

EMPLOYMENT LAW FOR NONPROFITS

5 Areas That Need Your Immediate Attention



Asha B. Wilkerson, Esq.

*California licensed
attorney, MBA holder,
professor, and business
owner.*



ANTI-DISCRIMINATION LAWS APPLY TO NONPROFITS AND FAITH-BASED ORGANIZATIONS

Questions that may be asked of applicants on employment applications or during interviews are restricted by Govt C §12940(d), which **prohibits any non-job-related inquiry** that "expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation."

AT THE TIME OF HIRING, AN EMPLOYER MUST PROVIDE EACH EMPLOYEE **WRITTEN NOTICE** OF:

- The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable;
 - Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances;
 - The regular payday;
 - The employer's name, including any "doing business as" names used by the employer;
-

AT THE TIME OF HIRING, AN EMPLOYER MUST PROVIDE EACH EMPLOYEE **WRITTEN NOTICE** OF:

- The physical address of the employer's main office or principal place of business, and a mailing address, if different;
 - The employer's telephone number;
 - The name, address, and telephone number of the employer's workers' compensation insurance carrier;
-

AT THE TIME OF HIRING, AN EMPLOYER MUST PROVIDE EACH EMPLOYEE **WRITTEN NOTICE** OF:

- That an employee
 - May accrue and use sick leave,
 - Has a right to request and use accrued paid sick leave,
 - May not be terminated or retaliated against for using or requesting the use of accrued paid sick leave, and
 - Has the right to file a complaint against an employer who retaliates; and
 - Any other information the Labor Commissioner deems material and necessary.
-

2. WHO IS AN EMPLOYEE, A CONTRACTOR, A VOLUNTEER?

EMPLOYEES v. CONTRACTORS

VOLUNTEERS

EVERY WORKER IS PRESUMED TO BE AN EMPLOYEE

UNLESS the worker meets the factors of the ABC TEST:

- (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- (B) The person performs work that is outside the usual course of the hiring entity's business.
- (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

California Labor Code §2750.3

EMPLOYEE V. CONTRACTOR

"VOLUNTEER" is defined as an individual who performs work for civic, charitable, or humanitarian reasons, for a public agency or tax-exempt corporation (see IRC §501(c)(3)), "without promise, expectation, or receipt of any compensation for work performed." Lab C §1720.4(a)(1).

- Are the volunteer activities in question the same or similar to the activities the employee is employed to perform, and are they during or outside the employee's normal working hours?
 - There must be no contemplation of pay.
-

3. PROPER PAYMENT PRACTICES

PAYMENT FREQUENCY

HOURLY RATES & SALARY MINIMUMS

LOVE OFFERINGS

Wages must be paid weekly, biweekly, or semimonthly

The employer must, semimonthly or at the time of each payment of wages, furnish each employee with an itemized written statement showing the following:

- Gross wages earned;
 - Total hours worked by each employee whose compensation is based on an hourly wage;
 - The amount of paid sick leave available for use (Lab C §246(i));
 - All deductions;
 - Net wages earned;
-

Wages must be paid weekly, biweekly, or semimonthly

- Inclusive dates of the period for which the employee is paid;
 - The name of the employee and the last four digits of his or her Social Security number (or an employee identification number);
 - The name of the employee and the last four digits of his or her Social Security number (or an employee identification number);
 - The employer's name and address; and
 - All applicable hourly rates in effect during the pay period and the number of hours worked at each rate.
-

ALL EMPLOYEES MUST EARN THE HIGHEST MINIMUM WAGE APPLICABLE

- The California minimum wage is currently \$13.00/hour
 - There is a one-year delay for businesses that employ 25 or fewer employees
 - Oakland's minimum wage is \$14.14/hour
-

EMPLOYEES QUALIFYING FOR THE ADMINISTRATIVE, EXECUTIVE, OR PROFESSIONAL EXEMPTION MAY EARN A SALARY

The salary must be equivalent to **at least twice the state minimum wage** for full-time employment, which is defined as 40 hours per week. Lab C §515(a), (c)

GIFTS CANNOT BE DISTRIBUTED IN LIEU OF COMPENSATION FOR WAGES EARNED

When giving gifts, look out for the following:

- Should the recipient be an employee?
- Exceptions:
 - De minimis gifts
 - Employee achievement awards

Internal Revenue Code 26 U.S. Code § 102

4. PROPER SUPERVISION

● RESPONSIBILITY FOR THE ACTIONS OF OTHERS

● BACKGROUND CHECKS

● SAFETY TRAINING

GENERALLY SPEAKING THE BUSINESS **WILL NOT BE** **RESPONSIBLE** UNLESS:

- The employee/volunteer was furthering the interest of the employer,
 - The employer was negligent in hiring the employee/contractor, or
 - The employer was negligent in supervising the employee/volunteer.
-

YOU NEED TO KNOW WHO IS WORKING IN YOUR BUSINESS

- If you're working with **children and/or vulnerable populations** you may have a heightened duty not to put them in danger
 - What kind of training do you need to provide?
 - Physical safety?
 - Mental health?
 - Workplace safety?
-

5. EMPLOYEE & VOLUNTEER HANDBOOKS

HIRING PRACTICES

PAYMENT PRACTICES

DISCIPLINE PRACTICES

POLICIES SPECIFIC TO THE
ORGANIZATION

VOLUNTEER/EMPLOYEE HANDBOOKS

- The purpose of an employee handbook is to **instruct employees** on official company policy and the expected standards of their behavior while they are employed.
 - Clearly written provisions in the employee handbook are an effective way to **communicate general workplace policies and procedures** to employees.
 - The handbook should be concise and have clear policies, which sometimes helps an employer prove that an adverse employment action with respect to an employee was not discriminatory.
-



THANK YOU!

You can find me here:

- ◉ asha@thewilkersonlawoffice.com
- ◉ @MissAshaBee on Instagram
- ◉ The Wilkerson Law Office on FB