



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?



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