

**SUBJECT: VOLUNTEERS/UNPAID INTERNS**

Purpose: The City of Madison recognizes that community volunteers can substantially enhance the ability of the City to provide services to its citizens. In addition, the use of unpaid interns provides valuable education to students and allows students an opportunity to learn about public employment as a possible career. However, volunteers and interns may potentially expose the City to liability for actions that occur while volunteers/unpaid interns are performing services on behalf of the City. This APM spells out the procedures the City should follow when seeking volunteers and unpaid interns in order to minimize risk.

Volunteer Defined: A volunteer is a person who provides services of their own free will that are recognized and authorized by the City and who neither receives, nor expects to receive, any kind of pay or compensation for their services—with the possible exception of specific out-of-pocket reimbursements such as meals or mileage for driving responsibilities.<sup>1</sup> A person is not a volunteer if that person works for the City in the same capacity for which s/he wishes to volunteer (i.e., Employees in the Clerk’s Office may not volunteer to register voters on Election Day).

Unpaid Intern Defined: An unpaid intern is a trainee under the Fair Labor Standards Act. A trainee may be excluded from coverage by the Fair Labor Standards Act if the following criteria are met:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school.
2. The training is for the benefit of the trainee.
3. The trainee does not displace regular employees, but works under close observation.
4. The employer that provides the training derives no immediate advantage from the activities of the trainee, and on occasion the operations may actually be impeded.
5. The trainees are not necessarily entitled to a job at the completion of the training period.
6. The employer and the trainee understand the trainee is not entitled to wages for the time spent in training.

Student interns are not considered employees when they are hired through a school program and when they are involved in education or training programs that are “designed to provide students with professional experience in the furtherance of their education and training and are academically oriented for their benefit.” (*Wage and Hour Opinion Letter, Jan. 28, 1988*) In addition, the DOL will not consider a student an employee where the student will receive college credit for performing an “internship...which involves the students in real-life situations and provides the students with educational experiences unobtainable in a classroom setting.” (*Wage and Hour Opinion Letter, May 10, 1983*)

Volunteer Policy: Departments that use volunteers must be aware of and abide by the information provided in this APM.

Pay for Volunteers: By definition, a volunteer is someone who performs a service without salary or remuneration. This is outlined in detail in the Fair Labor Standards Act. In fact, inappropriately

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<sup>1</sup> Volunteers under age 18 will need written parental/legal guardian consent in order to serve as a volunteer.

compensating a volunteer may convert the volunteer into an employee—making the City liable for underpaid wages and other benefits. However, the Fair Labor Standards Act has established circumstances in which it is appropriate to provide compensation to volunteers.

Exceptions under which a volunteer may accept compensation:

- A uniform allowance or cleaning expenses;
- Out-of-pocket expenses for meals and transportation;
- Tuition, meals, and transportation costs for when a volunteer is attending a class intended to teach them about the volunteer services they intend to perform; and
- Nominal fees.

Before providing any compensation to a volunteer, please consult with the Human Resources Department and/or the Office of the City Attorney to ensure that such payments will not violate the Fair Labor Standards Act.

*Pay for Interns:* If a department is hiring an intern under the Management Intern hourly classification, then this APM does not apply. Generally an unpaid intern should not expect any compensation. However, if a department is seeking to hire an unpaid intern but wishes to pay a stipend or other form of compensation, Human Resources must be involved in ensuring that the arrangement complies with the provisions of the Fair Labor Standards Act. This will generally involve the department creating a position description for the intern and Human Resources reviewing the position description to ensure the proposed arrangement does not violate the Fair Labor Standards Act.

*Liability for Volunteers and Unpaid Interns:*

- General Liability Insurance - The City's general liability insurance provides that any expressly authorized volunteer (includes unpaid interns) of the City while acting within the scope of their volunteer responsibilities is covered as an insured under the policy, subject to its terms, conditions, and exclusions.

If a volunteer's actions cause physical injury or property damage to another and the injured party files a claim or suit against the volunteer, the City's insurer will defend the volunteer and be responsible for any financial judgment incurred, provided the volunteer was acting within the scope of his or her responsibilities, gives notice of the claim to the City, and cooperates in the defense or litigation.

- Automobile Liability Insurance - The City's automobile liability insurance shall cover a volunteer as a supplement to the volunteer's private automobile insurance. The City's automobile liability policy insures the actions of a properly sanctioned City volunteer while operating the volunteer's privately owned vehicle, subject to the following:
  - The volunteer's personal automobile insurer is "primary," i.e., responds first to any such liability.

- The City's insurance shall respond on an "excess" basis to provide protection for expressly authorized volunteers performing volunteer services on behalf of the City. "Excess" coverage means the City's insurance shall respond to such liability only after all other insurance available to the volunteer is exhausted, and subject to its terms, conditions, exclusions.
- The City shall not provide protection for the volunteer for damage to the volunteer's own automobile. The volunteer's personal automobile insurer should respond to such a loss if the volunteer has purchased physical damage insurance on their automobile.

**Please Note:** Coverage is not provided while the volunteer is going to or coming from the volunteer's normal volunteer work site. **Volunteers shall not be allowed to operate City-owned vehicles.**

- Medical Expenses Incurred by Volunteers in Performance of Their Duties - Volunteers are not covered by workers' compensation. Similarly, the City does not provide any coverage for medical expenses incurred as a result of an injury sustained by a volunteer.

Best Practices Regarding Volunteers/Unpaid Interns: All volunteers and unpaid interns need to be screened to ensure they have the necessary skills and abilities to carry out the tasks they will be expected to perform and to minimize the risks of any claims against either the volunteer/intern or the City. In order to meet this goal, the following process is outlined to ensure that the volunteer/intern will be successful and helpful to the City:

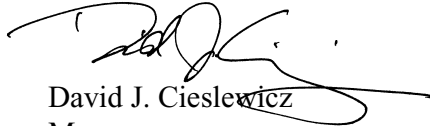
- Volunteer Application - All volunteers and unpaid interns should fill out a volunteer application, separate from a regular City of Madison application. The application will be available on-line on employeenet.
- Interviews - All volunteers/interns should go through an interview process. This may be a face-to-face interview, phone interview, or other type of interview. The purpose of the interview is to ensure that the volunteer/intern is aware of the duties and responsibilities of the position and for the City to evaluate whether the volunteer or intern will be effective in carrying out the duties and responsibilities.
- Criminal Background Checks - All volunteers/interns who will have direct contact with the public, especially children and those in vulnerable conditions, should have a background check done before beginning their volunteer/intern position. Departments can choose to do background checks on other volunteers/interns depending on the nature of the volunteer activity. Questions regarding the use of background checks for volunteers/interns should be referred to Human Resources.
- Reference Checks - Departments should conduct reference checks on all volunteers/interns subject to a criminal background check or on all volunteers/interns who are volunteering in a position that requires specialized education or skills.
- Driver's Record Check - If a volunteer/intern is expected to use a personal vehicle during the course of the volunteer work, a driver's license and record check should be performed and

the volunteer/intern must provide proof of insurance in compliance with State law (Wis. Stats. 344.01) before the volunteer/intern is allowed to drive as part of the volunteer work. Departments should obtain evidence of continued coverage if the volunteer's insurance expires during the period the volunteer's services are engaged.

- Welcome letter - Departments should send a welcome letter to all volunteers/interns confirming the volunteer appointment and the duties and responsibilities expected of the volunteer/intern. Depending on the volunteer's duties, the letter could contain the department requesting the volunteer, the location of the assignment, the name of the department supervisor, contact number for the department supervisor, days and hours needed, length of time needed, specific description of expected volunteer duties, required qualifications and skills, if applicable, resources available to the volunteer and, if needed, the necessary training for the volunteer to effectively perform their assignment. The purpose of the welcome letter is to establish that the person is authorized to serve as a volunteer/intern and perform services on behalf of the City.
- Training - Volunteers and interns should be trained on their specific duties and responsibilities. (A position description is a useful tool here as well.) However, volunteers/interns should also receive training on significant APMs, such as APM 2-33 Work Rules, APM 3-5 Prohibited Harassment and/or Discrimination, APM 2-25 Workplace Violence, and APM 5-2 Vehicle Accident Reporting and Investigation (including the completion of the Vehicle Accident Report and Incident Report), as well as department-specific policies and procedures.
- Confidentiality - Department heads/supervisors shall instruct volunteers and interns of their responsibility in maintaining the confidentiality of all proprietary or privileged information they may have access to during the performance of their volunteer duties.
- Identification - Volunteers should wear a City-issued volunteer identification badge when performing their volunteer duties and responsibility for the City. The volunteer identification badge is only used when volunteering for the City and at no other time.
- Safety - Volunteers and interns should be instructed in pertinent safety policies and procedures including such items as emergency evacuation and sheltering plans, safety rules, security procedures and proper use of personal protective equipment.
- Thank You letter - Departments should send a letter thanking the volunteer/intern when the volunteer/intern ends service with the City. This is done to recognize the service the volunteer/intern has provided and to document that the volunteer/intern is no longer authorized to perform services on behalf of the City.

No Discrimination: For all activities related to the recruitment and retention of volunteers, the City does not discriminate against or exclude individuals based on their ethnic origin, color, religion, gender, sexual orientation, personal appearance, age, physical or mental disability, veteran status, or inability to speak English. Individuals requesting accommodations or accessibility information should inform the department head/supervisor at the initial screening interview.

Enforcement: The Human Resources Director, in conjunction with the Office of the City Attorney and the City's Risk Manager, will be responsible for interpreting and enforcing the provisions of this APM.



David J. Cieslewicz  
Mayor

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October 1, 2010