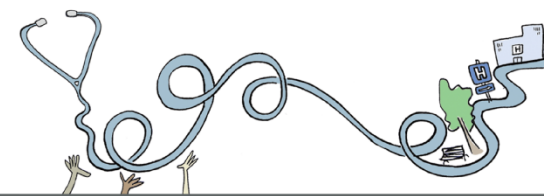




VOLUNTEERISM: Community Partnerships in a Complex World
2019 California Hospital Volunteer Leadership Conference



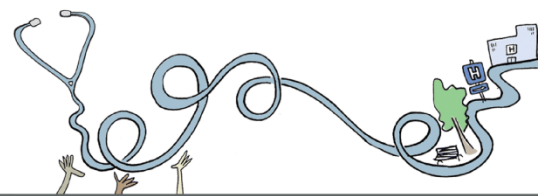
Your Volunteer Workforce: Compliance, Human Resources and Legal Issues

Presented by

Roseanna Galindo-Kuhn, CAVS
Director, Volunteer Services
Enloe Medical Center

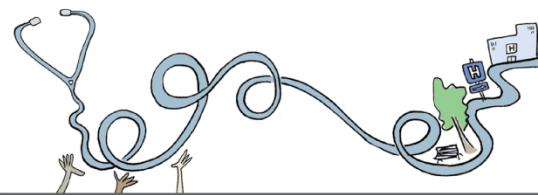
Gail Blanchard-Saiger, JD
VP, Labor & Employment
California Hospital Association





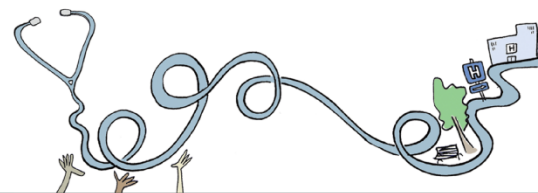
Enloe Medical Center

- 450 Volunteers
- 43,725 Hours of Service in 2018
- 298 Bed Not-for-Profit Hospital
- 4,000 Employees



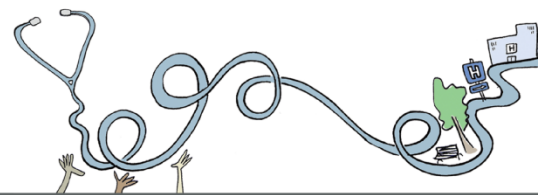
Goals for Today

- To provide you with specific tools to assist you in:
 - Managing a volunteer workforce
 - Complying with legal requirements
 - Spotting issues before problems arise



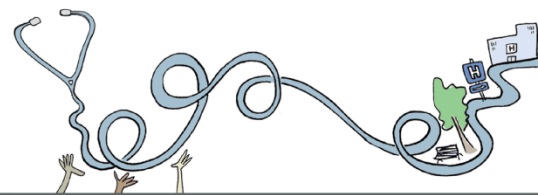
Who Is A Volunteer

- Employee or Volunteer?
- This is the multi-million dollar question because misclassification can result in liability for:
 - Four years of past wages
 - Benefit liability
 - Taxes
 - Penalties



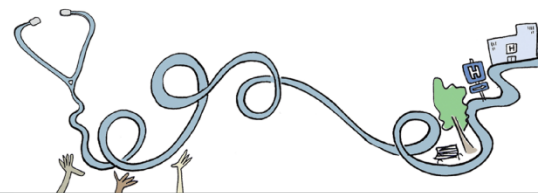
“Employee”

- Any individual who is “suffered or permitted to work” by an employer
 - Mere knowledge by an employer that work is being performed on the employer’s behalf will satisfy the “suffer-or-permit-to-work” requirement
- This is a very broad definition so that an exception for unpaid interns/volunteers is very narrow
- There is a presumption is that the individual is an employee rather than a volunteer
- Burden is on the employer to prove volunteer status
- Generally the same definition under federal and state law



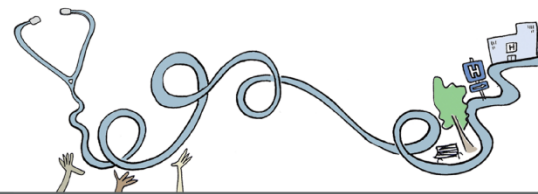
“Volunteer”

- An individual who intends to donate their services to religious, charitable or similar non-profit corporations
 - without contemplation of pay and
 - for public service, religious or humanitarian objectives
- U.S. Department of Labor approves for-profit hospital use of volunteers on “rare occasions”
 - For-profit hospital may not allow employees to volunteer



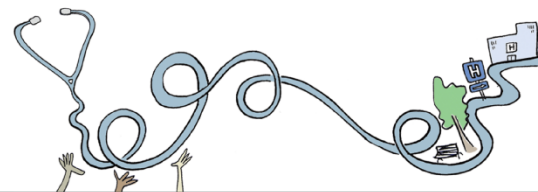
No Employment Relationship

- **Individual intent:**
 - To perform work for civic, charitable or humanitarian reasons, without promise, expectation or receipt of pay
 - To volunteer freely and without pressure or coercion from employer
- Also must ensure that the individual is not employed by the non-profit organization to perform the same type of services as those for which the individual proposes to volunteer, e.g., RNs cannot “volunteer” to work at a health fair doing BP checks without being paid



No Employment Relationship (TIPS)

- Volunteers should not be utilized to operate commercial enterprises which serve the general public, e.g., restaurants or stores
- Cannot have both paid employees and unpaid volunteers performing the same or similar work
- Contemplation of “pay” does not have to be monetary
 - An individual cannot “volunteer” to gain experience



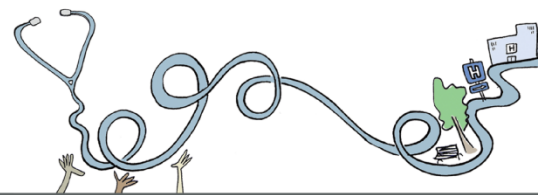
The Gift Shop Issue

- **Wage and Hour Opinion Letter – June 28, 1996**
 - Working in a gift shop does not qualify as “charitable” activity
 - Use of paid employees as well as volunteers in the gift shop further undermines volunteers status
 - This principle not limited to “gift shop”
 - NOTE: CA Labor Commissioner has adopted a similar approach (Roseanna to speak on this)
- **Eltman v. Columbia/HCA Healthcare Corp (U.S. Dist Ct. Florida, 2000)**
 - Rejected June 28, 1996 Opinion Letter as contrary to Alamo
 - However, this opinion is not binding in California, other federal courts or the DOL
 - Unclear what approach current Secretary of Labor would take



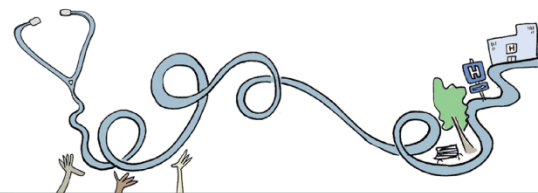
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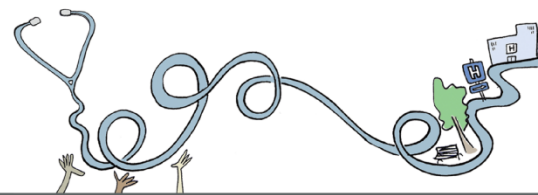
“Intern”

- An individual who performs work as part of an educational training opportunity for his/her benefit which must be:
 - an essential part of an established course of an accredited school or of an institution approved by a public agency to provide training for licensure or to qualify for a skilled vocation or profession



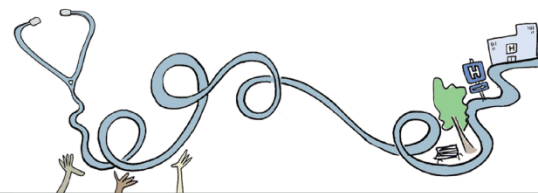
No Employment Relationship (TIPS)

- Internship is similar to training which would be given in an educational environment
- Internship is for the benefit of the intern
- Intern does not displace regular employees
- Intern works under close supervision of existing staff



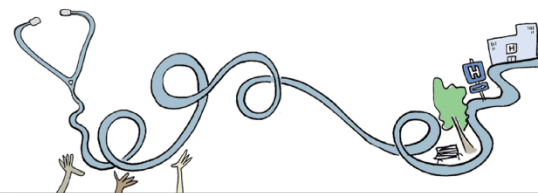
No Employment Relationship (TIPS)

- Employer providing training derives no immediate advantage from the activities of the intern and on occasion its operations may actually be impeded
- Intern is not entitled to a job at the conclusion of the internship period
- Employer and intern understand that intern is not entitled to wages for the time



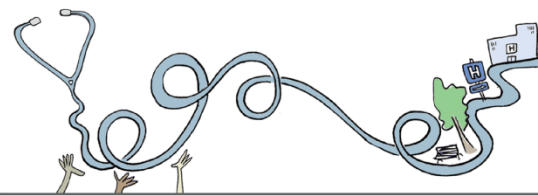
No Employment Relationship (TIPS)

- Criteria more likely to be met if:
 - Internship training is related to the individual's course of study
 - Internship provides skills that can be used in multiple employment settings as opposed to skills particular to one employer's operation
 - College/university exercises oversight over the program and provides educational credit
 - Intern program supervised by the school or a disinterested agency
 - There is a "predominant" benefit to the student as compared to just "some" benefit



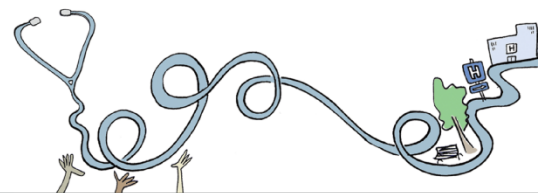
No Employment Relationship (TIPS)

- Title of position/program or individual does not dictate, e.g., trainee, intern, extern, volunteer
- Interns require close supervision (greater than that provided to regular employees) which can offset any perceived advantage received by the employer, e.g., weekly evaluations and feedback, regular monitoring and mentoring by supervisors



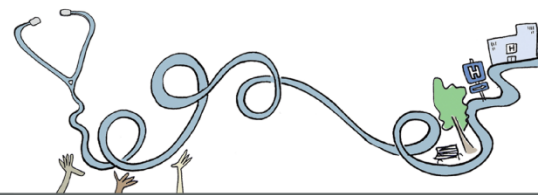
No Employment Relationship

- Internships should not be used as a trial period for individuals seeking employment
- Internship should be of fixed duration established prior to outset of the program
- Criteria can still be met even if employer receives incidental benefits from the tasks performed by the intern while practicing his/her skills (especially towards the end)



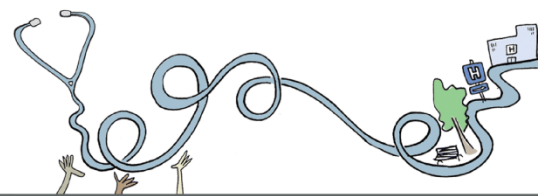
Interns and Volunteer: In practice

- At Enloe Medical Center...
- Interns are onboarded through HR & Education
- Interns must be receiving academic credit
- Intern responsibilities are consistent with course objectives
- Interns have a set weekly schedule that meets the hours requirement of course



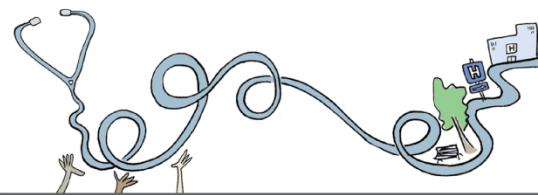
Recruitment/Onboarding a Volunteer/Intern

- More important than ever given the trend in CA to extend employer rights and responsibilities to volunteers/interns
 - FEHA now prohibits:
 - discrimination and harassment against unpaid interns
 - harassment against volunteers on the basis of any legally protected classification, e.g., race, disability
(Cal. Gov't Code sections 12940(c) and (j))



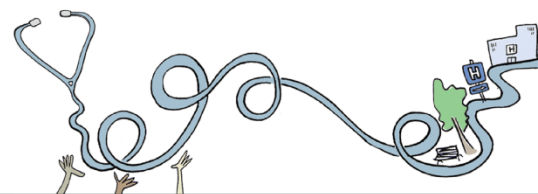
Legally Protected Categories (FEHA)

- Age (40 and over)
- Ancestry
- Color
- Religious Creed (including religious dress and grooming practices)
- Denial of Family and Medical Care Leave
- Disability (mental and physical) including HIV and AIDS
- Marital Status
- Medical Condition (cancer and genetic characteristics)
- Genetic Information
- Military and Veteran Status
- National Origin (including language use restrictions)
- Race
- Sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding)
- Gender, Gender Identity, and Gender Expression
- Sexual Orientation
 - **ALSO COVERS PERCEPTIONS AND ASSOCIATIONS**



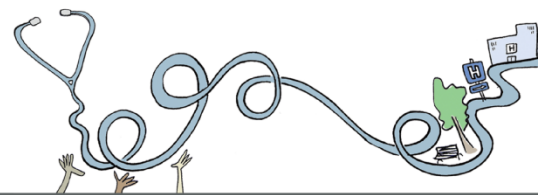
Emerging Issues (Recruitment/On-boarding)

- Ban the box in the context of volunteers
- Hours for junior volunteers (don't allow volunteers under 16 for that reason)
- Can a hospital set a minimum age for volunteers/interns
 - Yes; age discrimination prohibits denying opportunities to individuals over 40 based on their age
- Transgender volunteers and interns



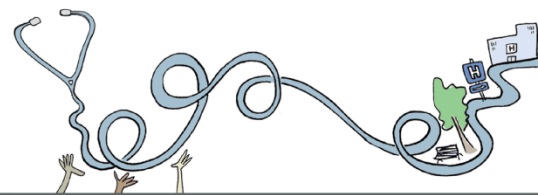
Recommended Actions

- Detailed applications
- Background check and Health clearance
- Interview
- Recommendations
- Offer (or declination) letter
- New intern/volunteer orientation
- Ensure that the hospital's website does not include any language that could suggest the program accepts individuals for reasons other than those allowed for by law
- E.g., no mention that those interested in gaining experience should apply as a volunteer (educational internships are different)



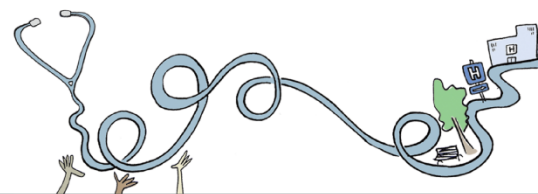
Application

- Similar to employee application
- Key points:
 - Reason for wanting to intern or volunteer
 - Signed acknowledgment that:
 - No expectation of pay
 - Not intended, nor expected, to result in job opportunity
 - At will relationship
 - No employment relationship unless signed by authorized person



Background Check

- Always a good idea
- Can wait until assignment decision is made to run the check
- Treat information the same as if the prospective intern or volunteer is applying for a job, e.g., if background check turns up a conviction, analyze under job-relatedness
 - NOTE: Labor Code 432.7
- Be careful about using Social Media or Google searches



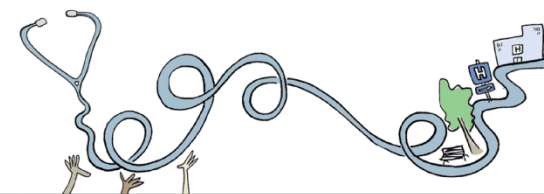
Interview

- Treat the same as you would an employee applicant in terms of acceptable questions
- Avoid questions that are not position-related or that can directly or indirectly identify an individual on a basis protected by law, e.g., disability, etc.
 - <http://www.dfeh.ca.gov/res/docs/publications/dfeh-161.pdf>



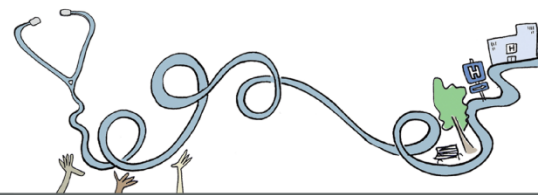
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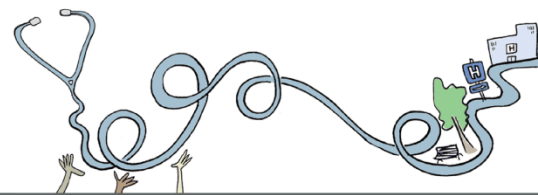
EMPLOYMENT INQUIRIES

ACCEPTABLE	SUBJECT	UNACCEPTABLE
Name	NAME	<ul style="list-style-type: none"> • Maiden name
Place of residence	RESIDENCE	<ul style="list-style-type: none"> • Questions regarding owning or renting.
Statements that hire is subject to verification that applicants meet legal age requirements.	AGE	<ul style="list-style-type: none"> • Age • Birth date • Date of attendance/completion of school • Questions which tend to identify applicants over 40
Statements/inquiries regarding verification of legal right to work in the United States.	BIRTHPLACE, CITIZENSHIP	<ul style="list-style-type: none"> • Birthplace of applicant or applicant's parents, spouse or other relatives. • Requirements that applicant produce naturalization or alien card prior too employment.
Languages applicant reads, speaks or writes if use of language other than English is relevant to the job for which applicant is applying.	NATIONAL ORIGIN	<ul style="list-style-type: none"> • Questions as to nationality, lineage, ancestry, national origin, descent or parentage of applicant, applicant's spouse, parent or relative.
Statement by employer of regular days, hours, or shifts to be worked.	RELIGION	<ul style="list-style-type: none"> • Questions regarding applicant's religion. • Religious days observed.



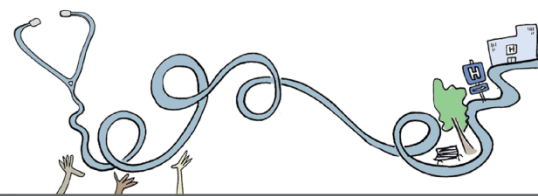
Recommendations

- Ask for a list of personal and professional recommendations and what the prospective intern/volunteer thinks that individual will say about them



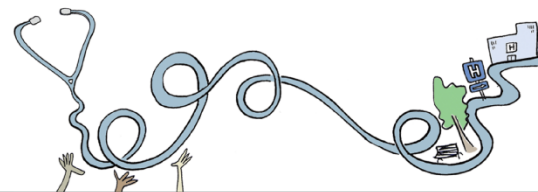
Offer Letter

- Start date of the volunteer service or internship and end date, if any
- Describe duties and assignment
- Explanation of at-will status
- Expected time commitment
- Self-serving language that matches legal requirements
- Volunteer fact sheet



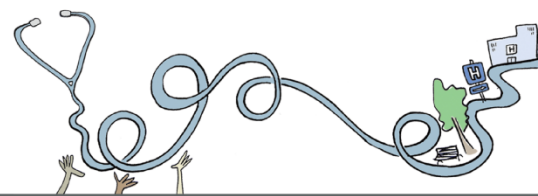
Orientation

- **Should include at a minimum:**
 - Thorough explanation of expectations
 - Who to contact if concerns about the program arise
 - Description of anti-harassment/discrimination policy and what to do if volunteer or intern would like to lodge a complaint
 - HIPAA and confidentiality expectations
 - General review of all topics in manual including what happens if there is a violation of policy



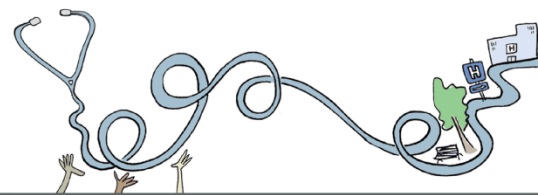
Recommended Documentation

- Application
- Background check
- Offer (or declination) letter
- Confidentiality agreement
- Notice of expectations
- Handbook
- In-person orientation
- Mentoring agreement



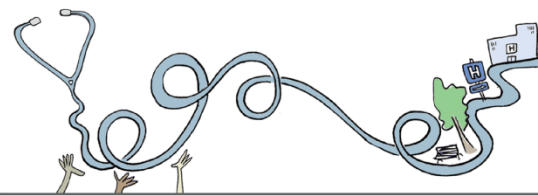
Confidentiality

- California law requires hospitals to ensure patient confidentiality and to report any breach
 - Penalties for breaches and failure to report
- California law also imposes individual liability for privacy breaches
 - Penalties range from \$1,000 to \$250,000



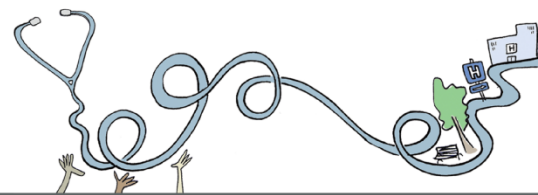
Vaccinations

- Centers for Disease Control recommends that volunteers receive vaccinations
- California Department of Public Health
 - “Health care personnel” includes volunteers
 - Outreach and data collection must include volunteers



Emerging Issues (Safety and Security)

- Workplace violence prevention
 - Cal/OSHA regulations were effective April 1, 2017
 - Do not specifically cover volunteers, but...
- Issues that arise due to increased community-based activity



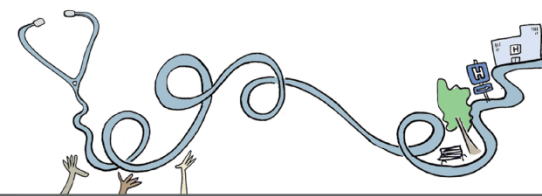
Emerging Issues (Labor Relations)

- Application of hospital's solicitation and distribution policy
- Coordinating volunteer activity with hospital labor representatives – Enloe's experience



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Questions?

Thank you!

