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The HR resource every business needs

The "Total" Advisor

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Determining Employment Status: Volunteer or Employee?

If your company accepts the services of people who donate or volunteer their time, you may be wondering if you are obligated to pay those individuals for their services. In fact, there are situations in which a person who volunteers his or her services may result in an employment relationship that entitles that person to certain minimum wage and other protections. The following guidelines provided by the U.S. Department of Labor (DOL) can help you decide whether such workers are volunteers or employees, and ensure that your company is paying wages in accordance with federal law.



DOL to Extend Compliance Date of ERISA Fee Disclosure Rules Related to Employee Pension Benefit Plans



On July 16, 2010, the U.S. Department of Labor (DOL) published an [interim-final regulation](#) requiring that certain service providers to employee pension benefit plans disclose information to help assess the reasonableness of fees being charged for plan services, as well as potential conflicts of interest that might affect the quality of those services. The new requirements were scheduled to

The Federal Fair Labor Standards Act

The [Fair Labor Standards Act](#) (FLSA), which prescribes standards for the basic minimum wage and overtime pay, affects most private and public employment. Unless specifically exempted, workers covered by the FLSA are entitled to a minimum wage of not less than \$7.25 per hour and overtime pay at a rate of not less than one and one-half times their regular rate of pay after 40 hours of work in a workweek.

Employment Relationship

In order for the FLSA to apply, there must be an [employment relationship](#) between an "employer" and an "employee." Factors such as the place where the work is performed, the absence of a formal employment agreement, the time or method of payment, and whether an individual is licensed by the state or local government have no bearing on whether an individual is an employee under the FLSA.

Volunteers

According to the DOL's [FLSA Advisor](#), the FLSA defines employment very broadly as "to suffer or permit to work." However, the Supreme Court has made clear that the FLSA was not intended "to stamp all persons as employees who without any express or implied compensation agreement might work for their own advantage on the premises of another." In administering the FLSA, the DOL follows this judicial guidance in the case of individuals serving as unpaid volunteers in various community services. So, individuals who volunteer or donate their services, usually on a part-time basis, for [public service, religious or humanitarian objectives](#), not as employees and without contemplation of pay, are not considered employees of the religious, charitable or similar **non-profit** organizations that receive their services.

For example, parents may assist in a school library or cafeteria as a public duty to maintain effective services for their children, or they may volunteer to drive a school bus

apply to plan contracts or arrangements for services in existence on or after July 16, 2011.

However, the DOL's Employee Benefits Security Administration (EBSA) has [announced](#) that it intends to extend the applicability date for the new disclosure rules to Jan. 1, 2012.

To view the interim-final rule in its entirety, please [click here](#). To read more about the regulation of retirement and other welfare benefit plans under ERISA, please visit the HR360 page on the [Employee Retirement Income Security Act](#).

IRS Concludes Lactation Expenses Qualify as Medical Care

The Internal Revenue Service (IRS) has [determined](#) that breast pumps and supplies that assist lactation are medical care under the Internal Revenue Code because, like obstetric care, they are for the purpose of affecting a structure or function of the body of the lactating woman. So, if the remaining requirements of the [law](#) are met (for example, the taxpayer's total medical expenses exceed 7.5 percent of adjusted gross income), expenses paid for breast pumps and supplies that assist lactation are deductible medical expenses.

Amounts reimbursed for these expenses under flexible spending arrangements, Archer medical savings accounts, health reimbursement arrangements, or health savings accounts are not income to the taxpayer.

The IRS will revise Publication 502, [Medical and Dental Expenses](#), to include this information.

You may view the IRS announcement by [clicking here](#). To read more about health savings accounts and other tax-favored plans, please see the HR360 section on [HSAs, FSAs and Other Tax-Favored Plans](#).

New Center for Consumer

to carry a football team or school band on a trip. Similarly, an individual may volunteer to perform such tasks as working with disabled children or disadvantaged youth.

Under the FLSA, employees may not volunteer services to **for-profit** private sector employers. On the other hand, in the vast majority of circumstances, individuals can volunteer services to public sector employers. Congress has made clear that people are allowed to volunteer their services to public agencies and their communities with one exception--public sector employers generally may not allow their [employees to volunteer](#), without compensation, additional time to do the same work for which they are employed. It is important to also consider all the facts and circumstances in a particular case, including whether the volunteer service is closely related to the actual duties performed by, or responsibilities assigned to, the employee. There is no prohibition on anyone employed in the private sector from volunteering in any capacity or line of work in the public sector.

It is very important to properly classify those individuals who perform services for your company as employees or volunteers. Also, keep in mind that some employees may be [exempt](#) from various provisions of the FLSA. For help in determining the employment status of your workers, please review the [FLSA Coverage and Employment Status Advisor](#), and contact the DOL's [Wage and Hour Division](#), at 1-866-487-9243.

Tax Help for Small Businesses from the IRS

The IRS [Small Business and Self-Employed Tax Center](#), available on the IRS website, offers extensive resources and online tools designed to help small businesses and self-employed persons. Among the information and resources available on the website are:

- Small business forms and publications
- Employer Identification Number online application
- Employment tax information - federal income tax, Social Security and Medicare taxes, FUTA and self-employment tax
- Tax-related news that could affect your business
- Small business educational events
- IRS videos for small businesses
- A-Z Index for Business - find information fast using the A-Z listing



The site provides important tax information for all stages of owning a business. Other resources available on the IRS website include the following:

- [The IRS Video Portal](#): Learn about tax topics through video and audio presentations. The video portal contains archived versions of live panel discussions, archived webinars, video clips, and audio archives of national phone forums.
- [IRS Audits Video Series](#): "Your Guide to an IRS Audit" takes the viewer through the steps of an audit from notification to closing. The video series is composed of scenarios that demonstrate the stages of each type of audit: correspondence, office and field. The scenarios address issues that are common to audits of small businesses.
- [Virtual Small Business Tax Workshop](#): An interactive resource to help small business owners learn about their federal tax rights and responsibilities. The workshop contains nine stand-alone lessons that can be selected and viewed in any sequence. The workshop is available online 24 hours a day, seven days a week from any computer. It can also be ordered on CD.
- [Tax Calendar for Small Business Taxpayers](#): This 12-month calendar is filled with information on general business taxes, IRS and Social Security Administration customer assistance, electronic filing and paying options, retirement plans, business publications and forms, and common tax filing dates. Each page highlights different tax issues and tips that may be relevant to small-business owners, with room on each month to add notes, state tax dates or business appointments. You can also download the tax events into your calendar

Information and Insurance Oversight to Help Implement Health Care Reform

On February 1, 2011, the Office of Consumer Information and Insurance Oversight (OCIIO) became the [Center for Consumer Information and Insurance Oversight](#) (CCIIO), a part of the Centers for Medicare & Medicaid Services (CMS).

The new Center for Consumer Information and Insurance Oversight will help the U.S. Department of Health and Human Services (HHS) implement many of the provisions of health care reform legislation that address private health insurance. According to its [Functional Statement](#), the CCIIO:

- Implements, monitors compliance with, and enforces the new rules governing the insurance market, such as the prohibition on rescissions and on pre-existing condition exclusions for children. Conducts external appeals for states that do not have that authority.
- Implements, monitors compliance with, and enforces the new rules regarding medical loss ratio standards and the insurance premium rate review process, and issues premium rate review grants to states.
- Administers the Pre-Existing Condition Insurance Plan program and associated grant funding to states, the Early Retiree Reinsurance Program, and the Consumer Operated and Oriented Plan program.
- Collects, compiles and maintains comparative pricing data for an internet portal providing information on insurance options, and provides assistance to enable consumers to obtain maximum benefit from the new health insurance system.
- Collects, compiles and maintains comparative pricing data for the Department's web site, provides assistance to enable consumers to understand the new health insurance laws and regulations, and establishes and issues consumer assistance grants to states.
- Develops and implements policies and rules governing state-based Exchanges, establishes and issues Exchange Planning and Establishment Grants to states, oversees the operations of state-based Exchanges, and administers

or subscribe to the tax calendar events.

To access the IRS Small Business and Self-Employed Tax Center, please [click here](#).

Retaining Employees

Retaining skilled employees is a significant issue for any business. A high rate of employee turnover can result in a loss of knowledge and skills, as well as have a direct impact on a company's bottom line. The cost of losing an employee includes not only lost productivity, but also the expense of recruiting, selecting and training a new employee. Consider the ideas presented in this article to help reduce turnover and increase satisfaction among your company's valued employees.

Why Employees Stay

Some of the factors affecting employee retention include:

- Compensation
- Strong leadership
- Challenging and fulfilling job
- Relationships with immediate supervisors and staff
- Recognition

Ways to Increase Retention

The following are strategies that may help to increase retention:

- Acknowledge and reward your employees' contributions and provide regular, constructive feedback.
- Make sure your compensation package is fair and competitive.
- Provide a forum to encourage new ideas and open communication.
- Provide training programs and mentoring to enhance skills development, learning and career growth.
- Provide employee assistance, wellness and health programs.
- Support work-life balance.
- Offer flexible work arrangements, such as varied hours and the possibility of telecommuting.
- Provide leadership opportunities.

Employee Attitude Surveys

Employee attitude surveys allow your staffers to give confidential feedback on their opinions of your company in terms of satisfaction with their jobs and how their jobs and work environment might be improved. Responses to the survey can provide you with key information on how to strengthen workplace processes, policies and morale to retain existing staff and attract new employees. The results of your survey should be acted upon by your company, if possible, to help build a relationship of integrity and trust among your employees.

There are a number of different ways to conduct an employee attitude or satisfaction survey--from simply filling out a paper survey to taking an online survey or hiring a consulting firm to do all the surveying and analysis work for you. If you decide to work with a consultant to administer the survey, make sure you have access to the data. By personally reviewing the data and analysis, you'll be able to make a better assessment of employee satisfaction.

Some of the topics that can be covered in a survey include:

- Job satisfaction



Exchanges in states that elect not to establish their own.

The CCIIO website contains information on various initiatives and programs related to the health care reform law, regulations and guidance, and gathering insurance information. To visit the new website, please [click here](#). For more information regarding health care reform, please see the HR360 [Health Care Reform](#) section.

- Senior management
- Functional expertise
- Compensation
- Customer service
- Communication
- Mentoring
- Leadership
- Teamwork
- Staff development

Developing a Health and Wellness Program

A company health and wellness program refers to activities or initiatives undertaken within the workplace that are designed to support your employees' general health and well-being. Programs will often differ from business to business in terms of the range of initiatives offered. Some simple initiatives to consider include:

- Providing filtered water.
- Having your air-conditioning and heating systems checked and maintained on a regular basis.
- Increasing the nutritional quality of food available in the workplace.
- Providing desk chairs that are ergonomically designed to support the back.
- Empowering employees to include physical activity into their working day, such as encouraging walking at lunch.
- Providing incentives such as subsidized memberships to local health clubs. Be sure to check with your local health clubs to see if they offer corporate rates.
- Providing flexible work hours.

For more tips on how to successfully motivate your employees, including how to deal with stress in the workplace, please visit the HR360 section on [Motivating Employees](#).

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