

**LEGAL ALERT: EMPLOYMENT AND TAX LAW CONSIDERATIONS
RELATED TO COMPENSATING SUMMER YOUTH WORKERS**

Nonprofit organizations that operate summer youth programs should be mindful of the employment and tax laws that govern the compensation of youth workers. Payments made to summer youth workers generally fall into one of the following categories: employee wages, trainee stipends, or volunteer reimbursements.

Employee Wages

Employment Law Considerations

Generally, an employee is an individual who performs services under another's direction and control in exchange for compensation, i.e., a wage.¹ Employers have many legal obligations to their employees.² These include adhering to federal and state laws governing the workplace, such as wage and hour laws, unemployment insurance laws, and anti-discrimination laws. Employers are also required under New York State law to provide short-term disability insurance and workers compensation insurance to all of their employees.

Tax Law Considerations

The taxing authorities will treat the compensation paid by employers to employees meeting the above definition as taxable wages, without regard to the part-time or temporary nature of the work or the label the parties involved apply to the relationship.³ Employers are generally required to withhold and pay federal taxes⁴ (income tax, social security tax, and Medicare tax) and state taxes⁵ (in New York, income tax and unemployment tax) on wages paid to employees. Tax-exempt employers must always withhold and pay income tax from employee wages, but they are exempt from withholding and paying social security and Medicare taxes for employees to whom they pay less than \$100 in a calendar year.⁶

Special Note Regarding Paid and Unpaid Interns

Despite its common usage, there is no exemption from federal or state wage and hour laws, or from employer tax obligations, for "interns." In other words, the age and experience of the individual intern, the duration of the individual's commitment to the nonprofit, or the fact that it is a summer position does not create a special status or provide an exception to any federal or state employment or tax law.

¹ N.Y. Labor Law Sec. 740 (a).

² *Requirements for Employers*, <http://www.nyfirst.ny.gov/ResourceCenter/Business/Employees/Requirements.html>.

³ *IRS Publication 15*, <http://www.irs.gov/pub/irs-pdf/p15.pdf>, at p. 11.

⁴ *Id.* at p. 20-23.

⁵ <http://www.tax.ny.gov/bus/wt/wtidx.htm>.

⁶ *IRS Publication 15-A*, <http://www.irs.gov/pub/irs-pdf/p15a.pdf>, at p. 10.

How persons described as interns should be treated for employment and tax law purposes depends on the facts surrounding their relationship with the not-for-profit organization:

Paid Interns: If individuals described as interns are providing services under the direction and control of the nonprofit in exchange for compensation in the form of a wage or stipend, they should be treated as employees, entered into the payroll system, and paid at least minimum wage with appropriate taxes withheld and paid.

Unpaid Interns: Alternatively, if the individuals are unpaid interns (meaning that they are not receiving or expecting compensation but are performing tasks for an organization), they should be treated as volunteers. In this capacity, they can, at most, be reimbursed for minimal expenses, such as travel and lunch costs, associated with their participation as volunteers. Providing any further compensation to unpaid interns increases the likelihood that they will be found to be employees by a court or regulatory agency.

*****Takeaway: If you are paying summer youth workers who are providing services under your control or direction, you should treat them as employees for employment and tax law purposes and undertake to fulfill all the attendant employer obligations (including paying at least minimum wage, which is \$15.00/hour in New York City). If you anticipate having unpaid interns, you should limit any payment to them to reimbursement of participation costs in order to reduce the risk that they will be classified as employees for employment and tax law purposes.*****

Volunteer Reimbursements

Employment and Tax Law Considerations

Volunteers who are not paid any compensation in exchange for the services they perform are not entitled to the protections afforded to employees under the law. But they may receive monetary reimbursement for certain minimal expenses, such as the costs of transportation and meals while volunteering. Reimbursement is not a wage and does not require withholding.

While reimbursements for participation costs will generally not be considered compensation, distribution of cash and cash equivalents (e.g., gift cards or gift certificates) not related to reimbursements is taxable income to the recipient, will be treated as compensation by the taxing authorities, and could give rise to the treatment of volunteers as employees under federal and state employment law.⁷ However, nonprofit organizations may give volunteers non-monetary token gifts without engendering this risk.

*****Takeaway: You may generally reimburse your volunteer summer youth workers for the costs (e.g., meals and travel) associated with participating in your program if they provide services under your direction and control without the risk that they will be deemed employees for employment or tax law purposes. Any money paid to them in excess of reimbursement for participation costs increases the risk that they will be considered employees by the relevant authorities. A non-monetary “thank you” gift such as a pin or certificate at the end of the program does not pose this risk.*****

⁷ *Charities and Their Volunteers: Working Together to Help the Public*, http://www.irs.gov/pub/irs-utl/charities_and_their_volunteers_working_together_to_help_the_public.pdf, at p. 9.

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