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**Legal Issues for Working with Volunteers:
A Special Bulletin for Food Banks, Soup Kitchens and Food Pantries**

With the approach of the holiday season, food banks, soup kitchens, and food pantries often see an influx of volunteers and rely on their assistance. Nonprofit organizations need to be aware of some general rules about working with volunteers to meet requirements of federal and state labor laws. Below, we have summarized rules about wages and stipends that of particular relevance to soup kitchens and food pantries.

Wage v. “Stipend” in Volunteer Context.

Volunteers are people who donate their services freely without any expectation of compensation. Nonprofits may provide volunteers with a “stipend” for purposes of reimbursing the volunteer for his or her reasonable and documented expenses (e.g., transportation costs). The word “stipend” is used incorrectly, however, if the benefits extend beyond reimbursement of minimum expenses. The extent of benefits received by a volunteer can shift the balance and cause an unintended result of creating an employment relationship with the volunteer. This can trigger obligations such as tax withholding, and payment of minimum wage and overtime under the Fair Labor Standards Act (“FLSA”). Therefore, a “stipend” should not be used to evade an organization's obligations to its employees, nor should it be confused with a “wage.”

If your organization makes an annual payout of \$600 or more to an individual for any purpose, you should talk to an accountant about issuing an IRS Form 1099 to the individual.

Groceries are not necessarily “compensation”.

Food bank volunteers who receive groceries from the food bank are not considered “employees” under the FLSA. The FLSA specifically exempts such volunteers from the definition of “employee,” in recognition of how food banks often rely on the assistance of volunteers, who may be of limited means, and how food banks wish to “encourage such volunteerism...without concern they are triggering an employment relationship including wage and other employment liabilities”.¹

This alert is meant to provide general information only, not legal advice. Please contact Gail Bayarin at ext. 279 or Judith Moldover at ext.250 if you have any questions about this alert.

¹ *Congressional Record*, June 25, 1998, p. H5386. A November 11, 2009 telephone discussion with staff of the Wage and Hour Division, U.S. Department of Labor (“DOL”) suggests that the DOL believes that volunteers at soup kitchens and food pantries who receive groceries and food items would similarly not be considered “employees” under the FLSA. Note, however, that the particular staff person’s statement was part of an informal discussion and does not necessarily reflect DOL’s official interpretation of the statute. Please contact us if you would like to learn about how the regulations apply to your organization.