Employment Compensation Issues
Managing, Disciplining, and Terminating Volunteers

Panelists:
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• Suzanne Ross McDowell, Partner, Steptoe & Johnson LLP
• Ronald Taylor, Partner, Venable LLP

Moderators:
• Christian Dubay, Vice President and Chief Engineer, National Fire Protection Association (NFPA)
• Claire Ramspeck, Director of Technology, American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)

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Employment Compensation Issues

Presented by
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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: Excess Benefit Transactions

- What is a disqualified person?
- What is an organization manager?
- What is an excess benefit transaction?
- How much is the excise tax?
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
Understanding and Handling Volunteers

Presented by
Ronald W. Taylor
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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
Managing and Firing Volunteers in Governance Roles

Presented by
Eileen Johnson
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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

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<th>Problem Source</th>
<th>Counselor</th>
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<td>Board chair</td>
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<td>Board chair/officer</td>
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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