Volunteer & Intern HR Compliance Reference Guide

How to use this guide. This guide references legal standards, practical examples, and citations. It is written with California organizations in mind: where California law is more protective or more specific than federal law, California law controls your obligations. This guide is educational material, not legal advice; consult with legal counsel about your organization's specific circumstances.

1. Volunteer Classification — The Threshold Question

1.1 Why classification is the core issue

The ability to use volunteers at all is a privilege largely reserved to nonprofit and governmental organizations. Under the Fair Labor Standards Act (FLSA), individuals may volunteer only for public agencies and for organizations operated for civic, charitable, humanitarian, or religious purposes. For-profit businesses generally cannot lawfully accept volunteer labor. Because volunteering is an exception to the ordinary rule that work must be paid, regulators construe it narrowly — and the organization, not the volunteer, bears the consequences of getting it wrong.

California adds a critical layer: Labor Code § 3357 presumes that anyone rendering services for another is an employee. The nonprofit bears the burden of proving that a worker is a true volunteer. Holding 501(c)(3) status does not, by itself, establish that anyone working for you is a volunteer.

1.2 The legal standard for a true volunteer

California courts have determined that a true volunteer is a person who:

- Performs services for civic, charitable, personal, or humanitarian reasons;
- Acts without promise, expectation, or receipt of compensation for the services rendered; and
- Offers those services freely and without pressure or coercion, direct or implied, from the organization.

Intent matters, but so does structure: an arrangement that looks and functions like a job will be treated as one regardless of what the parties call it.

1.3 High-risk fact patterns

- **Employees "volunteering" for their own employer.** Paid staff may not volunteer to perform the same or similar work they are employed to do, even enthusiastically and even off the clock. Those hours are compensable working time. If employees wish to volunteer, the services must be genuinely different in kind from their job duties, outside normal working hours, and truly uncoerced — and even then the arrangement deserves careful review.
- **Displacement of paid staff.** Using volunteers to perform work that paid employees would otherwise perform — or to replace positions that were cut — undermines volunteer status and invites wage claims.
- **Revenue-generating ventures.** Volunteers staffing a nonprofit's commercial activities (thrift stores, catering arms, fee-for-service programs) occupy a legally murky zone. The more the activity resembles an ordinary

commercial enterprise, the greater the risk that the workers will be deemed employees, even for a legitimate 501(c)(3).

1.4 Red flags that a "volunteer" is really an employee

- The organization sets and enforces a fixed schedule
- The work is identical or nearly identical to a paid position at the organization
- The person expects (or was led to expect) future employment in exchange for the service
- Benefits or perks scale with hours served
- The person is subject to discipline like an employee (write-ups, performance management)

> **Takeaway:** *When in doubt, they're an employee. Structure the role so no reasonable observer would mistake it for a job.*

2. Interns — A Legally Distinct Category

2.1 Interns as compared to volunteers

Interns and volunteers are analyzed under different legal tests. A volunteer serves for charitable reasons without expecting compensation; an intern participates in a program whose primary purpose is the intern's own education.

2.2 The DOL "primary beneficiary" test — all seven factors

The U.S. Department of Labor and federal courts assess unpaid internships by asking who primarily benefits from the relationship — the intern or the organization. The seven factors, none of which is dispositive alone, examine the extent to which:

1. The intern and the organization clearly understand there is no expectation of compensation (any promise of pay, express or implied, suggests employment);
2. The internship provides training similar to that which would be given in an educational environment, including clinical and hands-on training;
3. The internship is tied to the intern's formal education program through integrated coursework or academic credit;
4. The internship accommodates the intern's academic commitments and corresponds to the academic calendar;
5. The internship's duration is limited to the period in which it provides the intern with beneficial learning;
6. The intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefit; and
7. The intern and the organization understand the internship is conducted without entitlement to a paid job at its conclusion.

2.3 The California reality check

California applies a similar test. If an internship is not genuinely educational, the intern is an employee for all purposes of California wage-and-hour law: minimum wage (state or applicable local rate, whichever is higher), overtime, meal and rest breaks, and itemized wage statements (Labor Code § 226).

2.4 What misclassification costs

- **Back wages** for all hours worked, at minimum wage or above, plus overtime
- **Waiting time penalties** of up to 30 days' wages when final pay is not timely (Labor Code § 203)
- **Wage statement penalties** (Labor Code § 226(e))

- **PAGA exposure** — representative actions under the Private Attorneys General Act can aggregate penalties across all affected workers

> **Takeaway:** *An unpaid internship must be structured as education, not free labor. Document the educational design before the intern starts.*

3. Money and Volunteers — Stipends, Perks, and Reimbursements

3.1 The nominal fee rule

A volunteer may receive a nominal fee without losing volunteer status — but "nominal" is narrow. As a rule of thumb drawn from federal guidance, a fee is not nominal if it exceeds roughly 20% of what the organization would pay an employee for the same services. Just as important as the amount is the structure: a payment tied to hours worked, shifts completed, or productivity is a wage substitute, not a nominal fee, regardless of its size.

3.2 Safe practices vs. status-destroying practices

Category	Practices
Generally safe	Reimbursement of actual, documented expenses (mileage, parking, supplies); meals provided during service; uniforms, tools, and equipment needed for the role; de minimis appreciation gifts (annual dinner, modest thank-you gift); reasonable benefits customarily provided to volunteers
High risk / status-destroying	Hourly "stipends" at any rate; per-shift or per-task payments; attendance-based rewards (e.g., a monthly gift card for completing all shifts); productivity bonuses; "stipends" that function as living allowances tied to ongoing service; anything promised in advance as an inducement to serve

3.3 Tax considerations

- Payments to a volunteer totaling $600 or more in a year raise Form 1099 reporting questions — and issuing a 1099 is itself evidence that the relationship involves compensation, which undercuts volunteer status.
- True expense reimbursements made under an accountable plan (documented, business-related, excess returned) are not income to the volunteer and do not trigger reporting.
- Volunteers may deduct certain unreimbursed expenses (including mileage at the charitable rate) as charitable contributions; the organization cannot convert this into a payment.

> **Takeaway:** *Reimburse expenses; never pay for time.*

4. HR Obligations That Extend to Volunteers and Interns

4.1 Harassment and discrimination — FEHA and SB 1343

"They're just volunteers" is not a defense. California's Fair Employment and Housing Act expressly extends its harassment protections to unpaid interns and volunteers (Gov. Code § 12940(j)). Practical consequences:

- Your anti-harassment policy and complaint procedure must explicitly cover volunteers and interns — both as potential victims and as potential harassers
- Organizations with five or more employees must provide harassment prevention training (SB 1343): two hours for supervisory personnel and one hour for nonsupervisory employees, every two years — and supervisors of volunteers should be trained on their obligations toward them

- Investigate complaints involving volunteers with the same rigor as employee complaints, and document the investigation

4.2 Workers' compensation — an affirmative board decision

Volunteers are generally not covered by workers' compensation in California unless the organization opts in. Labor Code § 3363.6 allows the governing board of a private nonprofit to pass a resolution electing to treat volunteers as employees for workers' compensation purposes. Key points:

- Without an election and corresponding coverage, an injured volunteer's remedy is a negligence lawsuit against the organization — often a worse outcome for both sides
- The election is a deliberate cost-benefit decision: premiums increase, but exposure becomes predictable and the volunteer is protected
- Whatever the decision, the board should make it consciously and document it in minutes — the worst position is never having decided

4.3 Liability protections — what they cover and what they don't

Protection	Scope and limits
Federal Volunteer Protection Act (42 U.S.C. § 14501 et seq.)	Shields individual volunteers of nonprofit and governmental entities from personal liability for ordinary negligence within the scope of their duties. Does not protect the organization itself; does not cover gross negligence, willful misconduct, crimes of violence, or harm caused while operating a motor vehicle.
Corp. Code § 5239	Protects volunteer directors and volunteer executive officers of California nonprofit public benefit corporations from personal liability for negligence in their policymaking roles — but only if the organization maintains applicable liability insurance or made reasonable efforts to obtain it. Does not cover self-dealing, intentional wrongdoing, or acts outside the scope of duties.
What neither statute solves	Organizational liability for volunteers' acts (respondeat superior); auto accidents while volunteers drive on nonprofit business; injuries to the volunteers themselves. These are insurance questions, not immunity questions.

4.4 Insurance checklist for volunteer programs

- **General liability** — confirm volunteers are covered as insureds for acts within their duties
- **Volunteer accident coverage** — inexpensive medical-expense coverage for volunteers injured during service (especially important if the board does not elect workers' comp coverage)
- **Directors & officers (D&O)** — required in practice to make Corp. Code § 5239 protection effective
- **Non-owned/hired auto liability** — the sleeper issue: covers the organization when volunteers drive personal vehicles on nonprofit business; verify volunteer drivers hold valid licenses and personal auto insurance

> **Takeaway:** *Decide workers' compensation coverage deliberately; extend harassment policies to everyone; insure the gaps the immunity statutes leave open.*

5. Building (or Auditing) a Compliant Volunteer Program

The elements below serve as a blueprint for new programs and an audit framework for existing ones. Each element closes off one or more of the risks described in Parts 1–4.

5.1 Written volunteer agreements

- Signed acknowledgment that the volunteer expects no compensation and no future employment
- Description of the volunteer's role and its civic/charitable purpose
- Acknowledgment of key policies (code of conduct, harassment policy, confidentiality where applicable)
- For interns: a separate agreement documenting the educational design, academic credit arrangements, and program duration

5.2 Position descriptions distinct from paid roles

- State the charitable purpose of the role, not just the tasks
- Avoid duplicating the duties of any paid position
- Keep expected time commitments flexible and volunteer-driven where possible

5.3 Screening — scaled to the role

- Match screening intensity to risk: an event greeter and a youth mentor do not require the same process
- **AB 506 (Bus. & Prof. Code § 18975):** youth service organizations must background-check administrators, employees, and regular volunteers (Live Scan where required), train them in child abuse identification and reporting, and adopt policies limiting one-on-one adult–child contact
- Follow fair chance and consumer reporting rules (ICRAA/FCRA) when running checks

5.4 Program administration

- Track volunteer hours and roles systematically — essential both for defending classification and for insurance and grant reporting
- Provide orientation covering safety, reporting lines, and conduct expectations
- Assign clear supervision; document and address problems as they arise
- Review the program annually against the compliance checklist

6. Top 5 Pitfalls — Quick Reference

Pitfall	Why it matters
1. Letting employees "volunteer" for you	Paid staff doing the same or similar work off the clock is unpaid wages. See Part 1.3.
2. The "super volunteer" who becomes de facto staff	Imposed schedules, duties mirroring a paid role, and hours-based perks convert a volunteer into an employee — and the back-wage clock runs the whole time. See Parts 1.4 and 3.2.
3. An "internship" without the education to back it up	If the organization is the primary beneficiary, it is employment, with wages, penalties, and PAGA exposure attached. See Part 2.
4. Stipends tied to hours or shifts	Reimburse actual expenses; never pay for time. See Part 3.
5. Treating volunteers as outside your HR systems	Harassment protections and training obligations cover them; workers' comp is a deliberate board decision; volunteer drivers are the sleeper liability. See Part 4.

Key Authorities Cited

- Fair Labor Standards Act, 29 U.S.C. § 203; U.S. DOL guidance on volunteers and Fact Sheet #71 (unpaid internships/primary beneficiary test)
- California Labor Code §§ 226, 203, 3357, 3363.6
- California Government Code § 12940(j) (FEHA); SB 1343 harassment prevention training requirements (Gov. Code § 12950.1)
- Volunteer Protection Act of 1997, 42 U.S.C. § 14501 et seq.
- California Corporations Code § 5239
- AB 506 (2021), Business & Professions Code § 18975 (youth service organizations)
- Private Attorneys General Act, Labor Code § 2698 et seq.

This guide is provided for educational purposes and does not constitute legal advice. Laws and dollar thresholds change; verify current requirements or consult counsel before acting.