

## **VOLUNTEER AND TRAINEE GUIDELINES<sup>1</sup>**

Volunteers and trainees are encouraged and welcomed by Pace University. The University is pleased to include in its community individuals who wish to donate their services as well as those whose academic and professional experiences will be enhanced by participation as a trainee or similar position.

Ordinarily, an employment relationship is created when individuals provide services to an employer and consequently the individuals are considered to be employees entitled to wages. However, an employment relationship is not created by volunteers who donate their services to a non-profit or public institution for their own personal purposes or pleasures. Trainees, who in furtherance of their academic and professional development provide services to a non-profit, public or private institution incidentally to a bona fide training program, also are not considered employees.

There are legal consequences if individuals providing services to an employer are improperly classified. The United States and New York State Departments of Labor are responsible for ensuring that employers do not escape their legal obligation to pay employees wages (including overtime) by improperly classifying employees as volunteers or trainees. An individual who is entitled under the law to compensation cannot waive that right and therefore the employer and the individual cannot agree to forego compensation that is required by law. An employer found to have misclassified an employee as a volunteer or trainee, may be subject to civil penalties such as back pay and benefits and liquidated damages, as well as criminal actions. Thus, it is very important at the onset for the employer and the individual to clarify the nature and purpose of their relationship.

### **VOLUNTEERS**

There are many opportunities for volunteers at Pace University, but there are certain important exceptions. For example, a volunteer generally cannot donate services performed by paid employees or that cause an employee to be displaced or to incur reduced work hours. The services of a volunteer must be of a charitable or humanitarian nature typically associated with volunteer work. If it is determined that a volunteer's proposed services are the same or similar to those for which an employee is compensated, the prospective individual volunteer must not be permitted to provide those services on a volunteer basis. However, even if the proposed volunteer services do not duplicate those of employees, the analysis of the individual's status is not complete. There are additional factors that must be examined in order to determine whether the individual is properly classified as a volunteer or employee. Those factors include:

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<sup>1</sup> This *Volunteer and Trainee Guidelines* may be changed from time to time at the sole discretion of Pace University and such changes may be with or without prior notice.

1. Whether the donated services are entirely voluntary, of a charitable and/or humanitarian nature, and for the volunteer's own personal purpose or pleasure.
2. Whether the individual derives the principal benefit from the donated services.
3. Whether the donated services are on a part-time basis.
4. Whether the individual expects or has been promised wages or other forms of compensation.<sup>2</sup>

University-Employee Volunteers. The factors above apply also to University employees who wish to volunteer their services to the University. Consistent with the factors identified above, a University employee may volunteer services only if those services are not the same as or similar to the employee's job duties and responsibilities. Further, a University employee may perform volunteer services only outside of the employee's normal working hours. Thus, for example, a secretary whose normal work hours are 9:30 am to 5:30 pm, Monday through Friday, may not volunteer secretarial duties at any time, but probably can volunteer to take tickets at a University event in the evening or on a weekend day.

Whether the proposed services are compensable or donated and consequently whether the individual must be classified as an employee or volunteer, respectively, is determined on a case by case basis and depends on the totality of the circumstances.

## **TRAINEES**

In order to be classified as a trainee, intern, extern, apprentice or a similar position, the absence of an employment relationship must be demonstrated. In order to be exempt from the requirement that the University pay wages, all trainees, interns, externs, apprentices and similar positions must satisfy each of the following eleven factors:

1. Even though it includes the actual operation of the facilities of the University, the training is similar to training given in a vocational school or academic educational instruction, that is, the training is a practical application of material taught in a classroom; and
2. The training is for the benefit of the trainee and not to meet the labor needs of the University; and

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<sup>2</sup> Volunteers may not be paid wages, but may be paid reasonable expenses such as transportation or meal costs without losing their volunteer status.

3. The trainees do not displace regular employees or fill vacant positions, and employees have not been relieved of assigned duties in order to transfer those duties to a trainee; but, trainees work under the close supervision of University employees; and

4. In providing the training, the University derives no immediate advantages from the activities of the trainees, and on occasion the University's operations may actually be impeded; and

5. The trainees are not necessarily entitled to a job at the conclusion of the training period and are free to be employed elsewhere in the same field; and

6. The University and the trainees understand that the trainee is not entitled to wages for the time spent in training, and each trainee is given written notice that he or she will not receive any wages for the training, and is not considered to be an employee for purpose of the minimum wage law; and

7. The trainees do not receive employee benefits; and

8. The training is general so as to qualify the trainees to work in any similar business rather than designed specifically for a job with the University; and

9. Any clinical training is performed under the supervision and direction of individuals knowledgeable and experienced in the activities being performed; and

10. The screening process for the internship program is not the same as for employment, and does not appear to be for that purpose, but involves only criteria relevant for admission to an independent educational program; and

11. Advertisements for the training program are couched clearly in terms of education or training, rather than employment, although the University may indicate that qualified graduates may be considered for employment.

If each of the eleven factors is satisfied, no employment relationship is created, no wages must be paid, and the individual may be classified as a trainee.

## **PROCEDURE**

Human Resources is responsible for classifying volunteers and trainees in accordance with the factors identified above, and assigning them to appropriate placements. Only if the individual meets a recognized exception to the employment relationship will he or she be classified as a volunteer or trainee not entitled to wages. If it is determined that the proposed volunteer services or trainee experiences are not an exception and thus must be classified as employment, Human Resources will confer with the appropriate University administrators and employees to determine if the services or experiences can be restructured so that the individual can be classified properly as a volunteer or trainee.

In conjunction with the appropriate University administrators and employees, Human Resources shall create a description for each volunteer and trainee position. For volunteer positions, the descriptions will include at a minimum the title of the volunteer position, the services to be provided by the volunteer, and the name and title of the employee overseeing the volunteer activities. Human Resources shall, in conjunction with the appropriate faculty member or academic advisor, create a description for each trainee position.<sup>3</sup> The description will include no less than the title of the position (e.g., alumni marketing trainee, law office intern), the experiences to be provided to the trainee, and the name and title of the University employee overseeing the training program.

Using objective criteria, volunteers will be screened to ensure that they are qualified to provide the proposed services. University employees overseeing the volunteer activities should ensure that volunteers are providing only those services agreed to and deriving the principal benefit from those services. Such employees should provide feedback to volunteers in order to provide encouragement and recognition of their services. Similarly, trainees should be screened to ensure that they are qualified for the position and consequently will benefit from the experience. University employees overseeing the training program should ensure that the trainees' experiences conform to those identified in the trainee position description and the trainees are deriving the expected benefits from their experience at the University.

Human Resources will ensure that each volunteer and trainee completes any applicable safety or other training before providing any services or participating in a trainee program. Human Resources will confer with the appropriate University administrators to determine whether volunteers and trainees should be restricted from participating in certain areas of the University (for example, laboratories where hazardous materials are stored or used) or from having access to confidential financial, employee, donor or student information.

In conjunction with appropriate University administrators, Human Resources shall determine whether an email account or access to other information technology is required and, if so, arrange for them to be provided to the volunteer or trainee.

Presently, a background check is performed on every new employee. Similarly, because the University may be liable for the conduct of individuals in their roles as University volunteers and trainees, a background check will be performed on every prospective volunteer and trainee. In addition, Human Resources will ascertain whether the prospective volunteer or trainee's name is included in state sex offender registries and, if so, confer with the University Counsel about the status of the individual.

Volunteers and trainees are required to sign an agreement in which they acknowledge that, among other things, they may acquire sensitive or non-public information during their association with the University and agree to maintain it as

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<sup>3</sup> If the trainee is not a current Pace University student, an agreement may be required between the University and the academic institution in which the student is enrolled.

confidential; they are bound by the University's applicable practices and policies, including, without limitation, the University's policy prohibiting discrimination and harassment; they are donating their services or participating in a trainee program voluntarily and for their own benefit; they do not expect and have not been promised compensation or a job; they are not considered to be employees for purpose of the minimum wage law; and agree that any intellectual property created in the course of their volunteer or trainee activities is the property of the University.

The signed agreements will be maintained by Human Resources along with a copy of the volunteer or trainee's resume, home address and telephone number, and emergency contact information.

Human Resources will inform the appropriate administrators and employees in Risk Management about the placement of volunteers and trainees and provide such other information as may be required by Risk Management.

All prospective volunteers and trainees, as well as any questions about the University's volunteer positions and trainees programs, should be directed to the Director of Staffing and Recruitment at 914-923-2730.

Prospective volunteers and trainees who may require a reasonable accommodation in order to participate as a volunteer or trainee, should be referred to the Office of Disability Services on either the New York City or Pleasantville campus.

Effective September 23, 2013