance benefits, sponsored retirement savings plans, and paid time off to their seasonal employees, they may still provide information regarding how employees can access health insurance via internal communications channels and may provide tools for employees to save for retirement, such as an option for employees to transfer money from each paycheck into a non-employer sponsored retirement savings account. Although employers risk negative feedback from employees who are not eligible for employer-sponsored health insurance and retirement savings plans, they also may gain trust from employees who appreciate their employers' efforts to inform them of their options with respect to these important protections.

\textsuperscript{184} This assertion is based on the author's personal experience having received an employee scholarship from Vail Resorts.

\textsuperscript{185} See Part III, supra; see also Clarke interview, supra note 1 (explaining that she believed ski instructors in Vail, Colorado were eligible for unemployment insurance compensation during the summer).
3. On-site Medical Visits and Preventive Treatments

Even if employers cannot afford to provide medical benefits for their seasonal ski employees, they may provide fixed-cost alternatives such as pop-up medical clinics and preventive treatments such as flu shots, physical therapy for common injuries, cancer screenings, biometric screenings, and injury prevention trainings. These measures can go a long way in improving employee loyalty. For example, some of the companies in Fortune's list of top-ranked employers have on-site healthcare for workers.\(^{186}\)

4. Cash Signing Bonuses

Finally, as discussed previously in this article, Disney is similar to ski-industry employers in that it hires many low-wage temporary workers to work in its amusement parks. Also, its workers similarly struggle to live on the wages they earn in areas with high costs of living.\(^ {187}\) To address its worker shortage, Disney has offered cash signing bonuses for its summer seasonal workers.\(^ {188}\) Cash signing bonuses for seasonal ski workers would not only help employees with their start-up costs and reduce their economic vulnerability at the beginning of the season, but also would likely help with employers' recruitment efforts.


V. Conclusion

For all the reasons set forth in this article, seasonal ski employees are a particularly vulnerable and understudied population. Although many former seasonal ski employees look back on their winters working in the mountains with fondness, the stereotype of the carefree ski bum excludes those workers whose livelihoods are at the mercy of the snow and who are unprotected by some of the basic employment benefits many Americans take for granted. Moreover, given the enormous value these seasonal ski workers add to their employers' business and the difficulty employers face in recruiting them, it is in ski-industry employers' best interests to explore ways in which they can provide additional protections and incentives to attract and inspire seasonal workers.