III. PERSONNEL

Effective Date: April 21, 2008

A. PERSONNEL POLICIES AND PROCEDURES

The governing board of a non-profit organization has responsibility to supervise and approve decisions which affect goals, policies, plans, and programs. The board should recommend, oversee, and approve compensation plans and fringe benefits as well as various personnel matters. Set forth below are several items which must be governed by board approved policies and procedures.

Equal Employment Opportunity

A policy should be approved which states that all employment decisions are to be made without consideration of race, sex, color, religion, national origin, age or handicap, except where sex, age, or absence of handicap is a bona fide occupational qualification.

Employees and applicants have a right to be considered equal in all personnel functions including, but not limited to: pay, training, promotion, demotion, lay-off, and termination.

Work Schedule

A standard workweek should be established which specifies the normal daily work schedule for employees. However, if the board so desires, it may allow alternative work schedules, often called "flex-time", in an effort to increase productivity or efficiency, solve work force problems, or to provide a choice for employees.

Pay

A policy should be developed regarding classification and compensation of employees. The policy should also specify at what regular intervals employees will receive compensation. Common pay periods are semi-monthly, bi-weekly, or monthly

In conjunction with this decision, the board should also decide whether the organization's payroll process can best be served by in-house staff, board members, a payroll service bureau, or a local public accounting firm. Compliance with the various payroll tax rules and regulations is a difficult task; therefore, it may be in the board's best interest to contract with an outside party for this function.

Holiday Schedule

State employees generally observe the following holidays:

New Year's Day
Martin Luther King's Birthday
Good Friday

Memorial Day
Independence Day
Labor Day
Veteran's Day
Thanksgiving (2 days)
Christmas (2 or 3 days)

When a holiday falls on Saturday, the Friday before is identified as the holiday. If the holiday falls on Sunday, the following Monday is normally taken as a holiday.

The governing board may adopt the above State holiday schedule or modify it accordingly.

Leave Policy

A policy should be formulated to specify leave policies which include but are not limited to vacation leave, sick leave, civil leave, and. military leave for full-time, and part-time employees of the non-profit organization.

Grievance Procedure

A good relationship between management and its employees is based, on mutual trust and respect. If an employee has a problem or grievance regarding his or her working conditions, there must be a process in place which ensures that the employee's concern is addressed in a straightforward and fair manner without acts reprisal.

Therefore, it is imperative that the governing board institute a grievance policy and related procedures which are responsive to the needs and concerns of its employees.

Secondary Employment

A policy should be developed which requires employees of the non-profit organization to secure board approval before accepting secondary employment.

The policy should state that such employment is allowed only if it does not conflict with the interests of the non-profit organization and does not interfere with the employee's ability to perform his or her normal job responsibilities. Furthermore, the secondary employment should not be performed for an individual or organization which has either a direct or indirect relationship with the non-profit organization in order to avoid the appearance of a conflict of interest on the part of any party. The policy should stipulate that employees who engage in secondary employment are not to use offices, materials, or equipment of the non-profit organization in the provision of services. In addition, secondary employment must be conducted outside the organization's normal work day unless the employee has prior approved leave status.

B. EMPLOYEE VERSUS INDEPENDENT CONTRACTOR

It is very important for an organization or business to make an accurate determination as to whether payments for services rendered are being made to an employee or to a non-employee (independent contractor). Generally, anyone who performs services is an employee if the employer can control what will be done and how it will be done. This is so even when the employer gives the employee freedom of action. What does matter is the fact that the employer has the legal right to control the method and results of the services.

If an employer-employee relationship exists, it does not matter what the relationship is called. It also does not matter how payments are measured or paid, what the payments are called, or whether the employee works full or part-time.

It should be noted that when an employer incorrectly treats an individual as an independent contractor rather than an employee, the employer becomes liable for income tax and employee/employer social security/Medicare taxes which were not withheld on payments to the employee. Therefore, a severe penalty results when there is a misclassification of an individual providing services to an organization.

Normally, people in business for themselves, such as doctors, lawyers, CPAs, construction contractors, and others in an independent trade in which they offer their services to the public are not employees. However, there is not always a clear distinction which can be drawn as to whether a person providing services is an employee or an independent contractor.

The Internal Revenue Service has identified 20 factors that are to be used as guidelines to determine whether sufficient control is present to establish an employer employee relationship. Not every factor is applicable in every situation, and the degree of importance of each factor varies depending on the type of work and individual circumstances. However, all relevant factors are considered in making a determination, and no one factor is decisive.

It does not matter that a written agreement may take a position with regard to any factors or state that certain factors do not apply, if the facts indicate otherwise. If an employer treats an employee as an independent contractor when in fact there is an employee relationship, the person responsible for the collection and payment of withholding taxes may be held personally liable for an amount equal to the taxes that should have been withheld.

The twenty factors indicating whether an individual is an employee or an independent contractor are:

1. Instructions

An employee must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to control how the work results are achieved.

2. Training

An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchasers of their services.

3. Integration

An employee's services are usually integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control.

4. Services Rendered

An employee renders services personally. This shows that, the employer is interested in the methods as well as the results.

5. Hiring Assistants

An employee works for an employer who hires, supervises, and pays workers. An independent contractor can hire, supervise, and pay assistants under a contract that requires him or her to provide materials and labor and to be responsible only for the result.

6. Continuing Relationship

An employee generally has a continuing relationship with an employer. A continuing relationship may exist even if work is performed at recurring, although irregular, intervals.

7. Set Hours of Work

An employee usually has set hours of work established by an employer. An independent contractor generally can set his or her own work hours.

8. Full-time Requirement

An employee may be required to work or be available full-time. This indicates control by the employer. An independent contractor can work when and for whom he or she chooses.

9. Work Done on Premises

An employee usually works on the premises of an employer, or works on a route or at a location designated by an employer.

10. Order of Sequence Set

An employee may be required to perform services in the order or sequence set by an employer. This shows that the employee is subject to direction and control.

11. Reports

An employee may be required to submit reports to an employer. This shows that the employer maintains a degree of control.

12. Payments

An employee is generally paid by the hour, week, or month. An independent contractor is usually paid by the job or on a straight commission.

13. Expenses

An employee's business and travel expenses are generally paid by an employer. This shows that the employee is subject to regulation and control.

14. Tools and Materials

An employee is normally furnished significant tools, materials, and other equipment by an employer.

15. Investment

An independent contractor has a significant investment in the facilities he or she uses in performing services for someone else.

16. Profit or Loss

An independent contractor can make a profit or suffer a loss.

17. Works for More Than One Person or Firm

An independent contractor is generally free to provide his or her services to two or more unrelated persons or firms at the same time.

18. Offers Services to General Public

An independent contractor makes his or her services available to the general public.

19. Right to Fire

An employee can be fired by an employer. An independent contractor cannot be fired so long as he or she produces a result that meets the specifications of the contract.

20. Right to Quit

An employee can quit his or her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete it.

If you are unable to determine from the preceding guidelines whether there is an actual employer-employee relationship, you can file with the Internal Revenue Service District Director a FORM SS-8, "Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding."

C. EMPLOYEE WITHHOLDING ALLOWANCES

The employer is responsible for withholding applicable payroll taxes, such as social security/medicare, federal and state income taxes, from wages paid to employees. The social security tax of 6.20% is calculated on earnings up to $102,000 (2008) while the medicare tax of 1.45% applies to all earnings. However, the amount of federal and state income taxes to be withheld depends upon the number of withholding allowances claimed by the employee.

An employer should obtain a properly completed and signed FORM W-4, "Employee Withholding Allowance Certificate", (copy attached) from each employee on or before the first day of work. If a new employee does not provide the FORM W-4, then the employer should withhold federal tax as if the employee were single and with no withholding allowances,

A FORM W-4 remains in effect until the employee gives the employer a new one. If an employee provides you a FORM W-4 that replaces an existing FORM W-4, the employer should begin withholding no later than the start of the first payroll period ending on or after the 30th day from the date the new FORM W-4 was received.

The amount of income tax withholding must be based on the employee's filing status and withholding allowances. Employees may not base their withholding amounts on a fixed dollar amount or percentage. However, the employee may specify a dollar amount to be withheld in addition to the amount of withholding based on filing status and withholding allowances claimed on FORM W-4.

Employees may claim fewer withholding allowances than they are entitled to claim. They may wish to claim fewer allowances to get a larger tax refund or to offset other sources of taxable income that are not subject to adequate withholding.

When an employer receives a new FORM W-4, there should be no adjustment to withholding for pay periods before the effective date of the new form; that is, do not adjust withholding retroactively. Also, do not accept any withholding or estimated tax payments from employees in addition to withholding based on their FORM W-4.

An employee may claim **exemption from income tax withholding** because he or she had no income tax liability last year and expects none this year. However, the wages may still be subject to social security and medicare taxes. An employee must file a FORM W-4 each year by February 15 to claim exemption from withholding. If the employee does not give the employer a new FORM W-4, employer should withhold tax as if the employee is single with zero withholding allowances.

Employees should also complete FORM NC-4 **http://www.dor.state.nc.us/downloads/NC_4_2001.pdf** which is the withholding allowance certificate used to determine the amount of state income tax to be withheld. If a new employee does not provide the FORM NC-4, then the employer should withhold state tax as if the employee were single and with no withholding allowances,

The Internal Revenue Service provides employers each year with a copy of Circular E, "Employer's Tax Guide". Also, the State Department of Revenue periodically provides employers with a copy of NC-30, "Income Tax Withholding Tables and Instructions for Employers."