

4. EMPLOYMENT LAW



KNOW

There are five key areas of **Employment Law** for nonprofit to be aware of:



1. **Minimum Wage & Overtime:** Federal, State, and in some cases Local law regulates employers' pay practices and policies. Washington employers must comply with Federal, State, and Local law.



2. **Hiring Process:** Employers should understand the basis for at-will employment. Employers must also verify the work eligibility of employees.



3. **Non-employees: Interns, Volunteers & Independent Contractors:** Nonprofits need to make sure they are treating these categories of non-employees consistent with the law to avoid incurring liability.



4. **Payroll:** Employees must be paid at least once a month on a regularly scheduled payday. Payroll taxes must be withheld and paid to the IRS. IRS is very strict on payroll taxes and will hold individual board members liable for unpaid payroll taxes.



5. **Anti-discrimination Laws:** Federal and state law prohibit discrimination across a wide array of characteristics.

KNOW MORE

1. Minimum Wage & Overtime



A. Minimum Wage.

Most employees must be paid the minimum wage for all “hours worked.” “Hours worked” means all time during which an employee performs work for the benefit of the employer. This includes time spent opening or closing a business, and required meetings and training. It also includes time spent by an employee voluntarily continuing to work on an assigned task at the end of a shift or on a day off. All work time must be paid for by the employer.

For 2017, the Washington Minimum Wage is \$11.00 per hour, higher than the federal minimum wage of \$7.25 per hour. Employers are required to pay employees the more favorable (i.e., higher) of the State and Federal minimum wage. Several counties and cities throughout Washington state have enacted local minimum wage ordinances. Employers need to know what minimum wage applies to their employees.

B. Overtime

Most employees who work more than 40 hours in a 7-day work week must be paid overtime compensation for all hours worked over 40. For every overtime hour worked, the employee must be paid 1.5 times the employee's regular rate of pay. An employee's "regular rate" is not necessarily the same as an employee's fixed or straight time rate. The regular rate includes all compensation for employment paid to the employee divided by the number of hours worked in the week for which the compensation was intended. Payments such as commission payments, premium pay, and non-discretionary bonuses are included in the regular rate. Discretionary compensation, expense reimbursements, and pay for unworked time (holiday, vacation, sick pay) does not need to be included when calculating the regular rate.

C. Exempt

State and federal law provides exemption from overtime pay for employees employed as bona fide executive, administrative, professional, or outside sales employees. To qualify for the exemption, employees must meet certain tests regarding their job duties and be paid on a salary basis. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all of the requirements.

Paying an employee on a salary basis requires that the employee receive a predetermined amount of pay on a weekly basis, regardless of the quantity or quality of the hours worked. Currently federal law requires that employees must be paid in an amount equal to \$455 per week (\$23,660 per year) in order to qualify for the management, administrative or professional exemptions.

In addition to the salary basis requirements, exempt employees must also meet duties requirements. State and federal duties tests differ slightly and employers must comply with both. The three most commonly applied exemptions are the executive, administrative, and professional exemption. See Chart A on the next page.

Minimum Wages Around Washington (as of January 2017)

SeaTac: Certain employers in the hospitality and transportation industries must pay \$15.34/hour.

Seattle has a multi-year plan for increasing the minimum wage to \$15 per hour. Wage rates depend on a number of factors, including the size of the employer.

Tacoma is gradually increasing its minimum wage to \$12 per hour over a two-year period.

State and federal law also provide exemptions for certain other categories of employees. Employers should consult with legal counsel when making a decision whether to classify an employee as exempt from overtime.

Employers are not required to pay employees a higher rate of pay to work on holidays or weekends. Employers are not required to pay employees severance pay.

CHART A: COMMON EXEMPTIONS

Executive exemption	Administrative exemption	Professional exemption
<i>An employee must:</i>	<i>An employee’s primary duty must:</i>	<i>An employee qualifies if the employee:</i>
<ul style="list-style-type: none"> <input type="checkbox"/> Have the primary duty of managing the enterprise in which the employee is employed or of a customarily recognized department or subdivision. <input type="checkbox"/> Customarily or regularly direct the work of two or more full time employees or their equivalent; and <input type="checkbox"/> Have the authority to hire, fire, promote, or demote other employees or have particular weight given to suggestions and recommendations as to such decisions. 	<ul style="list-style-type: none"> <input type="checkbox"/> Involve office or non-manual work directly related to the management or general business operations of the employer or its customers. Examples provided in the regulations include work in areas such as finance, accounting, budgeting, auditing, quality control, purchasing, marketing, personnel management, public relations, and database administration; and <input type="checkbox"/> Exercise discretion and independent judgment with respect to significant matters. 	<ul style="list-style-type: none"> <input type="checkbox"/> Has a primary duty of performing office or non-manual work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, and whose duties require consistent exercise of discretion and judgment; or <input type="checkbox"/> Has a primary duty requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

2. Hiring Process



A. At-Will Employment

Washington State recognizes the doctrine of at-will employment. At-will employment means that employees can quit whenever they want and the employer may terminate them whenever it wants, provided there is no contract or agreement to the contrary. All employees are at-will employees unless the employer has taken affirmative steps to change the status. The majority of employees should be employed on an at-will basis to provide the employer with flexibility and to minimize cost.

Employers should have a policy confirming At-Will Employment. See Key Documents for a sample policy.

B. Employment Verification

Employers must have all employees hired on or after November 6, 1986 complete Form I-9. See Key Documents for a Blank and Completed Form.

3. Non-employees: Interns, Volunteers, and Independent Contractors



A. Unpaid Interns

The law narrowly limits an employer's ability to use unpaid interns. The United States Department of Labor looks at six criteria for evaluating whether an unpaid interns status is valid:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

B. Volunteers

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 service.

Each volunteer should sign a document confirming volunteer status, including acknowledgment of no pay.

C. Independent Contractors

An "Independent Contractor" is a person or business that performs services for an organization under a contract between them, with the terms spelled out such as duties, pay, the amount and type of work, and other matters. An Independent Contractor pays their own Social Security, taxes, and it not eligible for retirement or health benefits.

Individual workers hired to perform functions essential to your organization's primary purpose, who work full or part time under the employer's control, and who do not

provide similar services for other organizations are **not likely** to qualify as independent contractors. The U.S. Department of Labor evaluates independent contractor status based on the following factors:

1. Extent to which the worker's services are an integral part of the employer's business;
2. Permanency of the relationship;
3. Amount of the worker's investment in facilities and equipment;
4. Nature and degree of control by the principal;
5. Worker's opportunities for profit and loss; and
6. Level of skill required in performing the job and the amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent enterprise.

No single factor is regarded as more important than another.

Misclassifying employees as independent contractors can expose an employer to liability for unpaid minimum wage and overtime, sick and vacation pay, workers' compensation premiums, Federal, State and Local income tax withholdings, Social Security and Medicare contributions, unemployment, insurance, taxes, and benefits. There may be penalties under state and federal law for misclassification.

4. Payroll

An employer must establish regularly scheduled paydays at least once a month. When an employee has ceased working for an employer, the employer must pay the final wages due at the end of the established pay period. Payment must be made by midnight on the payday. If paychecks are mailed, they must be postmarked on the payday. If payment is made using direct deposit, funds must be available on the established payday.



5. Anti-Discrimination Laws

Federal law prohibits employment discrimination based on the following covered bases: race, color, creed, religion, sex (including pregnancy-related discrimination), national origin, age, disability, genetic information, and military or veteran status. Washington's anti-discrimination laws protect the same characteristics as federal law and also extend protections based on veteran and marital status, sexual orientation, and political activities. Federal law (Title VII) applies to employers with 15 or more employees. Washington's Law Against Discrimination applies to employees with eight or more persons.



KEY DOCUMENTS

- Anti-discrimination Policy/ Equal Employment Opportunity (EEO) Policy
- At-will Policy
- Confidentiality Policy
- I-9 Form: Blank
- Independent Contractor checklist (<http://www.lni.wa.gov/IPUB/101-063-000.pdf>)
- Whistleblower Policy