Your Volunteer Workforce: Compliance, Human Resources and Legal Issues

Presented by

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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
Emerging Issue

• Things to consider during mergers/acquisitions/affiliations
  – Where for-profit joint venture seeks to use non-profit hospital volunteers
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”

  • 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
“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
February 16, 2015

Dean of School  
School Name  
Address  

Re: Internship Participant (Insert Intern Name)

Dear (Insert Dean’s Name):

We are pleased to hear that (Insert Intern Name) (Student) will be participating in our educational internship program at Cedars-Sinai Medical Center (Cedars-Sinai) this [Summer, Spring, Fall, Winter]. The internship will commence on __________ and end on or about __________. By your signature below, you on behalf of your institution and Student acknowledge that Student is currently enrolled as a full-time student and is voluntarily agreeing to participate in this unpaid internship opportunity for his/her benefit [for which he/she will be receiving school credit], without any expectation of pay from Cedars-Sinai.

The internship is an educational training experience during which Student will be closely supervised and it is our intention that Student will learn transferable skills essential to his/her coursework and area of study. During the internship, Student will be involved in tasks and projects directly related to the training and educational objectives of the program, namely acquiring and developing scientific research skills.

As a participant, Student will be expected to adhere to Cedars-Sinai’s policies and procedures in effect at the time and will be required to [generally describe these -- meet our background/on-boarding requirements for interns]. Cedars-Sinai reserves the right to release Student from the internship program at any time in its sole discretion if it determines that such release is in the program’s and/or the student’s best interest. Please understand that interns at Cedars-Sinai are not entitled to a job at the conclusion of the internship program.
We invite you or your delegate to visit us at any time and we look forward to any feedback or evaluation of our program that you can provide. Please also do not hesitate to contact our office if you have any questions or concerns.

Thank you for allowing your student to participate in Cedars-Sinai’s internship program and we hope it is as beneficial to Student as we believe it will be in his/her educational journey.

Sincerely,

AHR Rep Name/Title/telephone number/email address

By my signature below, I acknowledge that I have read, understand and voluntarily accept the terms of participation as outlined above. I also agree that I will contact Cedars-Sinai’s Academic HR Department in writing as soon as possible if I learn that any student participant has voiced concerns about the internship program or how he/she has been treated.

_________________________________________  __________________________________
Signature of Dean                        Date

By my signature below, I acknowledge that I have read, understand and voluntarily accept the terms of participation as outlined above. I also agree that I will contact Cedars-Sinai’s Academic HR Department in writing as soon as possible if I have any concerns about the internship program or how I am being treated.

_________________________________________  __________________________________
Signature of Student                      Date
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)
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

• 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
• Accommodating deaf volunteers
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
**Adult Volunteer Program**

Thank you for your interest in volunteering at Cedars-Sinai. Please take a moment to complete your first step to becoming an Adult Volunteer by submitting your online application.

If you experience any problems while submitting this application, please email us immediately at [Adult Volunteer Program](mailto:adultvolunteerprogram@cshs.org).

Additional Requirements to become a volunteer

- **Welcome E-mail** - to be emailed to you after review of your application. Applications are reviewed within 48 hours of submission (applications submitted after 5 p.m. on Fridays are reviewed on the next business day.) To avoid having our email sent to your Spam or Junk Mail please add adultvolunteerprogram@cshs.org to your e-mail contact list.

- **Submit two letters of recommendation** as indicated in your Welcome Email.

- **Interview** - Once we receive both letters of recommendation, you will be contacted by phone within seven business days to schedule an interview to discuss your interests and volunteer opportunities at Cedars-Sinai.

- **Attend mandatory orientation** - details provided during interview

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**Cedars-Sinai Medical Center**

**Adult Volunteer Application**

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<thead>
<tr>
<th>Field</th>
<th>Required</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Name</td>
<td>Yes</td>
<td>Last name:</td>
</tr>
<tr>
<td>Home Address</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>City</td>
<td>Yes</td>
<td>State:</td>
</tr>
<tr>
<td>E-mail</td>
<td>Yes</td>
<td>Do you have an MD or PhD? (Please only answer yes if the requested volunteer training is necessary based on a requirement by your health profession, specialty educational program, or licensing board)</td>
</tr>
<tr>
<td>Vehicle License Plate</td>
<td>Yes</td>
<td>Are you at least 18 years of age? Yes/No</td>
</tr>
</tbody>
</table>

*Please only answer yes if the requested volunteer training is necessary based on a requirement by your health profession, specialty educational program, or licensing board.*
Hello ____________:

My name is ___________________ and I manage the Research Internship Program at Cedars-Sinai. Effective April 1, 2014, Academic Human Resources began implementing the newly established Research Internship Program (which replaces the research volunteer program). The new program involves a structured approach to ensure compliance and a formalized learning experience for program participants.

Although each research internship will be unique to a faculty member’s research area, all research internships will provide structured insight into careers in healthcare research and are learning or observational experiences in basic, translational and/or clinical research. Under direct supervision, an intern might be provided basic research instruction and introduced to research practices, techniques, and compliance & safety requirements. Interns will not work independently or have substantive responsibilities.

If you would like to participate in a research learning experience at Cedars-Sinai, please:

1. Browse our research areas and contact a faculty member with whom you would like to study: [http://www.cedars-sinai.edu/Research/Faculty-Directory/index.aspx](http://www.cedars-sinai.edu/Research/Faculty-Directory/index.aspx)

2. Provide the faculty member with your:
   A. Resume or CV
   B. Statement of Interest
   C. Days/time which you are available to participate in an internship (Research Internships are permitted to take place Monday-Friday only between the hours of 7:00AM and 6:00PM).

3. Once a faculty member has agreed to support an Internship for you, they will complete an appointment packet and include your resume/CV and Statement of interest.

We will provide additional details about the pre-appointment process, etc. once we have received a completed appointment package from the faculty member.

If you have any questions about the process please let me know.

Thank you for your continued interest in Cedars-Sinai.
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
• 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)
## Employment Inquiries

<table>
<thead>
<tr>
<th>Acceptable</th>
<th>Subject</th>
<th>Unacceptable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td><strong>NAME</strong></td>
<td>• Maiden name</td>
</tr>
<tr>
<td>Place of residence</td>
<td><strong>RESIDENCE</strong></td>
<td>• Questions regarding owning or renting.</td>
</tr>
<tr>
<td>Statements that hire is subject to verification that applicants meet legal age requirements.</td>
<td><strong>AGE</strong></td>
<td>• Age&lt;br&gt;• Birth date&lt;br&gt;• Date of attendance/completion of school&lt;br&gt;• Questions which tend to identify applicants over 40</td>
</tr>
<tr>
<td>Statements/inquiries regarding verification of legal right to work in the United States.</td>
<td><strong>BIRTHPLACE, CITIZENSHIP</strong></td>
<td>• Birthplace of applicant or applicant’s parents, spouse or other relatives.&lt;br&gt;• Requirements that applicant produce naturalization or alien card prior too employment.</td>
</tr>
<tr>
<td>Languages applicant reads, speaks or writes if use of language other than English is relevant to the job for which applicant is applying.</td>
<td><strong>NATIONAL ORIGIN</strong></td>
<td>• Questions as to nationality, lineage, ancestry, national origin, descent or parentage of applicant, applicant’s spouse, parent or relative.</td>
</tr>
<tr>
<td>Statement by employer of regular days, hours, or shifts to be worked.</td>
<td><strong>RELIGION</strong></td>
<td>• Questions regarding applicant’s religion.&lt;br&gt;• Religious days observed.</td>
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</table>
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
Volunteer Expectations

As a Cedars-Sinai Volunteer, I will uphold the following expectations:

1. I shall hold as absolutely confidential all information that I may obtain directly or indirectly concerning patients, doctors or personnel, and not seek to obtain confidential information from a patient.
2. I will donate my services to the hospital without contemplation of compensation or future employment and give my service for humanitarian and charitable purposes.
3. I understand that I will be terminated as a volunteer if I participate in any volunteer role within the Medical Center that was not approved through the Volunteer Services Department.
4. I shall not sell or attempt to sell goods or services, request contributions or solicit persons to sign or distribute political petitions on hospital premises, unless I receive the express authorization of the Director, Volunteer Services to engage in these activities.
5. I shall submit to initial and annual health screening requirements, which may include tuberculosis screening, lab tests and/or immunizations, and flu vaccination when applicable, that may be necessary as part of my service.
6. I will be punctual and conscientious, conduct myself with dignity, courtesy and consideration of others, and will endeavor to maintain professional appearance and provide quality service.
7. I will attempt to resolve any problems related to my volunteer activities with my supervisor and, if unsuccessful, attempt to resolve any such problems with the Director, Volunteer Services.

8. I will uphold the philosophy, standards and values of Cedars-Sinai Medical Center at all times in my interactions with patients, visitors, other hospital staff and volunteers.

9. I understand that the Volunteer Services Department may release me as a volunteer of the Medical Center at any time.

10. I understand that Cedars-Sinai Medical Center assumes no responsibility for any contact, visits or services provided by me that are beyond the scope of responsibilities defined for my specific assignment.

11. I understand that anything created by me discussing or involving Cedars-Sinai and that appears in public media or online requires approval — in advance — by the Director of Volunteer Services. Media that may be of concern include: Online publications (websites, web media, blogs); print (newspapers, magazines, books); scripts (theatrical, radio, TV, movie, documentary); photography; video; filming and other visual capture or rendition. Whether said material is positive, negative, or neutral toward Cedars-Sinai, Volunteer Services must approve the material in advance of its

I have read and understand the Volunteer Expectations as stated above and agree to follow them in all aspects of my service to Cedars-Sinai Medical Center.

_________________________________________  __________________________
Volunteer Signature  Date

_________________________________________  __________________________
Volunteer Services Witness  Date
RESEARCH INTERN MENTORING AGREEMENT FOR SUPERVISORS

Please initial after each statement in the space provided.

The training provided is for the benefit of the Intern. This opportunity does not replace work performed by a regular employee. _______

The intern will learn valuable research techniques and/or skills, which will be applicable to other research laboratories or research projects. _______

The PI and intern will meet regularly to ensure that the objectives of their learning opportunity are being met. _______

This experience is not in preparation for employment in the area where the intern is being mentored. ____

The supervisor is responsible for the intern’s compliance to IRB certification and adding them to the IRB approved protocols in which they will participate and be exposed as appropriate/required for the intern’s assignment. _______

Intern’s access to CSMC computers and systems will be administered by Academic Human Resources. PI will make access requests directly to Academic HR. Interns may not make requests on their own behalf. Intern’s use of CSMC data will occur on CSMC issued computers and equipment only. Interns may not use personal computers or equipment for any CSMC related activities. ____

The intern will be carefully instructed, monitored and supervised when learning about or assisting with:

- clinical trials research or projects where he/she may have access to patient information through Web VS, or any Cedars-Sinai computer systems _________
- patients’ charts, research data, etc. _________
- animal research protocols _________
The student must complete the Dept. of Comparative Medicine training, and his/her involvement in the IACUC protocol must be approved by the IACUC before he/she is permitted to work with animals.

The supervisor will be entirely responsible for any violation related to patient information/breach of confidentiality or IRB/IACUC protocols.

The intern may not start his/her assignment until all the program requirements are met and an ID badge has been issued. An unexpired ID badge must be worn at all times while on campus.

Under no circumstances will the investigator/supervisor allow the Intern access to any CSMC facilities before 7:00 am, after 6:00pm, on weekends, or at time when he/she is not being appropriately supervised.

All activities related to this experience must be conducted at Cedars-Sinai. Activities may not be conducted off site.

Mentors and Interns are subject to periodic unannounced visits from the Academic HR Program Advisor.

Mentors are required to complete periodic evaluations of their intern and provide feedback to the Intern at regular intervals.

An overall program evaluation is required at the end of each Intern's experience.

At the expiration of the Intern's role/assignment, all CSMC systems and computer access will be terminated.

The supervisor will ensure that the intern’s badge is returned to the Academic Human Resources.

Internships may be terminated at any time and for any reason including non-compliance with program requirements.

I have read this document and understand my responsibilities for _ (intern name) ____ internship.
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 will be effective in fall 2016. Do not specifically cover volunteers

• Issues that arise due to increased community-based activity

• Tele-commuting

• On-call
Emerging Issues
(Labor Relations)

• Application of hospital’s solicitation and distribution policy
• Coordinating volunteer activity with hospital labor representatives
Questions?