Volunteers, Independent Contractors and Employees: What's the Difference?

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Overview

• Differences Between Classifications

• Why Labels Matter

• Best Practices

• Other Common Labeling Issues
Employees

- Safest Classification
- Exempt or Non-Exempt
- Minimum wage
- Benefits
- Sick Leave
Potential Problem Areas

- Coaching
- Extracurricular Activities
- Travel/Overnight Field Trips
- Different Position/Job Titles
Concerns

• Stipends
• Minimum Wage
• Overtime
• Reporting Time Pay
• Meal and Rest Breaks
• Time Sheets
Independent Contractors

• Classification is not automatic

• Must satisfy certain factors

• Parties’ agreement is not dispositive
Independent Contractors - Factors

- Is this work an employee normally performs?
- Does school control the performance or just the results?
- Does school provide supplies/equipment?
- Is it an at-will relationship?
- Is the work part of the school’s primary purpose?
- Is worker paid by job or by the hour?
- Is there a particular skill required?
- Do the parties believe the worker is an independent contractor?
Penalties For Misclassification

• Fines from $5,000 to $25,000

• Unpaid Employment Taxes and Penalties

• Liability for unpaid wages, failure to pay minimum wage, unpaid overtime or missed meal and rest breaks

• Publication of violation on website and/or physical location

• Possible revocation of charter
Best Practices

• Evaluate Carefully

• Written Agreement

• Should screen as for employee if working with students
Volunteers

• Employees cannot volunteer for duties similar to their job duties

• Should screen if working with students

• Recommend volunteer agreement
  – Confirms volunteer status
  – They agree to abide by policies
  – Confidentiality

• Minor Volunteers
  – Capacities
  – Permission Slip
Interns

• The training, even though it includes actual operation of the employer’s facilities, is similar to that which would be given in a vocational school;

• The training is for the benefit of the trainees or students;

• The trainees or students do not displace regular employees, but work under their close observation;
Interns

- The employer derives no immediate advantage from the activities of trainees or students, and on occasion the employer’s operations may be actually impeded;

- The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and

- The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.
Interns – Other Considerations

• Agreement with University/School
  – Ability to Reject
  – Ability to Terminate
  – Be careful of indemnity provisions

• Agreement with Intern
  – Obligation Comply With School Policies
  – Confidentiality

• Screen if work with students
Concerns From Misclassification

- Minimum wage
- Overtime
- Split Shift Pay
- Meal and Rest Breaks
- Time Sheets
- Employment Tax
- Penalties
- Litigation
Other Common Classification Issues

- Exempt v. Non-Exempt
- Permanent v. Probationary
- Permanent v. Temporary
- At-Will v. For Cause
QUESTIONS?
CONTACT INFORMATION

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