

The Volunteer Workforce:

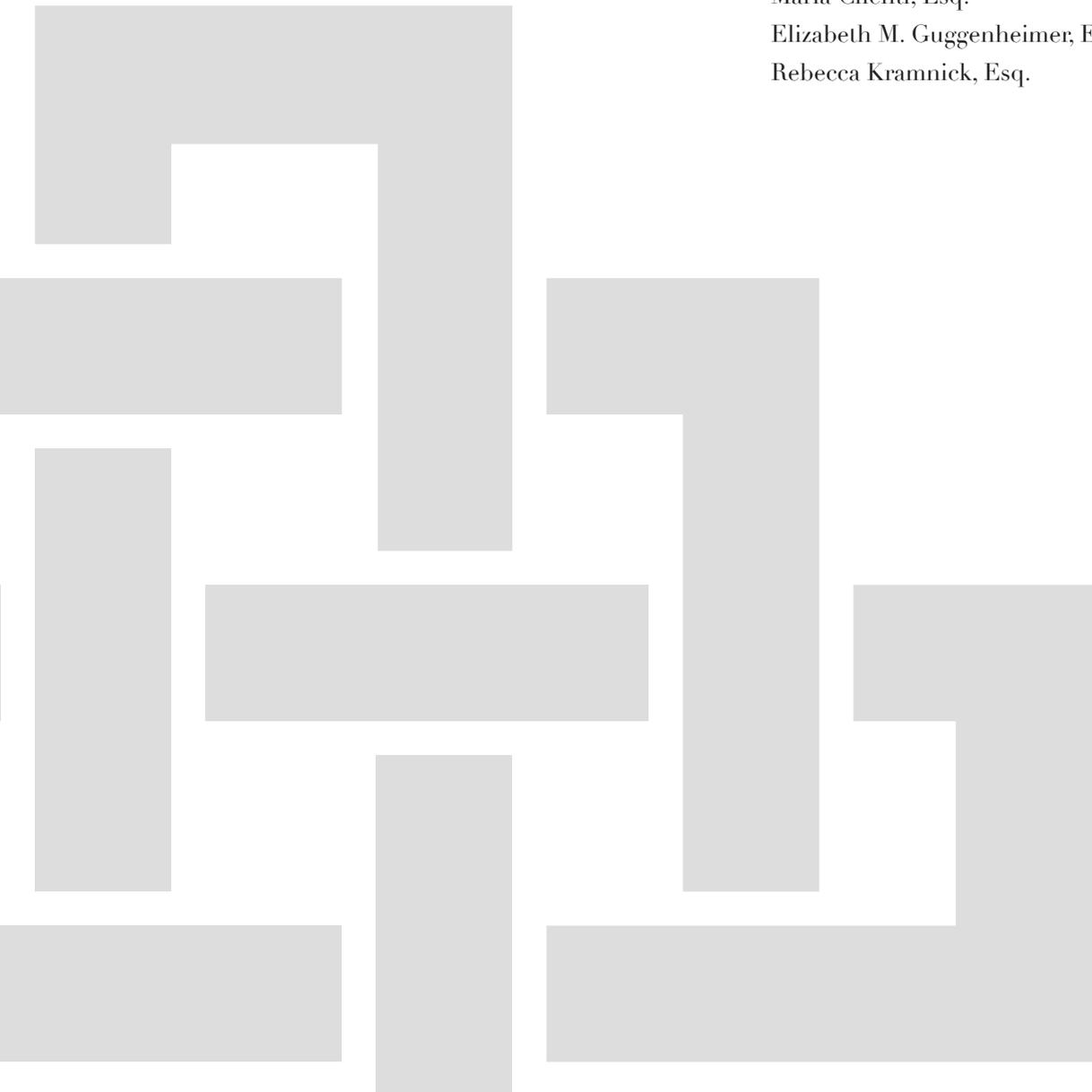
Legal Issues and Best Practices for Nonprofits

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Introduction

Volunteers are the lifeblood of many nonprofit organizations. Nonprofits have traditionally relied on volunteers to perform crucial agency functions. As staffing costs continue to rise, and as job seekers continue to look for valuable experience, nonprofits will continue to rely more heavily on volunteers and other unpaid staff than do their for-profit counterparts. Just as nonprofits benefit tremendously from the efforts of volunteers, volunteers receive substantial benefits from their service to nonprofits, gaining both valuable experience and the reward of helping their communities.

The increasingly common practice among nonprofits of relying on volunteers and other unpaid staff coincides with an unprecedented surge in volunteerism in the United States. In 2000, adult volunteers devoted 15.5 billion hours of time to nonprofit organizations throughout the nation, representing a total dollar value of \$239 billion in volunteer time.¹ Between September 2004 and September 2005, more than 65 million people did some kind of volunteer work, up from 59.8 million people in 2002.² The dollar value of volunteer time for 2005 is estimated at \$280 billion.³ Moreover, as volunteerism increases, state and local governments continue to fund programs aimed at reducing the number of individuals on public assistance. Nonprofits continue to play an instrumental role in providing older youth and unemployed individuals with job-training opportunities, job-seeking skills and exposure to real workplaces. These programs often place students and unemployed persons in the workplace as interns or trainees and provide them with skills training and career counseling. Philanthropic funders also encourage and continue to support workforce development programs that focus on job experience. Some of these programs pay traditional wages and benefits to the

¹ Independent Sector, *Giving and Volunteering in the United States 2001* (7th ed. 2001). Key findings from this report are available on Independent Sector's website at <http://www.independentsector.org/PDFs/GV01keyfind.pdf>.

² Bureau of Labor and Statistics of the U.S. Dep't of Labor ("US DOL"), *Volunteering in the United States, 2005*, available at www.bls.gov/news.release/volun.nr0.htm; see also Corp. for Nat'l & Cmty. Serv., *Volunteering in America: State Trends and Rankings*, available at www.nationalservice.gov/pdf/VIA/VIA_fullreport.pdf.

³ Independent Sector, *Giving and Volunteering in the United States 2001* (7th ed. 2001).

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Introduction

individuals involved. Some offer participants small stipends in lieu of wages or reimbursement for certain expenses such as meals or travel. Others provide no financial support of any kind.

This manual is intended to help nonprofits understand the legal implications of working with volunteers and other unpaid staff such as interns, trainees and students. Employment law in general is complicated and contains many traps for the unwary, and the law as it relates to volunteers and other unpaid staff is equally complex. The law has traditionally distinguished between the legal rights afforded to “employees” versus “volunteers.” Traditionally, only employees have been protected by employment laws—for example, laws that prohibit discrimination and govern wages—while volunteers have not. This distinction between volunteers and employees is, however, not a straightforward one. The law looks beyond the labels employers give individuals, or the labels individuals give themselves, and examines the nature of the relationship between the individual performing services and the employer. If the relationship resembles one of employer and employee, the relationship will generally be deemed an “employment” relationship. For example, volunteers who are given significant non-wage benefits may be considered “employees” under the law, and therefore would be entitled to the full range of protection that the employment laws allow. In addition, an employer is liable under the law for the actions (and misdeeds) of volunteers to the same extent that it is liable for the actions of employees.

This manual will explore the legal issues related to a nonprofit’s use of volunteers and unpaid staff. Chapters One through Five discuss the legal distinctions between a volunteer and an employee, best practices for screening and “compensating” a volunteer or intern, and best practices for setting up and managing the volunteer relationship. The remaining chapters discuss possible legal pitfalls associated with the volunteer relationship, the applicability of certain employment laws to volunteers, the consequences of misclassifying a worker as a volunteer, and the steps nonprofits can take to protect both the volunteer and the organization. Finally, given that many nonprofits have volunteer opportunities exclusively for young people, Chapter Ten focuses on some additional legal issues when

volunteers are minors. We have included several sample documents as appendices, as well as an alphabetized list of the websites of organizations and governmental agencies cited throughout this manual.

This manual is a general guide for nonprofit managers and others in the nonprofit world. While it is intended for nonprofits operating in New York and focuses on New York state law, much of the relevant law is federal and thus will be applicable to non-New York employers as well. Since the answers to certain legal questions are unclear or evolving, this manual can give nonprofits only general guidance as they approach and recognize these trouble spots. This manual should not be used as a substitute for legal advice. Employment law is a constantly evolving area of law and the applicable rules may change as new cases are decided and new laws are passed. In many instances, the specific facts of a case will determine the outcome, so consultation with an attorney will be essential to resolving the question or problem. We hope that you will find this manual informative and helpful as you pursue your essential work.