Look Before You Leap

By Barbara B. Oliver

Resource Type: Articles

Topic: General

Exercise Caution When Engaging Consultants

Expertise that is needed on a short-term and targeted basis or during an economic downturn or a drop in donations can spur a nonprofit to seek outside expertise. Those that hire consultants may save dollars in the long run, if they are wise employers of those providers. However, if nonprofits don't protect themselves during the hiring process, they might find themselves paying more than they bargained for in back taxes, penalties and lost reputation.

Due Diligence

It's worth your while to follow risk management strategies when engaging a consultant, just as you do when hiring an employee. Whether the contractor was referred by the chairman of your board, a respected nonprofit is listed as a reference, or you found them in a directory, you need to check out who these people really are and whether they have the credentials to match their sales pitch.

Before engaging a consultant, employ these strategies:

- Determine "consultant" versus "employee" status for tax and benefit purposes. Refer to Publication 15-A, "Employer's Supplemental Tax Guide," pages 5-6 (www.irs.gov).
- Hire someone with an established, incorporated business.
- Negotiate a written contract expressly stating that the person isn't an employee, won't be eligible for benefits, and will be responsible for all state and federal taxes related to compensation; specify the scope of work.
- Require that the contractor send timely and regular invoices for services rendered.
- Keep the treatment of employee wages, insurance and benefits separate from those of your independent contractors.
- Be particularly mindful of a long-term staffer who becomes an independent contractor and continues to perform the same tasks, or an employee who as an independent contractor provides non-job-related services to the nonprofit. The IRS will be watching, even if you aren't.

This information was adapted from *Taking the High Road: A Guide to Effective and Legal Employment Practices for Nonprofits*, by Jennifer Chandler Hauge, Esq., and Melanie Lockwood Herman, Esq., Nonprofit Risk Management Center, Washington, DC, 1999.