

Legal Alert: Unemployment Benefits for Nonprofit Employees

Are the employees of your not-for-profit organization (“NFP”) eligible to receive unemployment benefits? You may be surprised. It depends on whether your NFP qualifies as a “nonprofit organization” under the Illinois Unemployment Insurance Act.

This legal alert lays out how to determine if your NFP’s employees are eligible for unemployment benefits and if not, explains the notice requirements for NFPs whose employees are not eligible.

If the NFP employs four or more individuals for 20 or more weeks per year, its employees are eligible for unemployment benefits.

If a NFP qualifies as a “nonprofit organization” under the Illinois Unemployment Insurance Act (“Act”), their employees are eligible to receive unemployment benefits. To qualify as a “nonprofit organization” under the Act, a NFP must be a 501(c)(3) exempt organization and employ 1) at least four people, 2) over the course of 20 or more calendar weeks of the year.^[1]

The employees do not have to be working for twenty consecutive weeks to be counted under the guidelines, nor is it required that the same individuals be employed in each week. The NFPs must add the weeks together to determine if the 20-week minimum is met, and count all full time, part-time and temporary workers, regardless of the form of remuneration. “All individuals who performed services for the organization must be counted, unless such services are specifically excluded under the law.”^[2]

If the NFP does not employ four or more individuals for 20 or more weeks per year, its employees are ineligible for unemployment benefits, and the NFP must provide notice to their employees and board members.

If the NFP does not employ four or more over 20 or more weeks of the year, it is not considered a “nonprofit organization”; its employees are not eligible to receive unemployment benefits, and the NFP is exempt from the Act.

NFPs that are not “nonprofit organizations” under the Act are required to give employees written notice of their ineligibility to receive unemployment benefits.^[3] This notice may be provided in an employee’s contract, or in a written notice provided to an employee who does not have an employment contract. Board members must also be notified that employees of the NFP are not eligible to receive unemployment insurance benefits.

The Law Project urges its clients and other NFPs to determine if they are considered “nonprofit organizations” under the Illinois Unemployment Insurance Act. If an organization cannot be classified as a “nonprofit organization,” then it should draft and distribute notices to its employees and Board members, explicitly informing them of the employee’s ineligibility to receive unemployment benefits under Section 103.35 of the 1986 Illinois General Not for Profit Corporation Act.

Example 1:

“Bookworms” is a 501(c)(3) educational NFP that provides tutoring for underprivileged children during school vacations. Bookworms hired Adam, Ben, Carl and Dan to work for 13 weeks in the summer. For 8 weeks around winter break, Bookworms employed Emily, Faye, Gina and Hannah. Bookworms would qualify as a “nonprofit organization” under the Act. The weeks do not need to be consecutive, and the employees do not need to be the same individuals for the whole 20 weeks.

Example 2:

NFP “Hope House” has 3 full time employees. Hope House has a lot going on this year, so it hired Ina to work for 20 weeks during its busiest period. Because Hope House would have four or more employees for 20 weeks (temporary workers count), it would qualify as a “nonprofit organization” under the Act for that year.

Example 3:

NFP “GoodPeople” is staffed by Quinn and Rick, who work full time for the entire year. GoodPeople also has four volunteers who come in every other week. GoodPeople would not qualify as a “nonprofit organization” under the Act, as it does not have four or more employees. GoodPeople must give notice to Quinn, Rick and board members about the employee’s ineligibility to receive unemployment benefits.

The Law Project is a project of the Chicago Lawyer’s Committee for Civil Rights under Law, Inc. The Law Project matches eligible nonprofit organizations and small businesses with pro bono legal counsel. For additional information about issues involving nonprofits and small businesses, please contact us at t1p@thelawproject.org or 312.939.3638, or visit us online at www.thelawproject.org.

This communication is provided by The Law Project as a public service solely for informational purposes, without any representation that it constitutes legal advice by The Law Project or Seyfarth Shaw LLP. This neither creates an attorney-client relationship between the recipient and any other person, nor constitutes an offer to create such a relationship. Consult an attorney if you have questions regarding the contents of this communication.

The Law Project thanks Marc R. Jacobs of [Seyfarth Shaw LLP](#) for his assistance with preparing this legal alert.

[1] 820 ILCS 405/211.2

[2] For a discussion of various exclusions from employment, see pages G-33, 34 of the IL Unemployment Insurance Law Handbook, Illinois Department of Employment Security, available at <http://www.ides.illinois.gov/Custom/Library/publications/Publications/IllinoisUnemploymentInsuranceAct2.pdf>

[3] 805 ILCS 5/103.35