

## Are You Ready to Hire Your First Employee?

Is your nonprofit organization looking to hire its first employee or employees? Before taking this major step, you need to be aware of some important legal considerations and requirements for employers in the state of Illinois. This article briefly explores some of the legal issues that an Illinois not-for-profit organization (NFP) must consider before hiring its first employee.

### 1. Budget: Can You Afford to Hire an Employee?

The first step in hiring an employee is determining how much an employee will cost. Below is a list of non-exhaustive payments you should familiarize yourself with before making the decision to hire someone.

**Salary:** It is important to make sure that your organization will pay the required minimum wage. The two laws you need to be aware of are the Fair Labor Standards Act of 1938 (FLSA) and the Illinois Minimum Wage Law (IMWL). Generally, minimum wage is \$8.25 per hour for workers aged 18 and older, and overtime must be paid after 40 hours of work per week at one and a half times the regular rate, unless an employee is exempt. The Illinois Department of Labor's [website](#) provides some guidance on these issues.

**Payroll Taxes:** All employers must withhold the cost of Medicare and Social Security from their employees' paychecks and remit the amount to the federal government. Currently the cost of Medicare and Social Security is 7.65% of the employees' salary. Due to the complexity of tracking and abiding by the numerous rules, many smaller NFPs choose to outsource their payroll administration to third-party payroll service providers (or "PSP's").

**Benefits:** As an organization, you must determine whether, and to what extent, you are going to provide your employee(s) with benefits. Until recently, most agencies have not been required by law to provide benefits; however, with recent health care reforms, your organization needs to be aware of how those reforms affect your legal obligations to offer health care insurance to employees.

**Unemployment Tax:** Generally, every employer must pay unemployment tax pursuant to the Federal Unemployment Tax Act (FUTA) and relevant state laws. This tax will be paid from an organization's own funds instead of being withheld from employee's wages.

- Under FUTA, if an organization is exempt from income tax under section 501(c)(3) of the Internal Revenue Code then it is exempt from unemployment tax at the federal level.
- Under Illinois state law, an NFP will be liable when it has employed 4 or more persons during each of 20 cumulative weeks in a given calendar year. If you are interested in learning more about unemployment tax, Illinois Department of Employment Security (IDES) hosts [Unemployment Insurance Workshops](#).

**Worker's Compensation Insurance:** The state of Illinois requires employers to pay for any injuries employees incur in the scope of their employment. Some employers are excused from this, but most employers are required to participate, including NFPs.

Generally, NFPs will purchase workers' compensation insurance from an insurance provider to meet this requirement. Other options include "self insuring" or enrolling in a special plan designated by the Workers' Compensation Commission. If your organization is interested in the other options, please consult with an attorney.

### 2. Employee or Independent Contractor?

Because the legal reporting requirements are vastly different for employees and independent contractors, it is essential that you understand a) whether the person working for you is an "employee" or "independent contractor," and b) what the reporting requirements are for each.

Whether or not someone is an employee or an independent contractor turns on a number of different factors, including:

**Behavioral Control:**

*The amount of direct control the NFP retains over the specific means or method by which the individual works:* If the NFP retains complete control over the individual, this factor weighs in favor of the individual being an employee.

**Financial Control:**

*How the individual is compensated:* If the NFP is paying the individual directly, this factor weighs in favor of the individual being an employee. On the other hand, if the NFP is paying another organization or company which in turn pays the individual this seems more like an independent contractor position.

**Type of Relationship:**

*Which party provides the tools, equipment, or materials to accomplish the work:* If the NFP is providing the tools, equipment, etc. then this factor weighs in favor of the individual being an employee.

*Which party sets the individual's work schedule:* If the NFP sets the individual's work schedule, this indicates the individual is an employee.

For more information about the differences between employees and independent contractors, please visit the IRS's website, [here](#).

**3. Filings: What You Need to File When You Hire an Employee**

The following is a non-exhaustive list of forms that your NFP will have to file when you hire your first employee:

Form	Agency	Purpose
<a href="#">W-4, Employee's Withholding Allowance Certificate</a>	IRS	Provides the NFP and the IRS with the required information to determine the appropriate amount of withholding for the employee's income taxes.
<a href="#">I-9, Employment Eligibility Verification</a>	U.S. Immigration and Customs Enforcement	Provides the NFP and the U.S. Immigration and Customs Enforcement with the information and documentation to verify the employee's legal eligibility to work in the U.S.
<a href="#">IDES New Hire Form</a>	IDES	Provides the IDES with information that a new employee was hired.
<a href="#">UI-1, Report to Determine Liability Under the UI Act</a>	IDES	Registers the employer with IDES to allow the employer to report and make unemployment insurance contributions.

Please note: if you hire an independent contractor, you will not have to file the above forms. However, for every independent contractor you hire you will need to fill out [Form 1099](#) from the IRS.

**4. Record Keeping**

FLSA and the IMWL require employers to keep records of hours worked, wages paid, and other information for non-exempt employees for three years. These records do not have to be kept in a particular form and can be kept at the place of employment or at a central records office. However, FLSA requires that the records contain certain identifying information regarding the employee, the hours worked and the wages earned. Additionally, depending on the type of record FLSA has certain requirements for how long the records need to be retained. For more information on record keeping, please visit the Illinois Department of Labor's website, [here](#).

## 1. Reporting

There are a number of forms that employers need file with the IRS, the Illinois Department of Revenue, and IDES, including:

Form	Agency	Timing	Purpose
<a href="#">941*</a>	IRS & IL	Quarterly	Reports the total amount of income taxes withheld.
<a href="#">W-2</a>	Employee & IRS	Yearly	Reports total amount of wages and taxes withheld from employee.
<a href="#">W-3</a>	IRS	Yearly	Summarizes all W-2 forms issued by the employer.
<a href="#">UI-3/40</a>	IDES	Quarterly	Reports contributions owed to IDES and wages paid each quarter if your organization is liable under the Illinois Unemployment Insurance Act.

\* Some small NFPs (those whose annual liability for social security, Medicare, and withheld federal income taxes is \$1,000 or less) are eligible to file an annual [Form 944](#) instead of filing a quarterly Form 941.

## 6. Personnel Policies

An NFP should establish and have its board of directors adopt written policies for hiring, firing, promoting and compensating its employees. When writing a termination policy, an organization should be aware that Illinois is an “employment at-will” state. This means that an employer or employee may terminate the employer/employee relationship without any reason or cause. However, the employer cannot discriminate based on race, color, religion, sex, national origin, ancestry, citizenship status, age, marital status, physical or mental handicap, military service or unfavorable military discharge.

Additionally, NFPs should familiarize themselves and consider adopting Whistleblower and Ethics policies to protect the organization. For more information about these issues please read TLP’s [A Guide for Nonprofit Organizations–Employment Issues](#).

An NFP must also display mandatory workplace posters that are required by the federal, local and state government. Illinois requires that an employer display the following posters: Your Rights Under Illinois Employment Law, Workers’ Compensation Notice, Unemployment Insurance Benefits Notice, Emergency Care for Choking and Smoke Free Illinois. Depending on what your organization does, Illinois might require additional posters. Additionally, the Federal government requires employers to display certain posters. For more information on the federal posters and where to find the Illinois posters, please click [here](#).

For more information, the following websites may be helpful:

[Illinois Department of Labor](#)

[Illinois Department of Employment Security](#)

[Illinois Department of Revenue](#)

[U.S. Internal Revenue Service](#)

[U.S. Department of Labor](#)