NONPROFIT LEGAL RESOURCE HUB

POST-TRAINING QUESTIONS & ANSWERS

Volunteers, Interns & Worker Classification: Your Questions Answered

Companion to the training *Compliance Issues When Using Volunteers and Interns* · August 20, 2026

This resource combined attendee questions and grouped them by topic with answers from the presenters.

How to use this resource

- **Start with Key Terms.** Many answers refer to the legal tests covered in the training. The table below is a quick summary of each one.
- Questions marked ★ **Frequently asked** came up from several attendees.
- **Check the related training section.** Each topic points back to the part of the slide deck that covers it in more depth.

Key Terms

Related training section: *Sections 1–3 of the training*

These are the legal tests and laws the answers below refer to. They are summarized from the training slides.

Test	Applies to	What it asks
***Spilman* Test** (Section 1, slides 5-12)	Distinguishing Nonprofit Volunteers from Employees in CA	CA Labor Code excludes nonprofit volunteers from the definition of "employee", however, under the *Spilman v. Salvation Army* (2026) test, both prongs must be met: **Prong 1:** The worker freely agreed to work for the nonprofit to get a personal or charitable benefit, rather than for compensation. **Prong 2:** Overall, the nonprofit's use of volunteer labor is not a workaround to evade wage laws.
DLSE Six-Factor Test (Section 2, slides 13-20)	Whether unpaid interns and trainees can legally work without receiving wages in CA	California's Division of Labor Standards Enforcement weighs six factors to determine if intern is exempt: **1.** Training is similar to what a vocational school would give **2.** The training benefits the trainee **3.** Trainees do not displace regular employees **4.** The employer gets no immediate advantage **5.** Trainees are not entitled to a job afterward **6.** Both sides understand the intern is unpaid

Test	Applies to	What it asks
Primary Beneficiary Test (Section 2, slides 21-25)	Whether unpaid interns and vocational students are considered employees (federal law)	A federal test that courts may apply in California. Courts weigh seven factors, and no single factor decides the outcome: **1.** No expectation of compensation **2.** Training like an educational environment **3.** Tied to the intern's formal education program **4.** Accommodates the academic calendar **5.** Lasts only as long as the learning does **6.** Complements, rather than displaces, paid staff **7.** No entitlement to a paid job afterward ** CA courts have not settled which intern test applies, so programs should be designed to meet both DSLE and PBT tests.*
ABC test (Section 3, slides 26-28)	Anyone paid for their work, including contractors	Under Labor Code section 2775, a paid worker is an employee unless the organization proves all three: **A.** The worker is free from the organization's control and direction **B.** The work is outside the organization's usual business **C.** The worker has an independently established trade or business ** True volunteers and unpaid interns who receive no pay fall outside this test.*

1 Classification & Status

Related training section: *Section 1, Volunteer or Employee? · Section 2, Unpaid Interns*

Q1 What are the basic steps to decide if someone is an employee or a volunteer?

A Use the two-part *Spilman* test. First, ask whether the person freely agreed to serve for a personal or charitable benefit, not for pay. Second, ask whether the nonprofit is using volunteer labor to get around wage laws.

Q2 Does someone have to be in school right now to be an intern? ★ Frequently asked

A No. But being in school can help show that the internship is connected to the person's education.

Q3 Our nonprofit is new and has a small budget. Can the founders who do the work be volunteers?

A Possibly, but they still need to pass the *Spilman* test (see Q1). The second part may be hard to meet, because the founders are the ones "doing the work." In practice, founders are unlikely to sue their own organization, so you may decide you can accept more risk for founders.

Q4 We realized someone was misclassified as a volunteer, and the "stipends" we paid were really wages. What should we do?

A You may have legal liability, depending on the facts, so consider talking to an attorney. To reduce your risk, you could calculate and pay back the wages owed. You can also change how the person is paid going forward.

2 Stipends & Compensation

Related training section: *Section 1, When Do Benefits Become "Compensation"? · Section 2, Primary Beneficiary Factor 1*

Q5 Can we call someone a paid intern if they get a stipend, or do they have to be on payroll? What about youth who get a one-day stipend for helping with one activity, like setting up a workshop? ★ Frequently asked

A If the stipend pays for their services (not to reimburse expenses), run it through payroll. When it comes to pay, a paid intern is an employee. A one-day stipend tied to finishing a specific task sounds like pay for work, so it should also go through payroll.

Q6 Does reimbursing interns for expenses make them employees?

A Generally, no. Reimbursing interns for reasonable expenses they pay does not usually create an employer-employee relationship.

Q7 We pay a law student a stipend. Does it matter whether we pay an hourly wage or a flat, one-time stipend up front, no matter how many hours they work?

A Yes. If the law student is an unpaid intern, any stipend should be a fixed amount meant to cover reasonable living expenses. It should not be tied in any way to performance or hours worked.

Q8 Can we promise a stipend at the start of an internship (for example, $2,000 over 6 weeks) to cover transportation and supplies, not as pay for work? Does that meet the "no express or implied compensation" standard? ★ Frequently asked

A Generally, yes, if the purpose is to cover living expenses while the intern is learning. Set it at a fixed amount meant to cover the reasonable expenses interns have.

3 Hours, Duration & Placement Length

Related training section: *Section 1, Prong 1: Free Choice and Duration · Section 2, Primary Beneficiary Factor 5*

Q9 When does a placement become "long-running," and does that change how someone is classified?

A No set number of months or years automatically changes someone's status. The question is whether the length still fits a real rehabilitative, educational or charitable purpose. If it has gone on so long that it looks like an ordinary job, that is a problem.

- **Volunteers:** Length is one factor under the first part of the *Spilman* test (see Q1).

- **Unpaid interns:** A placement becomes legally risky when it lasts far longer than the time needed for real learning.

Q10 What happens if an unpaid internship continues past the minimum time the school requires? How do we know when it has gone on too long?

A An internship that keeps going after its learning goals are met, or runs well past the school calendar without a clear learning reason, points toward employee status. (This is factor five of the primary beneficiary test.)

The internship should last only as long as needed to meet defined learning goals, not as long as the organization needs unpaid help.

Q11 Some volunteer applicants want more hours written into their agreements (ours currently says "not exceeding 2 hours per week") so they can use it for immigration purposes. Can we change the agreement using terms from their immigration lawyer? ★ **Frequently asked**

A This is a question for an immigration attorney.

4 Roles, Structure & Staffing Overlap

Related training section: *Section 1, Prong 2 · Section 4, Practical Considerations*

Q12 Can a volunteer help with client intake when paid staff already do the same work? How do we set this up so volunteers help without replacing staff?

A Yes, but the overlap raises your risk. Keep the volunteer's work extra (not a replacement for staff), limited and supervised.

Q13 Do different volunteer roles need different role descriptions in onboarding paperwork? ★ **Frequently asked**

A It is not required. But a description written for each role can help show how the role connects to your mission, which supports the *Spilman* test.

Q14 We have more than 14 volunteers, and one is especially active. Can we give her a title like "volunteer coordinator" and have her help coordinate other volunteers? Everyone, including her, stays unpaid. ★ **Frequently asked**

A A title alone does not decide anything. The *Spilman* test still applies the same way (see Q1). Giving her coordination work may create some risk under the second part of the test.

5 Remote Work & Contractors

Related training section: *Section 3, Independent Contractors and the ABC Test*

Q15 How do we decide whether a role can be remote?

A This was outside the scope of the training. In general, employment law does not say whether a job should be remote. The main exception is when remote work is requested as a possible accommodation.

Q16 Can we require contractors to use a company laptop, or must they be free to use their own equipment?

A Requiring a company laptop creates risk under the ABC test. Equipment requirements can show the kind of control that makes a contractor look like an employee.

6 Onboarding, Training & Compliance

Related training section: *Section 3, Volunteers vs. Unpaid Interns Under FEHA · Section 4, Practical Considerations*

Q17 What training should interns and volunteers get? For example, sexual harassment prevention and other trainings required for employees? ★ **Frequently asked**

A It is good practice to include volunteers and unpaid interns in training on your anti-harassment policy, prohibited conduct, how to report problems and related topics. Under FEHA, unpaid interns are protected from discrimination and harassment, and volunteers are protected from harassment.

Q18 Besides a volunteer agreement, what else should volunteers or interns complete before they start (for example, harassment prevention training or a code of conduct)?

A As in Q17, volunteers and unpaid interns should go over your anti-harassment policy, prohibited conduct, reporting steps and related topics. Try to strike a balance: share the important rules without treating them like employees.

Q19 Should volunteers and interns go through the same background check as new employees?

A Not necessarily. It depends on the role and the type of organization, and different laws apply in different situations. For example, volunteers who work with children at youth service organizations must have a background check under California Business and Professions Code § 18975.

7 Academic Credit

Related training section: *Section 2, Primary Beneficiary Factor 3*

Q20 Is there a formal legal process for a school to recognize our organization for for-credit internships? Do we need to be accredited?

A Each school sets its own rules, so check with the school directly.

Please note

This resource gives general information about California law and does not constitute legal advice for your organization. Every situation depends on its own facts. If you have a specific concern, especially about possible misclassification or back pay, talk with an attorney.

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