





## ANSI Legal Issues Forum 2015

Top Legal Traps Your  
Non-Profit Organization  
Needs to Avoid



# Employment Compensation Issues

*Presented by*

Suzanne Ross McDowell  
Partner, Steptoe & Johnson LLP  
[smcdowell@steptoe.com](mailto:smcdowell@steptoe.com)

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Part of the **World Standards Week 2015** series of events

# Overview

- Reasonable Compensation
- Private Inurement Doctrine
- Excess Benefit Transactions
- IRS Form 990



# Reasonable Compensation

- Reasonable compensation under the private inurement doctrine
- Reasonable compensation under section 4958
- Automatic excess benefits
- Initial contract exception



# Private Inurement Doctrine

- ❑ Applicable to section 501(c)(3), (c)(4) and (c)(6) organizations
- ❑ Statutory language: “no part of the net earnings of [the organization] inures to the benefit of any private shareholder or individual.”
- ❑ Non-fair market value transactions between organization and an “insider”
  - Results in excessive benefits flowing from organization to person with influence over the organization
- ❑ Penalty: revocation of tax-exempt status



# Section 4958: Excess Benefit Transactions

- ❑ Applicable to section 501(c)(3) and (c)(4) organizations
- ❑ Intermediate sanctions
- ❑ Imposes excise taxes on
  - Disqualified persons who are parties to, and
  - Organization managers who knowingly approve,
  - Excess benefit transactions





# Section 4958: What is Reasonable Compensation

- What is included in compensation?
- Rebuttable presumption of reasonableness
- Initial contract exception
- Automatic excess benefit transactions





# IRS Form 990

- Detailed reporting on compensation paid to officers, directors, key employees, and 5 highest compensated
- Questions about policies and process
- Questions about perks
- Question about excess benefit transactions
- Available to the public





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# Understanding and Handling Volunteers

*Presented by*  
Ronald W. Taylor  
Venable LLP

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# Overview

- ❑ Many organizations use volunteers
  - Board members
  - Technical advisors
  - Summer Interns
  - Judges and coaches
  - Employees eager to contribute in ways outside their regular job duties
- ❑ Often, these people are misclassified and are not really volunteers
- ❑ Misclassification is not a hypothetical problem



# Why Proper Classification Matters

- Fair Labor Standards Act and State wage and hour laws
- Title VII, ADA, ADEA and other laws governing employment
- Misclassified employees could raise workforce above statutory thresholds – i.e., 50 employee threshold for FMLA and ACA
- Tax liability
- Unemployment Insurance
- Tort claims



# Volunteers vs. Employees

- ❑ Common perception that volunteers are not employees
- ❑ Label placed on individual is not determinative
  - True volunteers are not employees
  - Question of fact whether they are employees or volunteers
- ❑ Volunteers permitted for religious, charitable or similar non-profit organizations or public sector
- ❑ May not normally volunteer in for-profit private sector



# Who are Volunteers

- ❑ Volunteers typically “serve on a part-time basis and do not displace paid workers or perform work that would otherwise be performed by employees”
- ❑ Volunteer service offered freely and without pressure or coercion
- ❑ May receive a “nominal fee”
  - Not tied to number of hours worked/productivity
  - Reimbursement of actual expenses and nominal “thank yous”
  - BUT, some state laws may vary – e.g., Maryland



# Common Issues with Volunteers

## ❑ Misclassification issues

- Employees who volunteer outside normal work hours
- Retirees or former employees who return on a “volunteer” or independent contractor basis
- Exempt vs. non-exempt employees under the FLSA

## ❑ Liability issues

- Liability for injuries/damages to volunteers
- Liability for injuries/damages from volunteers



# “Hiring” Volunteers

- Develop volunteer duties & tasks for each volunteer position
- Establish clear expectations – orientation programs, policies, handbooks
  - Volunteer status
  - Nominal compensation (if any) is not tied to work/productivity
  - Communication of procedures for failure to meet performance expectations
- Training (avoid tort liability, warnings, assumption of risk)
- Releases/Acknowledgement of risk





# “Managing” and “Firing” Volunteers

- Follow policies and procedures established for program
- If misconduct, do appropriate investigation to ensure volunteer engaged in the misconduct alleged
- Communicate precisely the legitimate, non-discriminatory reasons for terminating the relationship





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# Managing and Firing Volunteers in Governance Roles

*Presented by*

Eileen Johnson

Whiteford, Taylor & Preston L.L.P.

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# Governance Roles

- Delegates
- Committee members or chairs
- Editor-in-Chief
- Board of Directors
- Officers



# Prevention

- Recruiting and vetting
- Position descriptions with outline of authority
- Volunteer/leadership handbook
- Orientation
- Ongoing training
- Specialized training – officers and committee chairs



# Informal Action

- Informal counseling or behavior correction or redirection

<b>Problem Source</b>	<b>Counselor</b>
Board member/officer	Board chair
Committee chair	Board chair/officer
Committee member	Committee chair



# Formal Action

- Statutes of state of incorporation (officers & directors)
- Bylaws
- Policies & Procedures
- Code of Conduct
- Conflict of Interest Policy



# Disciplinary Actions

## Informal

- Investigation and report
- Often confidential

## Formal

- Charges
- Notice and opportunity to be heard
- Not always confidential



# Disciplinary Options

- Private or public reprimand
- Removal from committee or board
- Removal from chair or officer position
- Suspension of membership
  - No voting rights
  - May not run for or serve as officer
  - Must still pay dues
- Termination of membership





# Strategic Actions

- ❑ Is there an imbalance of power?
  - Board/committees
  - Board/staff
  - Committees/staff
- ❑ Change Policies & Procedures or Bylaws
  - Term limits
  - Selection process

