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# Managing Nonprofit Employees

## **People drive the mission in a charitable nonprofit!**

Some use the term "talent" to refer to employees, which is a great reminder that the talent of staff members (and volunteers) is truly what makes nonprofit organizations high-performing.

There are few things nonprofits and their funders can invest in that are more important than talent. This web page focuses on some of the most common questions (and misperceptions) we hear about employment at charitable nonprofits.

True or false? "*Employment laws are different for nonprofits.*" False! It's a myth that nonprofits are exempt from state and federal employment laws.

The National Council of Nonprofits encourages all nonprofits to be familiar with the employment laws in the state(s) where the nonprofit operates. [State associations of nonprofits](#) frequently offer educational programs and reliable resources related to managing employees and volunteers.

In addition to state laws, some federal laws, such as the [Fair Labor Standards Act](#), apply to many employers, regardless of organization size. Other federal employment laws cover [workplaces with 15 or more employees](#).

Because employment laws are complicated and subject to change, it is helpful for every charitable nonprofit to have access to a professional to consult when questions arise about employment issues. Access to expertise on employment laws and human resource management practices is much more prudent than trying to "go it alone" in this highly regulated area.

## Practice Pointers

- Ask your insurance broker/agent for employment law guidance and/or resources. Why? Insurance companies want to limit their exposure to legal claims made against their insureds. Your nonprofit's provider of Director and Officer liability insurance should be willing to serve as a resource on employment practices, and may even offer educational materials or programs about managing employees and drafting prudent personnel policies.
- Similarly, if your nonprofit outsources its payroll administration, your payroll company should be able to provide resources/guidance on employment-related laws affecting your nonprofit's workplace, and potentially also provide copies of workplace posters that your nonprofit is most likely required to display.
- The board of directors hires the executive director/CEO and sets compensation. It's prudent for the board to adopt a written policy that it will regularly [review the performance and compensation of the executive director/CEO](#).
- Our page [Why Diversity, Equity, and Inclusion Matter for Nonprofits](#) includes a section with resources for nonprofit employers, "Building Values into Actions."
- Make sure your hiring practices and job postings are both legal and equitable: see [Can New Laws and Practices Address Pay Disparities?](#) (National Council of Nonprofits)
- The hiring process is fraught with potential legal pitfalls, so it's useful to familiarize yourself with what *not* to do and to use consistent procedures with every applicant. Here are [10 things not to do in the hiring process](#).
- Your state [Department of Labor](#) can be an important resource for information on wage and hour regulations, mandatory postings, the process for reporting new hires, and other important information governing the employment relationship.
- It's critical to be aware of the distinctions between employees and independent contractors because of the potential consequences of misclassification. This is an area that the IRS and state departments of labor enforce, potentially

resulting in serious penalties and back-tax payments. Learn more about [classifying workers correctly](#).

## Don't neglect to withhold taxes for employees

Did you know that if a nonprofit fails to withhold income taxes from employees' wages, the **board of directors may be held responsible** for back withholding taxes and penalties? As the New York State Attorney General's publication [Right from the Start](#) explains on page 7, if the nonprofit has employees, it will be responsible for withholding and paying employees' state, federal, and local income taxes. When nonprofits fail to make these withholdings, the IRS has the authority to hold those with fiduciary responsibility for the organization (board members) responsible. See [Employment taxes for tax-exempt organizations](#) (IRS).

## Volunteers are not employees

The law treats volunteers differently than employees. Volunteers are workers who *voluntarily* choose to provide services to a nonprofit without any expectation of compensation. Read more about [volunteers](#) and [interns](#).

## Related Insights & Analysis

- [Compensation and benefits for nonprofit employees](#)
- [The Workforce is Changing. It's Time to Consider Making Hybrid Work Permanent.](#) (June, 2022)
- [Creative Approaches to the Nonprofit Workforce Shortage](#)

## Additional Resources

- [Background checks: What employers need to know](#) (Department of Labor, Equal Employment Opportunity Commission)
- Nonprofit Association of Washington designed a toolkit specifically for smaller nonprofit employers, [Workers in Nonprofits \(WiN\)](#). Some of the legal and compliance content is specific to Washington state, but much of it is relevant to nonprofits outside of Washington.

- [Nonprofit Risk Management Center](#) is a nonprofit that is a resource for managing risks associated with employees and volunteers, and for information about insurance policies that address employment practices (known as “Employment Practices Liability” insurance, or “EPL”).
- [State laws about employment](#) (DOL)
- This [video course from the IRS’s Tax Exempt and Government Entities division’s Exempt Organizations office](#) explains employment tax issues that nonprofit employers need to be aware of.

## **Frequently asked questions about nonprofit employment issues**

### **Q: Does our nonprofit need personnel policies/an employment manual?**

**A:** Most professional advisors to nonprofits in the area of human resources recommend providing employees with written guidance in the form of a human resources handbook or employee manual. A written manual is helpful for three reasons: (1) a manual offers guidance for supervisors to treat employees consistently and fairly; (2) written policies help answer common questions which can save time and ensure that everyone is on the same page by managing expectations, and finally, (3) a handbook clarifies what policies apply to the workplace and sets standards for employees to follow. Many nonprofit employers ask all newly hired employees to acknowledge by signature that they have received a copy of the nonprofit’s personnel policies. Having a signed acknowledgment on file can help support a nonprofit when an employee claims s/he/they were not aware of the policies.

### **Q. What kinds of insurance does our nonprofit need relating to employees?**

**A.** Your nonprofit will need workers compensation insurance and should seriously consider Directors’ and Officers’ (“D&O”) liability insurance that includes employment practices liability (“EPL”). Employment law claims are the most common of all claims made by nonprofits under D&O insurance policies. Many D&O insurance policies provide access to a hotline or legal counsel who will offer

assistance to policy holders at no charge. Check with your insurance professional to determine whether your nonprofit's policy includes this service. It's not uncommon for D&O carriers to assist nonprofits in the early stages of a potential legal claim for an employment related issue by providing legal counsel in an effort to avoid liability.

**Q. Can a nonprofit offer its employees a bonus?**

**A.** It's not unusual for nonprofit employers to give employees a bonus. Nonprofit compensation must be "reasonable and not excessive" according to the IRS. If a nonprofit can justify why an employee deserves a bonus, and the amount is not excessive, giving a bonus is acceptable.

**Q. Do nonprofits have to withhold income tax from employees' paychecks?**

**A.** Yes. And board members may be personally liable if the nonprofit doesn't!

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