

*Employee or Volunteer:  
What's the Difference and Why it Matters*

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**Nonprofit Risk Management Center**  
Find the answer here | [nonprofitrisk.org](http://nonprofitrisk.org)

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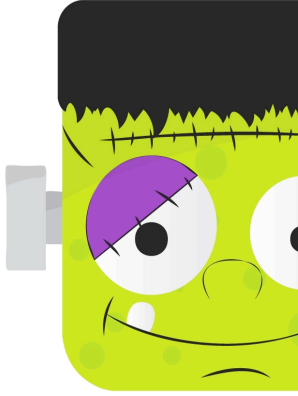
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**Key Issues**

- Volunteer or employee?
- The Frankenstein Effect (scenarios)
- Preventing the Frankenstein Effect




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**What does 'volunteer' mean to you?**

'When I use a word,' Humpty Dumpty said in rather a scornful tone, 'it means just what I choose it to mean—neither more nor less.'

'The question is,' said Alice, 'whether you can make words mean so many different things.'

Lewis Carroll, Through the Looking Glass

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- Working in a community garden in order to take home some free veggies
- Babysitting for your neighbor for free
- Political campaign advocacy
- Attending a protest related to social rights
- Using your cell phone to send a picture of a road hazard to the public works department
- Receiving regular pay at work for volunteering a few hours at a local nonprofit with your coworkers
- Reviewing legal documents pro-bono (as a lawyer)

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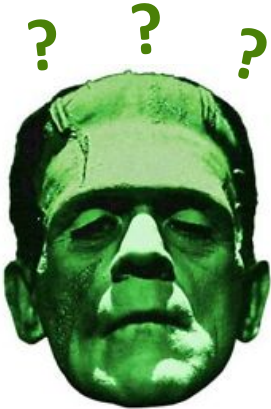
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**Volunteer or Employee?**

Why does it matter if we classify incorrectly?

Your nonprofit could owe \$\$\$!

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**Volunteer... or Employee?**

**DOL FLSA 6-Question Test** (to determine who is a volunteer)

1. Is the entity that will benefit/receive services from the volunteer a nonprofit organization?
2. Is the activity less than a full-time occupation?
3. Are the services offered freely and without pressure or coercion?
4. Are services of this kind typically associated with volunteer work?
5. Were regular employees displaced to accommodate the volunteer?
6. Does the worker receive (or expect) any benefit from the entity to which he/she is providing services?

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**Does volunteer status matter for the volunteer, too?**



YES! The Volunteer Protection Act may not apply if a volunteer is compensated (or given gifts of equal value) in excess of \$500/year.

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[www.nonprofitrisk.org](http://www.nonprofitrisk.org)

Library



**State Liability Laws for Charitable Organizations and Volunteers – 4th Edition**



Good Samaritan Laws. Volunteer Protection. Volunteer Immunity. Liability Limitation. Shield Laws. Charitable Immunity. These terms, which have significant, as well as subtle distinctions, have been used to describe laws that protect people and organizations in the nonprofit sector from claims, lawsuits and allegations of wrongdoing. Beginning with an overview of the liability environment, this fourth edition of State Liability Laws for Charitable Organizations and Volunteers provides a state-by-state review of the evolving landscape of charitable immunity and volunteer protection laws.

This publication has evolved over more than a decade. The initial research was conducted in the late 1980s with the first printed version available in 1990. We are pleased to present this fourth edition as a free, online publication.

**Download State Liability Laws for Charitable Organizations and Volunteers for Free!**

PDF: 122 pages / 815kb

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**“But we trust our volunteers! They would never claim employee status!”**



**Why might they?**

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### Frankenstein Effect Scenarios



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Sarah begins volunteering for a local nonprofit theater, which produces a new play or performance each week.

Volunteers are required to work at least 8 hours per week on a set schedule.

Sarah was unable to commit to her shift one week, her volunteer coordinator informed her that her penalty would be to work an extra shift later that month.

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Benji, a recent college grad who studied marketing, wants to gain real experience to make him an attractive job candidate.

He volunteers at a local youth camp and is mentored by Kim, the camp's marketing director (a full time employee). Kim offers Benji a role as the Lead Marketing Volunteer.

Kim trains Benji for the role, in which he learns a lot by doing the same exact tasks as her. Benji is available to volunteer when Kim is absent for vacation or due to illness.

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Sandy is looking for volunteer opportunities online and notices an ad for a local animal shelter.

The ad says that through his or her service, one volunteer will win a new Mini Cooper car, and 3 other volunteers will win a new iPad. The gifts are sponsored by a separate animal advocacy organization.

Sandy signs up to volunteer right away and can't wait to win a great prize.

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### Payment for Volunteers?

- Do you pay volunteers 'a lil something?'
- Why are cash gifts dangerous?
  - Volunteer can claim employee status
  - Tax requirements for both parties
- What about stipends?
  - Must be *de minimis*
  - Language is 'immaterial'



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### A Better Way than Cash

- **Reimburse for documented business expenses**
  - Travel to/from distant volunteering sites; long distance travel, meals, & lodging costs
  - Office costs (postage, telephone calls, copying, etc.)
  - Equipment or protective clothing
  - Attendance at training events/courses (that relate to volunteer's role!)



- **Have a clear reimbursement policy!**

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### A Better Way than Cash

#### Opt for non-cash gifts

- Not taxable if *de minimis*
- Watch out for gift cards & 'cash substitutes!'

**Standardize gifts for volunteers to avoid dangerous perceptions!**




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### A Better Way than Cash

#### No additional cost services

- Negligible cost to nonprofit & low \$\$ value to volunteer
- Volunteer is involved in providing the service




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### Other Benefits: Big Prize Perks

- Taxable income for volunteer
- Nonprofit must report
  - What if another organization sponsors the gift??




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### Other Benefits: Meals & Lodging

Generally exempt from taxes IF:

- *Meals*: provided for the NP's convenience & served on the program premises
- *Lodging*: provided to volunteers who are required to accept the lodging as a condition of their service




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### Other FAQs

Can an employee volunteer for us?

- Non-exempt = Maybe
- Exempt = Yes

Can we require employees to volunteer?

- **NO!**




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### Other FAQs: Unpaid Interns?

**DOL/FLSA Standards:**

1. Experience must be similar to that offered in an educational setting
2. **Internship must be for the intern's benefit**
3. Intern must not displace regular employees and work under close supervision
4. **Employer should derive no immediate advantage from intern**
5. Intern should not necessarily be entitled to a job at the end of the program
6. Both the employer and intern must clearly understand that the intern is not entitled to wages

**Unpaid interns should be trainees!**

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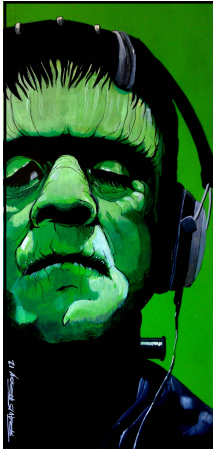
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### Unpaid Interns

**De minimis stipend**

- <20%
- Covers OOP costs; is **not** a wage
- Can't change based on hours worked
- Threshold for 1099 reporting = \$600

**PAID Interns:**

- Are regular employees
- Pay at least minimum wage!

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### Key Lessons

**Volunteering**

- Payment-free
- Not coerced
- Doesn't displace employees

**Distinguish employee/volunteer roles**

- *Separate* volunteer handbook




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**Never base classification  
solely on your ability to pay.**



**Celebrate collective accomplishments,  
not volunteered time.**

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