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A New York Nonprofit's Guide to Workers

It takes a lot of people to carry out the mission of a nonprofit organization. As a result, nonprofit managers frequently hire new paid staff and volunteers. A frequent misconception is that decisions about how to pay and classify these workers can be made solely on financial grounds. In fact, there are strict laws about who must be paid for their labor, and whether paid staff must be treated as employees or can be treated as independent contractors. Even if a staff person is called an “intern” or paid a “stipend” there may be a law requiring them to be treated as an employee.

The default rule is that workers must be classified as “employees” who are subject to minimum wage and overtime laws under the federal Fair Labor Standards Act and related state laws. Under certain circumstances, workers may instead be engaged as independent contractors. Many organizations also utilize paid and unpaid interns as a regular part of their workforce. Nonprofits may also utilize volunteers who are permitted to perform unpaid public service for religious, charitable, civic, humanitarian, or similar nonprofit organizations. This Legal Alert will provide guidance on how these four types of workers are distinguished under federal and New York law, explain potential consequences for misclassification, and highlight some best practices.

For additional information, see this New York Department of Labor [FAQ](#) sheet.

I. Worker Classification

Employees

An employee is an individual who performs services under the direction and control of an employer in exchange for compensation. Employers have many legal obligations to their employees, including adhering to federal and state wage and hour laws,¹ unemployment insurance laws, leave laws and anti-discrimination laws, among others. Employees must be given a W-2 tax form, and employers must withhold certain amounts from their paychecks and transmit that money to the government. Employers are also required under New York State law to provide short-term disability insurance and workers compensation insurance to all of their employees. Whether or not a worker is an “employee” is important because only employees have the protection of these laws.²

Interns

There is no exemption from federal or state wage and hour laws, or from employer tax obligations, for interns. If interns are paid for providing services under an employer’s control or direction, the employer should treat them as employees for employment and tax law purposes and undertake to fulfill all the attendant employer obligations. If interns are unpaid, organizations should limit any stipend or other

¹ The minimum wage is \$17.00/hour in New York City, as of January 1, 2026.

² For more information on hiring first employees, see

https://lawyersalliance.org/userFiles/uploads/legal_alerts/Hiring_First_Employees_Legal_Alert.pdf

payment to them to reimbursement of participation costs in order to reduce any risk that they will be classified as employees for employment and tax law purposes.³

Independent Contractors

The key to classifying a worker as an employee or an independent contractor is delineating the individual’s relationship with the organization. Independent contractors are in business for themselves, and their relationship with the organization is free from supervision, direction, and control in the performance of their duties.

There is no single test to evaluate independent contractor status for all purposes, and compliance is often complicated by the fact that different tests may apply. In New York, the economic realities test is used to evaluate worker classification for wage and hour purposes. This test evaluates whether the worker is economically dependent on the organization to which the worker provides services. For analysis of unemployment insurance claims, on the other hand, the common law direction-and-control test applies. Under this test, a worker qualifies as an employee if the employer exercises control over either: (1) the results produced by the worker; or (2) the means used to achieve those results. Both tests take many different factors into account, so that no one factor is determinative of whether a worker is properly classified as an independent contractor or an employee.

The chart below summarizes important common distinctions between employees and independent contractors. The New York Department of Labor has also provided helpful information on independent contractors [here](#).

	Employee	Independent Contractor
Pay	Wages (which may include overtime compensation).	Fees for service.
Benefits	Eligible for company-sponsored benefits.	Not eligible for company-sponsored benefits.
Length of Relationship	Employed for a continuous period of time. Typically, longer term. Employment may be for a fixed period, but is more typically an at-will arrangement.	Engaged only for the term required to perform an identified service or task.
Taxes	Pays the full amount of their income taxes and a portion of their social security and Medicare taxes, generally through the amounts their employer is obligated to withhold from their wages.	Is responsible for paying their income, social security, and Medicare taxes.

³ For more information on summer youth employment and interns, see:
https://lawyersalliance.org/userFiles/uploads/legal_alerts/Youth_Employment_Law_Legal_Alert.pdf
https://lawyersalliance.org/userFiles/uploads/legal_alerts/Internship_Programs_During_the_COVID_Crisis_Legal_Alert_June_2020.pdf

Direction/Control	Performs whatever tasks the company requires in the manner and means directed by employer.	Retains control over the method and manner of work.
Employment Laws	Is protected by applicable federal, state, and local employment laws.	Is not protected by most federal, state, or local laws intended to protect employees.

Volunteers

Many nonprofits rely on unpaid volunteers to perform crucial organizational functions. A volunteer is an individual who, without compensation or expectation of compensation, freely performs services at the direction of a nonprofit, usually on a part-time basis, and solely for their personal purpose or pleasure.

The New York [Department of Labor](#) has taken the position that a person will be treated as an employee, not a volunteer, if he or she:

- replaces or augments paid staff to do the work of paid staff; does anything but tasks traditionally reserved for volunteers;
- is required to work certain hours;
- is required to perform duties involuntarily;
- is under any contract to hire by any other person or business, express or implied, related to the nonprofit organization; or
- is paid for their services, except as reimbursement for minimal expenses associated with volunteering.

Reimbursements to volunteers may include costs of transportation and meals while volunteering. Alternatively, volunteers may receive a stipend to offset expenses incurred, but such stipend may not be based on an hourly, daily, weekly, or monthly rate or serve as compensation for the volunteer's efforts.

II. Implications of Misclassification

An organization that misclassifies employees as independent contractors or improperly treats employees as unpaid volunteers may be liable for: back pay (including overtime, if applicable), employee benefits, disability payments and workers' compensation, tax and insurance obligations, liquidated damages, and civil monetary penalties.

III. Best Practices

- Document the distinct roles that employees, independent contractors, and volunteers play in the organization and the historical context (if any) for making the distinction.
- Create a volunteer agreement and code of conduct. This should be separate from the policies that apply to employees.
- Enter into an independent contractor agreement with each paid non-employee. Avoid applying the organization's employment policies to independent contractors.

- Stipends for volunteers (including unpaid interns) should be labeled as reimbursement for reasonable costs incurred (travel, meals) in any written records. Organizations typically do not need to collect receipts for any such volunteer expense reimbursements.
- Avoid distributing gift cards to volunteers, as it can trigger audits and fines if they are found to constitute compensation. Typically, tokens that are not of significant value, such as pens or tote bags, are acceptable.

Conclusion

Nonprofits should carefully determine whether workers are accurately classified as employees (including interns), independent contractors, or volunteers depending on whether the person performs services at the direction and control of the organization, and whether such services are performed for compensation or personal pleasure. Nonprofits should consult with legal counsel where questions arise about proper classification or compensation or for assistance with remediation of any related issues.

Lawyers Alliance is grateful to our extern, Crystal Barnes, for drafting this legal alert.

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