

13

Human Resources Issues Related to Finance



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13.1 Compensation and Employee Benefits

Please refer to the following two (2) documents developed by Human Resources for the Archdiocese of St. Louis.

1. Guidelines on Selected Compensation and Employment Issues (see Subsection 13.1.1)
2. Benefits Administration Manual

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13.1.1 Guidelines on Selected Compensation and Employment Issues

Guidelines on Selected Compensation
and other Employment Issues for Persons
Employed by or Performing Work for
Archdiocesan Entities and Parishes

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13.1.1 Guidelines on Selected Compensation and Employment Issues

Introduction

These guidelines address various matters concerning the employment and compensation of individuals in certain job classifications as well as discussing requirements concerning child labor laws, immigration laws, barter-type transactions, sick leave sharing, tuition credits, independent contractor status, and volunteer issues.

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Mission

The Office of Human Resources provides professional employment and benefit services to those doing the work of the Church in the Archdiocese of St. Louis.

The department commits to fulfill its mission of employee recruitment, selection, and retention in a Christ-like manner.

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A. Overview of Legal Requirements

I. Child Labor Laws

Both the federal government, under the Fair Labor Standards Act, and the State of Missouri have extensive child labor laws. The Missouri laws regulating employment of children are generally more restrictive than the federal laws. In general, federal law must always be followed; however, where the state law is more restrictive than federal law, then the more restrictive provisions must be followed. The following guidelines will provide you with the provisions which must be followed to comply with both federal and state law.

- *Children under 14 years of age* may not be employed in any non-agricultural occupations other than in the entertainment industry.
- *Children 14 and 15 years of age* may only work pursuant to a Work Certificate.¹ Employment of children who are 14 and 15 years of age is limited to non-school hours during the school term. In addition, children who are 14 or 15 may only be employed for a maximum of three (3) hours per day on any school day, for a maximum of eight (8) hours per day on a non-school day, for a maximum of 18 hours per week when school is in session, and for a maximum of 40 hours per week when school is not in session. No child under 16 years of age may work more than six (6) days in any week. Work hours are restricted to those after 7:00 a.m. and before 7:00 p.m. during the school year and from 7:00 a.m. to 9:00 p.m. between June 1 and Labor Day. Children who are 14 or 15 years of age may not work in certain occupations including but not limited to: in connection with power driven machinery (including lawnmowers); in connection with ladders or scaffolding; in the operation of motor vehicles, elevators, or cranes; in any job involving exposure to toxic or hazardous chemicals; or in any place where alcoholic beverages are sold except where at least 50% of the sales consist of other commodities. Children under 16 may also not work in door-to-door selling or peddling or any activity pursued on or about public streets or places unless there is a written waiver from the Missouri Division of Labor Standards. However, this prohibition does not apply to fundraising activities for a church or charity.

¹Under Missouri law, children 14 and 15 years of age may only be employed after issuance of a Work Certificate. Certificates may be obtained upon the written consent of a parent, legal custodian or guardian of the child and a statement of intention by the prospective employer setting forth the specific nature of the occupation in which it intends to employ the child and the hours/days to be worked. In addition, it requires proof of the age of the child by birth certificate or other documentary evidence must be submitted. If required by an issuing officer, a physician's certificate stating that the child is in good health and capable of performing the work involved without injury may be needed. The documentation for a certificate also requires a certificate from the principal of the school, which the child attends.

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- *16 and 17 year old youths.* Youths 16 and 17 years old may perform any non-hazardous job for unlimited hours. Examples of equipment and/or jobs declared hazardous include: power-driven meat processing machines such as grinding or slicing machines; power-driven bakery machines; trenching and excavation operations; operation of power-driven hoisting apparatus such as elevators, cranes; power-driven woodworking machines -- e.g. chain saws, nailing machines, and sanders; work involving exposure to radioactive substances or explosives; driving a motor vehicle or working as an outside helper on a motor vehicle (except 17 year olds may drive cars or small trucks during daylight hours for limited times and under limited circumstances).
- *18 years and over.* All child labor restrictions under federal and Missouri laws end when a youth becomes 18 years of age.

II. Alien Work Authorization Issues

Foreign born individuals who are naturalized citizens are entitled to work without any limitation in the United States.

Individuals with Legal Permanent Resident status (commonly referred to as Green Card status) are entitled to work without any limitation in the United States. Such residents should present a Resident Alien Card at the outset of employment, and if the card appears genuine on its face, the individual may begin work immediately. As discussed below, the Legal Permanent Resident must also have a Social Security number (SSN).

In addition to legal permanent residency (immigrant visa status), the U.S. Immigration & Naturalization Service (INS) also maintains several other nonimmigrant visa programs that allow aliens to be employed in the United States. Among the most used, and most likely to be reviewed by the Archdiocese, nonimmigrant visas that provide for employment authorization are:

- the R visa (for religious workers);
- the H-1B visa (for specialty occupations);
- the L visa (intra-company transfers);
- the F visa (students who are allowed to work in the area of their studies for one year after the completion of those studies).

Each of the above referenced visa programs require that an application be submitted to and approved by the INS. In the application process, the sponsoring U.S. employer must designate the title and description of the job offered to the individual. In order for an individual with such a visa to remain in valid INS status, he/she must work under the terms of the visa that was granted (i.e. in the position designated in the application).

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Under no circumstances may an individual with a B visa (visitor visa) or no status at all be employed by a U.S. entity.

All individuals, alien or otherwise, must have valid social security numbers in order to be employed by a U.S. entity. Any individual with legal permanent resident status or an employment authorized visa may take proof of his/her status to a Social Security office and obtain a number and account based on that status.

An I-9 form must be completed on all individuals hired. A copy of the I-9 form should be retained in the personnel file of each employee. Also, a separate file should be maintained which contains all I-9 forms, so that access to the I-9 forms may be given to the INS without revealing other personnel documents. As long as the SSN and other identification appear valid on the face of each document, note that no further investigation should be conducted, since the Immigration Control and Reform Act has strict nondiscriminatory provisions which prohibit unwarranted scrutiny of matters related to the citizenship or valid work status of aliens. However, please be advised that certain numbers are not used for SSNs. A valid SSN must have nine (9) digits. The first three (3) digits are called the "area numbers". The next two (2) digits are called the "group numbers", and the last four (4) digits are known as the serial numbers. No SSNs with a 000 area number, or an area number in the 800 or 900 series are valid. Also, no SSNs with a 00 group or 0000 serial number have been issued.

III. Independent Contractors

Various tests under tax laws as well as the Fair Labor Standards Act have developed to determine whether an individual is an employee or an independent contractor.

Courts interpreting the Fair Labor Standards Act have developed an "economic realities" test as the basis for determining an individual's employment status. In general, employees are those who are as a matter of economic reality dependent upon the business to which they render service. *Bartels v. Birmingham*. 332 U. S. 126, 130(1947); *Henderson v. Inter-Chem Co., Inc.*, 41 F.3d 567 (10th Cir. 1994). Under the economic realities test, the following facts are weighed:

1. The degree of the alleged employer's right to control the manner in which the work is to be performed;
2. The alleged employee's opportunity for profit or loss depending upon his managerial skill;
3. The alleged employee's investment in equipment or materials required for his task, or employment of helpers;
4. Whether the service rendered requires a special skill;
5. The degree of permanence of the working relationship;
6. Whether the service rendered is an integral part of the alleged employer's business.

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Another major consideration is whether the individual offers his or her services to more than one entity. Individuals who perform work for multiple persons or entities are not economically dependent upon any one business.

Applying these above factors to an example, consider a school that hires an individual to paint the gymnasium. The painter is hired to perform a complete task as opposed to being directed on the details of how and when to perform that task. The painter sets a fee for the whole job. The painter may or may not hire helpers to assist in completing the painting job. The painter uses his/her own brushes, ladders, drop cloths and other equipment to perform the task. The task of painting a gymnasium is a singular task, and the individual has no anticipation of continuing the relationship with the contracting entity past the completion of that task. The service rendered is one, which has no relationship to the school's "business" of teaching students. The painter also takes jobs from other entities and companies. In this example, the painter would likely be found to be an independent contractor under the economic realities test.

The test employed by the Internal Revenue Service is a 20-factor test and somewhat more complex; however, the tests are very similar in terms of the facts examined, with the IRS placing much emphasis on the control and direction exerted over the individual in the performance of his or her work.

As described above, while the fee or other form of compensation granted to an independent contractor is income to him or her, the independent contractor has no true employment relationship with the contracting entity, and thus, other employment laws do not apply. The sole obligation of the contracting entity would be to issue the business or individual performing the task an annual 1099 form and submit same to the IRS and Missouri Department of Revenue, if any cash fees (or the value of other benefits such as tuition credits) exceed \$600 annually.

IV. Volunteers Volunteer or Employee?

Federal and state statutes do not clearly define "volunteers" who perform tasks for private and/or nonprofit entities. However, the courts, interpreting various requirements related to fair labor standards and taxation laws, have established some guidelines to determine whether individuals are true volunteers or whether they are employees. There is also some guidance in federal statutes and regulations defining a volunteer as an individual performing services for a non-profit organization or governmental entity who does not receive compensation for his or her services other than reasonable reimbursement for expenses actually incurred, or any other thing of value in lieu of compensation in excess of \$500 per year. This includes voluntary service as a director, officer, trustee, or direct service volunteer.

²Only one federal statute addresses payments to volunteers of non-profit private organizations. There is a single exemption in the Fair Labor Standards Act providing that individuals who volunteer their services to private nonprofit food banks may receive groceries from the food banks without destroying their volunteer status. 29 U.S.C. §203 (e)(5).

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In general, an individual will be considered to be a *volunteer* and not an employee when:

1. the individual is without pressure or coercion performing services for civic, charitable, or humanitarian reasons; and
2. the individual performs these services without promise, expectation or receipt of compensation for services rendered in any form (be that money, goods, shelter, food, or other benefits); and
3. the “businesses” of the entity for whom the services are performed are not ordinary commercial activities in competition with other commercial businesses.

For example, the United States Supreme Court held that “associates” who performed services for a non-profit religious organization which did not solicit contributions from the public, but derived its income from the operation of a number of businesses which were engaged in commercial activities in competition with other commercial businesses, were “employees” under the Fair Labor Standards Act and not volunteers. The businesses included service stations, retail clothing and grocery outlets, the production and distribution of candy, hog farms, and construction companies. The associates all testified that they considered themselves to be volunteers. They neither expected nor received cash wages, but they did expect and receive food, clothing, shelter and medical benefits. The court found that the benefits were simply wages in another form under an “economic realities” test of employment; and that therefore the associates were employees subject to minimum wage and overtime laws. *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290 (1985).

While the *Alamo* case did not reach to tax and other consequences, the same theory would apply. If an individual receives compensation in forms other than cash wages, the individual will be an employee, and the fair market value of the alternative type of compensation will be subject to federal and state income tax, as well as FICA and Medicare taxes. Other employment laws, if otherwise applicable to the type of work performed, would also apply, e.g. workers’ compensation coverage, child labor laws, and immigration laws.

Reimbursements

There are no federal or state statutes, which define or explain reimbursements, gifts, or granting of other benefits to volunteers of private non-profit entities, which would be permissible without converting volunteers into employees and without making the sums or benefits received subject to income and other taxation. However, there are federal statutes, which delineate reimbursements to volunteers for public entities which do not destroy the person’s classifications as volunteers.³ These include reimbursements for:

³See 29 CFR §553.106 Payment of expenses, benefits and fees to volunteers of a state or local public agency; 29 CFR §70.3 Volunteers in projects subject to Davis-Bacon and HUD.

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- Approximate out-of-pocket expenses for cost of meals and transportation;
- Expenses for items such as uniforms, cleaning expenses, or wear and tear on personal clothing worn while performing volunteer work;
- Nominal gifts or gratuities, such as length of service awards (a value of a maximum of \$25 will be considered “nominal”);
- Parking fees.

It would be reasonable to provide the above-enumerated benefits to volunteers without risking the loss of their status as volunteers.

Other benefits, such as inclusion of volunteers in group insurance plans (pension, health, life, disability), are allowable under some statutory regulations for *public entities and projects*. However, extending these benefits to volunteers in Archdiocesan entities is **not** allowed under any circumstance per the plan document.

Note that nontaxable reimbursements for similar types of ordinary and necessary expenses may be granted to employees as well as volunteers.

Caution

In general, persons who are employed by an entity and receive wages will not be considered as volunteers for that same entity if they perform the same or similar duties on a non-paid basis. For example, if a nurse worked in a hospital as a paid employee and then “volunteered” extra hours at the same hospital performing similar duties, he/she would likely be found to be an employee entitled to minimum wage and overtime for those extra hours. An Archdiocesan or parish employee who wants to perform volunteer services should be encouraged to perform different types of tasks for an Archdiocesan entity which does not employ him/her. For example, a high school custodian would likely be viewed as a true volunteer if he/she freely chose to deliver meals to the elderly for a different agency during his/her free time.

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V. Tuition Waivers and Credits

Tuition Waivers and Credits for Employees/Dependents of Educational Institutions

Some Archdiocesan educational institutions grant tuition waivers, reductions, and credits to certain of their employees as a fringe benefit of their employment. Section 117 of the Internal Revenue Code provides that gross income does not include any amount received as a “qualified tuition reduction.” A “qualified tuition reduction” means the amount of any reduction in tuition provided to an employee of an “educational organization” *which is defined as one which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.*

This exclusion of tuition waivers, reductions or credits applies to any “employee or any person treated as an employee” of the type of educational institution just described. **Exclusion of gross income from such tuition credits or waivers is not limited to educators, teachers, or academic administrative personnel. Rather, such tuition benefits may be granted to any employee of the educational institution.**

Persons treated as employees for purposes of the exclusion from income of tuition reductions or credits for employees at educational institutions include the following:

1. Retired and disabled employees and their spouses;
2. Spouses of current employees;
3. Dependent children of employees. A dependent child means any child who is a dependent of the employee in the usual sense of the tax code or a child both of whose parents are deceased and the child has not attained the age of 25.

In order to be a qualified tuition reduction, the program for granting the reduction must not discriminate in favor of highly compensated employees. In other words, the reduction must be available on essentially the same terms to each member of a group of employees defined by certain job classifications. For example, it may be reasonable for Archdiocesan educational institutions to grant tuition credits or reductions only to teachers. However, it would also be reasonable to expand that classification to any one or more of administrators, clerical help, maintenance and kitchen workers, or any other classification of worker who works in the educational institutions. The broader the expansion, the less likely that the program for tuition credits, waivers or reductions could be viewed as being discriminatory in favor of more highly compensated employees. The Internal Revenue Code contains a precise definition of highly compensated employees, and if the tuition reductions are to be limited to higher paid employees, legal counsel should be consulted to ensure that the anti-discrimination tests are met.

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Note also that a qualified tuition reduction may be granted to employees or those treated as employees to be used at *any* “educational organization” as defined above. In other words, the credit need not be to the school, at which the employee works, and need not be to another Archdiocesan school or even to a Catholic school.

Also, the “qualified tuition reduction” may take the form of a waiver or an actual monetary reimbursement to the employee.

In addition, it is acceptable for the Archdiocese to maintain a fund for purposes of disbursements of reimbursements or tuition waivers either to the educational institution at which tuition is incurred or to the individual. Assessments to parish schools or Archdiocesan educational institutions to develop and maintain this fund will have no impact on these issues and is acceptable.

Qualified tuition reductions excludable from gross income only apply to tuition for education *below the graduate level*. Thus, for example, if tuition credits were granted for pursuit of a Master’s Degree, Law Degree, Medical Degree, etc., the value of the credits granted would be included in the gross income of the individual for purposes of income, FICA, and Medicare taxes, unless excluded under a different unrelated provision, such as a scholarship.

Since the tuition waivers or credits are excludable from gross income, these amounts may also be excluded from the individual’s wages for purposes of reporting, withholding, and payment of income, FICA and Medicare taxes.

Note that the exclusion from gross income of tuition waivers and credits only applies when this benefit is granted to an actual employee or one treated as an employee as explained above. These benefits could not be granted to independent contractors who perform occasional and specific tasks for an educational institution. If a tuition credit or waiver were granted to an independent contractor, the value of such a credit would be imputed to that individual as income in the same manner as any other payment for services to an independent contractor.

Tuition Waivers and Reimbursements for Archdiocesan Employees at Facilities Which Are Not Educational Institutions

Note that qualified tuition reductions or waivers excluded from gross income under Section 117 of the Internal Revenue Code described above may be granted only to employees of *educational* institutions. Thus, employees at other Archdiocesan entities, such as Cathedral Tower, Villa Maria, St. Patrick Center, etc. are not eligible for tuition reductions, which are excluded from gross income under Section 117.

However, under a different IRS Code provision, Section 127, employees at entities which are *not educational institutions* may be eligible for exclusion from gross income of amounts paid or expenses incurred by the employer for educational assistance to the employee only (not spouses or dependents) up to an annual maximum of \$5250, if certain conditions are met.

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These conditions include, but are not limited to: (1) the existence of a separate written plan for such educational assistance; (2) nondiscriminatory employee eligibility; (3) no availability of a choice to employees between higher pay or educational assistance; (4) no payments or reimbursements for an educational program for sports, games or hobbies. If the Archdiocese considers adopting any such program for its noneducational entities, more information should be obtained and review by legal counsel sought before implementation of such a plan.

VI. Other Fringe Benefits

There are several other fringe benefits, which may be excluded from gross income under the Internal Revenue Code. In general, gross income does not include any fringe benefit which qualifies as a:

- “No Additional-Cost Service” (a service offered for sale to customers in the ordinary course of the business of the employer of the employee where the employer incurs no substantial additional cost by providing the service to the employee);
- A Qualified Employee Discount (any employee discount with respect to property or services, to the extent that the discount with respect to property does not exceed the gross profit percentage of the normal price of the item or, in the case of services, 20% of the price at which the services are being offered by the employer to customers).
- Working Condition Fringe (any property or services provided to an employee to the extent that if the employee paid for that property or service, it would be allowable as a deduction under the tax law provisions for deducting ordinary and necessary trade and business expenses).
- DeMinimis Fringe (any property or service the value of which is so small as to make accounting for it unreasonable or administratively impractical).
- Qualified Transportation Fringe (transportation in a commuter vehicle between the employee’s residence and place of employment or a transit pass for public transportation or qualified parking). Any fringe benefits on the basis of qualified transportation fringes may not exceed \$65.00 per month for the furnishing of transportation or transit passes or \$175.00 per month in the case of parking.
- Qualified Moving Expense Reimbursement (any amount for which an employer reimburses an employee if that same amount would have been deductible under the tax laws had it been paid by the employee without reimbursement). This would only apply to long distance moves by employees recruited from other areas.

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As with tuition credits for Archdiocesan employees, application of these fringe benefits in a discriminatory fashion to highly compensated employees is prohibited.

Again, the federal regulations concerning the exclusion of these types of fringe benefits from gross income are complex. If the Archdiocese plans to implement any one or more of these benefits, legal counsel should be consulted prior to implementing a specific plan.

VII. Barter Type Transactions

Federal labor laws and tax laws do not limit compensation to actual cash wages. Rather, anything of value given as a payment for services will be considered to be compensation. This would include the reasonable cost or value of:

- Board, lodging or other facilities
- Cancelled debts
- Anything else of value paid in exchange for work unless it qualifies for an exclusion under other laws discussed earlier.

As such, these benefits granted to individuals in exchange for services are subject to income taxation and FICA and Medicare taxation. Also, depending upon the employing entity and job classification, all provisions of the Fair Labor Standards Act relating to minimum wage, overtime, and oppressive child labor would apply. Immigration laws and state workers' compensation laws also apply.

If the bartered transaction resulted in goods or services being provided to an *independent contractor*, it will result in compensation to the independent contractor. In these instances, while the reasonable value of the benefit or item granted to an individual will be taxable to the individual, the contracting entity will not be subject to:

- Minimum wage and overtime
- Child labor restrictions
- Immigration laws
- Withholding of or contribution for FICA and Medicare taxes
- Issuance of a W-2 form. However, if the value is \$600 or more in one year, the contracting entity should issue a 1099 form for the reasonable value.

Situations involving bartered services are very fact specific, and the appropriate handling of these matters will depend upon each situation.

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VIII. Sick Leave Sharing

There are no provisions of state or federal law which would impact a policy of allowing sick leave, which has been accrued but not used by one or more employees, to be granted to another employee in need of the sick leave. The only precaution that must be taken is to make certain that the recipient of other employees' sick leave donations is the person to whom the paid time off is credited for purposes of income tax withholding, FICA, and Medicare taxes.

Accrued vacation days and accrued sick days are not considered to be wages under Missouri law, and, unless the employing entity has agreed to pay for one or other, or both, of this time credited to an employee's account for paid time off, there is no obligation to pay an employee for these amounts upon the termination of the employee's employment. Likewise, if an employee does not use accrued time off and is not paid extra for that unused time during his or her employment, there are no tax or labor law implications. The simple rule is that the person paid is the person taxed.

B. Application to Various Job Classifications

I. Substitute Teachers

Substitute teachers in elementary and secondary schools would, under almost all circumstances, be viewed as employees even though they work on a casual or "call-in" irregular basis. As employees, the compensation received by the Substitute Teachers qualifies as wages. Accordingly, the employing entity must:

- Withhold federal, state, and local income taxes
- Withhold FICA and Medicare taxes
- Pay its portion of FICA and Medicare taxes to the federal government
- Issue federal and state W-2 forms annually
- Abide by immigration laws

While elementary and secondary schools are, by specific statutory provision under the Fair Labor Standards Act, subject to minimum wage and overtime laws, the teachers in elementary and secondary schools (but not preschools) are exempt from that law's minimum wage and overtime provisions.

Unless the employing entity is incorporated, the school or parish may select the frequency with which it pays the substitute teachers, e.g. monthly, quarterly, annually. However, if the employing entity is incorporated, it must pay the teachers not less frequently than monthly.

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II. Playground Monitors, Lunchroom Helpers, Teacher Aides

Playground Monitors in elementary and secondary schools would, if paid wages or given other remuneration, be considered to be employees. Therefore, the employing entity must:

- Withhold federal, state, and local income taxes
- Withhold FICA and Medicare taxes
- Pay its portion of FICA and Medicare taxes on the wages to the federal government
- Issue federal and state W-2 forms annually
- Effective January 1, 2015 pay a minimum wage of \$7.65 per hour and overtime pay of 1 1/2 times an employee's regular rate if the work hours exceed 40 within one work week
- Comply with child labor law restrictions
- Abide by immigration laws

If the employing entity is not incorporated, it may select the frequency with which it pays Playground Monitors, e.g. monthly, quarterly, etc. If the employing entity is incorporated, then Playground Monitors would need to be paid at least semi-monthly.

However, if the Playground Monitors volunteer their time, with no expectation of wages (as discussed more fully in Section A - IV - Volunteers), they would then not be considered to be employees, but volunteers. The school and/or parish may reimburse volunteers for out-of-pocket expenditures such as transportation costs, meal costs, clothing/shoe costs, and equipment costs. If they are true volunteers, these reimbursements for expenses should not be considered to be wages, and therefore, not be subject to FICA, Medicare, or income taxation. Minimum wage and hour laws, child labor law restrictions, immigration laws, and workers' compensation coverage would not apply to volunteer activities.

Other positions staffed by schools and parishes on a volunteer basis, such as Lunchroom Helpers and Teacher Aides, would follow the same reasoning as that applied to Playground Monitors, i.e., if the individuals have no expectation of wages and are paid no wages, they would be considered to be volunteers who could receive reimbursements. However, if these individuals expect and are in fact paid wages or fees, all of the same requirements listed above for employed Playground Monitors would apply.

Minimum Wage Resources:

Federal Department of Labor: www.wagehour.dol.gov

Missouri Department of Labor: www.dolir.mo.gov/ls/minimumwage

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III. PSR Teachers

PSR Teachers could be viewed in several ways. If they have no expectation of wages, and are not in fact paid a wage or stipend, then they would be volunteers who may be reimbursed for expenses and likely could also be given an annual nominal token of appreciation gift as long as the gift is not anticipated or expected. "Nominal" generally means cash or items with a value of \$25 or less.

On the other hand, if the PSR Teachers perform their services in anticipation of receiving a stipend or wage, they would be considered to be employees. If PSR Teachers are employees and not true volunteers, the employing entity must:

- Withhold federal, state, and local income taxes
- Withhold FICA and Medicare taxes
- Pay its portion of FICA and Medicare taxes to the federal government
- Issue federal and state W-2 forms annually
- Pay a minimum hourly wage of \$7.65 per hour and overtime pay of 1 1/2 times an employee's regular rate if work hours exceed 40 within one work week
- Abide by immigration laws
- Abide by child labor laws

If the PSR Teachers are employees and not volunteers, they could be paid annually, semi-annually or on any schedule the church selects. The Missouri law on frequency of wage payments would not apply, as long as the employing entity is not incorporated.

IV. Evening Help

Persons engaged on a non-volunteer basis to perform occasional work or to work part-time in the evenings are considered in the same manner as all other employees. Accordingly, the employing entity must:

- Withhold federal, state, and local income taxes
- Withhold FICA and Medicare taxes
- Pay its portion of FICA and Medicare taxes on the wages to the federal government

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13.1.1 Guidelines on Selected Compensation and Employment Issues

- Issue federal and state W-2 forms annually
- Pay a minimum wage of \$7.65 per hour and overtime pay of 1 1/2 times an employee's regular rate if the work hours exceed 40 within one work week*
- Comply with child labor law restrictions
- Abide by immigration laws

There are no federal or state requirements for any evening differential pay.

If the evening help is employed by an entity that is not incorporated, the frequency of pay may be selected in any manner by the employing entity. If the employing entity is incorporated, then the pay to those who do not qualify as exempt executive, administrative or professional employees must be not less frequent than semi-monthly.

*If youths under 20 years of age are employed as evening or occasional help, then the employing entity shall pay newly hired employees the minimum wage as established by the State of Missouri.

V. Referees

The applicability of various federal and state laws as related to the compensation and hiring of Referees depends upon how or by whom these individuals are paid, whether they furnish their own equipment and uniforms, whether they work under the direction and supervision of the hiring entity, or whether they hire themselves out to multiple entities, etc.

Depending upon the facts in each situation, Referees could be either employees or independent contractors. If they are hired for specific events by multiple entities (e.g. various parishes or schools), and furnish their own equipment/uniforms *and* are paid a set fee for each event or series by each individual hiring entity (as opposed to an hourly wage) *and* perform their referees' tasks without direct supervision or control of the hiring entity, they likely qualify as independent contractors as opposed to employees. (See Section A -III — Independent Contractors.)

If Independent contractors, they are:

- Not subject to minimum wage and overtime laws
- Not subject to withholding tax, or to FICA and Medicare withholding or payment by the contracting entity

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13.1.1 Guidelines on Selected Compensation and Employment Issues

- Should not be issued a W-2 form but should be issued a 1099 form if annual fees to any individual are \$600 or more
- Are not subject to federal or Missouri child labor restrictions. Under Missouri law, the exemption is only applicable if all the sporting event players are under 18 years of age and the event is sponsored by a public body or a not-for-profit entity. VAMS §294.011 (7) (d)

On the other hand, if referees are hired by primarily by one employing entity, such as the CYC, are then assigned to referee games and sporting events at various parishes **or** sports fields, are under the direction and supervision of the CYC **or** hiring entity, they would likely be considered to be employees of the CYC or other employing entity.

If employees, then the employing entity must:

- Withhold federal, state, and local income taxes
- Withhold FICA and Medicare taxes
- Pay its portion of FICA and Medicare taxes on the wages to the federal government
- Issue federal and state W-2 forms annually
- Pay a minimum wage of \$7.65 per hour and overtime pay of 1 1/2 times an employee's regular rate if the work hours exceed 40 within one work week
- Comply with federal child labor law restrictions*
- Abide by immigration laws

Note also that the Missouri Workers' Compensation statute exempts from its coverage persons providing services as adjudicators, sports officials, or contest workers for interscholastic activities programs or similar amateur youth programs, *unless* the persons so employed work in another capacity for the employing entity-, **e.g.**, a teacher or custodian who also works as a referee would need to be covered for both occupations by the workers' compensation policy or plan.

*The Missouri child labor law exempts referees where all players are under 18 years of age and the event is sponsored by a public body or a not-for-profit entity. The employing entity would only be required to comply with federal child labor law restrictions which prohibit employment of children under age 14. Limit the hours of work for 14 and 15 year olds to hours outside school hours, no more than 3 hours in a school day, no more than 8 hours on a non-school day, no more than 18 hours per week when school is in session, no more than 40 hours per week when school is not in session, between 7:00 a.m. and 7:00p.m. However, between June 1 and Labor Day the evening hour is extended to 9:00p.m. Additionally, no Work Certificates would be required for 14 and 15 year olds.

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13.1.1 Guidelines on Selected Compensation and Employment Issues

VI. Summertime Help

If youths are employed during the summer to perform light maintenance tasks such as cleaning classrooms, weeding flower beds, organizing or stocking sports or school equipment, etc., these individuals would be considered to be employees. Accordingly, the employing entity must:

- Withhold federal, state, and local income taxes
- Withhold FICA and Medicare taxes
- Pay its portion of FICA and Medicare taxes on the wages to the federal government
- Issue federal and state W-2 forms annually
- Pay a minimum wage of \$7.65 per hour and overtime pay of 1 1/2 times an employee's regular rate if the work hours exceed 40 within one work week*
- Comply with child labor law restrictions
- Abide by immigration laws

In hiring youths for summertime activities, be advised that all child labor law restrictions (See Section A - I — Child Labor Laws) would apply. In particular, note that the employment of children under the age of 14, except in agriculture and in the entertainment industry, is prohibited by both federal and state law.

*Youths, if under 20 years of age, shall be paid the minimum wage as established by the State of Missouri.

VII. Casual Babysitting and Companionship Services

The Fair Labor Standards Act does not apply to employees employed on a casual basis either to provide babysitting services or to provide companionship services for individuals who because of age or infirmity are unable to care for themselves. However, other laws would apply to these workers. If babysitters or companions are employees, and not independent contractors (see Section A - III — Independent Contractors), the employing entity must:

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13.1.1 Guidelines on Selected Compensation and Employment Issues

- Withhold federal, state, and local income taxes
- Withhold FICA and Medicare taxes
- Pay its portion of FICA and Medicare taxes
- Issue federal and state W-2 forms annually
- Abide by immigration laws

Note that the Fair Labor Standards Act exempts from coverage for minimum wage, overtime pay, and child labor laws employees employed by an entity which would qualify as a recreational establishment or organized camp which does not operate for more than 7 months in any calendar year. Camps or summer recreational programs established by Archdiocesan entities may qualify under this exception. If there is a possibility that this exemption may apply, more detailed information should be obtained. However, all laws on tax withholding, tax payments, and immigration restrictions would apply.

VIII. Yard Work

Individuals performing yard maintenance who provide their own equipment, set their own work schedule, work for multiple entities, and sometimes hire other individuals to assist them would generally be recognized as independent contractors. As independent contractors, they do not come under the laws relating to employment and payment of wages. Thus, as to independent contractors, the contracting entity is *not subject to*:

- Minimum wage and overtime laws
- Child labor laws
- Withholding of income taxes or FICA or Medicare
- Payment of FICA or Medicare taxes
- Workers' Compensation Coverage
- Requirements under immigration laws

However, if an individual or business is paid \$600 or more annually, the contracting entity must prepare and submit an annual 1099 form for non-employee compensation.

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13.2 Job Descriptions

C. Conclusion and Additional Information

The correct treatment of individuals as employees versus independent contractors, as employees versus volunteers, and as employees in various job classifications exempted by federal and state labor laws is often a fact specific determination. Accordingly, if questions arise, Human Resources should be consulted.

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13.2 Job Descriptions

Increasing demands on scarce cash resources and escalating needs for automated record keeping are reasons for attracting and retaining qualified staff to assist in the prudent management of our parishes.

It was for this reason among others that the Archdiocese recently established the Office of Human Resources. This Office has developed separate resource manuals for salary administration and lay employee benefits to all parishes which are available for distribution.

Because of the number of requests from parishes, we enclose a sample job description for a Business Manager and one for a Parish Bookkeeper. The duties and responsibilities may vary from parish to parish but these job descriptions provide a starting point before tailoring the position(s) to any one parish's needs.

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13.2.1 Business Manager

Sample Job Description

Position

The Business Manager will assist the pastor, as directed, in the administration of the human, financial and physical resources of the parish.

Personal Qualifications

- Practicing Catholic with an integrated and balanced personal spirituality and a commitment to continuing faith formation.
- Demonstrated involvement in current parish and willing to become an active member of this parish.
- Sensitive to the pastoral mission of the church with knowledge and experience at the parish level.
- Willing to participate in continuing education in parish administration.

Professional Qualifications

- BS in Business Administration and/or
- Three to five years of applicable, job related experience in:
 - Business Management
 - Personnel management
 - Fiscal management
 - Facilities management
 - Computer systems management and computer literacy

Reporting Relationships

- The Business Manager will be hired by the pastor after consultation with his advisors and will be directly accountable to the Pastor.
- The following positions within the parish will report to the Business Manager:
 - Bookkeeper
 - Secretary
 - Maintenance

Salary and Benefits

- This is a full time, salaried position with a salary determined by qualifications.
- Benefits are consistent with Archdiocesan guidelines and include medical coverage, paid holidays, vacation and retirement plan.
- Work hours are flexible to meet parish needs and include evening and weekend meetings and other special occasions.

Administrative Duties

- Supervise designated parish staff members.
- Coordinate the implementation and development of personnel policies for all parish employees, with special attention being given to review and revision of job descriptions and organization of materials and procedures for performance reviews.
- Coordinate and manage the financial business of the parish.
- Coordinate and manage implementation of the annual budget process in the parish.
- Coordinate the implementation and management of all development activities on behalf of the parish and school programs.

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13.2.1 Business Manager

Administrative Duties, continued

- Develop regular financial reports for the parish at-large and for designated committees and organizations that would summarize and analyze the present and future status and viability of parish and school programs.
- Oversee the development and use of computer and communications technology by all employees of the parish office.
- Track the capital improvement needs of our parish and to manage the development and implementation of planning in response to such needs.
- Develop five-year facilities and equipment requirements for parish school and administration offices.
- Develop and implement an effective means of identifying, recording, and coordinating the use of parish volunteers who offer the gift of their time and talent.
- Coordinate and report progress of strategic planning initiatives undertaken by parish.
- Develop and implement a wide range of activities and initiatives, including published materials, that would foster outreach to and a strong sense of belonging among parish members, especially those who are new residents within the area and those who are returning to an active practice of their faith and religion.
- Explore the development of ongoing service projects/opportunities within the parish-deanery for children and youth in the parish.
- Oversee the management and analysis of parish census information.
- Coordinate activities with deanery and Archdiocesan peers.
- Other duties as assigned by the Pastor.

Parish Information

- Pastor
- Associate Pastor
- Address
- Phone
- Fax
- Number of Registered Families
- Annual Expense Budget
- School Enrollment
- PSR Enrollment
- Staff Size
- School
- Parish Administration

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13.2.2 Bookkeeper

Sample Job Description

Position

The Bookkeeper will assist the Business Manager and/or the Pastor, as directed, in initiating, recording and preparation of all accounting transactions involving payroll, accounts receivable, accounts payable and general ledger.

Reporting Relationships

The Bookkeeper will be hired by the Business Manager or Pastor whichever is applicable after consultation with the Parish Finance Committee. The Bookkeeper will be directly accountable to the Business Manager or Pastor whichever is applicable.

Salary and Benefits

- This is a full time, salaried position with a salary determined by qualifications.
- Benefits are consistent with Archdiocesan guidelines and include medical coverage, paid holidays, vacation and retirement plan.
- Work hours are flexible to meet parish needs and include evening and weekend meetings and other special occasions.

Personal Qualifications

- Practicing Catholic with an integrated and balanced personal spirituality and a commitment to continuing faith formation.
- Demonstrated involvement in current parish and willing to become an active member of this parish.
- Sensitive to the pastoral mission of the church with knowledge and experience at the parish level.
- Willing to participate in continuing education in accounting and computer skills.

Professional Qualifications

- High School Diploma
- Three to five years related experience and/or training in accounts receivable, payable, payroll and general ledger.
- Ability to read, analyze, and interpret technical procedures and governmental regulations.
- Ability to effectively present information and respond to questions from Business Manager and/or Pastor.
- Ability to calculate figures and amounts such as discounts, interest, and percentages.
- Working knowledge of approved parish software.
- Working knowledge of word processing and spreadsheet applications.

Bookkeeping Duties

- Prepares payroll.
- Prepares payroll taxes, payments, and reports.
- Prepares and files reports and payments for employee benefits.
- Prepares bank deposits and records receipts.
- Provides family and tuition information to FACTS or SMART, if used.

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13.2.2 Bookkeeper

Bookkeeping Duties, continued

- Reviews and reconciles FACTS or SMART tuition contracts and payments, if used.
- Maintains subsidiary for accounts receivable as needed.
- Prepares vouchers including coding and payments of outstanding invoices.
- Prepares and records general ledger journal entries.
- Reconciles general ledger.
- Prepares monthly financial statements.

Parish Information

- Pastor
- Associate Pastor
- Address
- Phone
- Fax

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13.3 Employee Background Verification

The Archdiocese of St. Louis advocates that parishes do background verification on all lay employees who handle accounting and financial matters for the parish. The following types of verification are recommended:

1. Previous Employer Verification
2. Previous Employer In-Depth
3. Personal Reference Check
4. Criminal Record Check, Federal, State, and County
5. Education/Credential Verification (if claimed on the Employment Application)
6. Credit History
7. Social Security Trace with Hawk Alert
8. Division of Family Services (DFS) Check
9. Worker's Compensation

The Human Resources Office of the Archdiocese has reliable vendors to conduct the verifications.

The Parish can readily do 1, 2, 3, 4, and 8 above. The remaining items are relatively inexpensive and can be done easily by an on-line professional service.

For additional guidance concerning this matter, please contact the Managing Director of Human Resources at 314.792.7540.

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13.4 Safe Environment Program

All adults who work or volunteer around children in an archdiocesan program must be in full compliance with the Charter of the Protection for Children and Young People” as approved by the United States Conference of Catholic Bishops and agreed to by the Archdiocese. For compliance information go to the Safe Environment section on the Archdiocese of St. Louis website, <http://www.archstl.org/sep> or call 314.792.7271.

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13.5 Contracts for Elementary School Educators

Effective for the 2015-2016 school year, employment contracts for all new elementary school teachers will run from August 1 through July 31.

Contracts for existing teachers may continue to run from September 1 through August 31 but, as budgets permit over time, all teachers' contracts should run from August 1 through July 31.

Contracts for school principals will continue to run from July 1 through June 30.