



# The Board Member's Guide to Worker-related Rules

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## What board members need to know

There are five worker-related actions that board members need to consider to ensure their organization is compliant and people are safe and healthy. We go over each one in this guide.

1. Classify your people correctly.
2. Budget with worker-related rules in mind.
3. Set a safe and healthy culture.
4. Keep good records.
5. Review risk to protect your organization and people.

## Why it matters

**Your people are your nonprofit organization's biggest asset.**

Without people, you can't do anything. It's the people who drive forward your mission.

Board members like you ensure that a nonprofit has the resources it needs to achieve its mission. That's why your board governance role requires you to understand worker-related compliance rules. That understanding will help you make better decisions, maintain compliance, and better assess risk.

## About this resource

*Nonprofit Labor & Industries Navigator* is a resource for nonprofits in Washington with staff and those that engage non-staff people to work on their behalf, such as independent contractors, volunteers, and interns. These resources are designed for educational purposes only. They center on nonprofit corporations that are 501(c)3s and are not intended to be inclusive of all laws related to all types of nonprofits.

Visit [www.nonprofitlearning.center/LNI](http://www.nonprofitlearning.center/LNI) for more information about worker-related rules, including a guide, short videos, and information about live trainings.

*Developed by Nancy Bacon Consulting LLC in partnership with Washington State Department of Labor & Industries.*



*In partnership with the Department of Labor & Industries for employer outreach and education.*



## 1. Classify your people correctly

**If your employees are not classified or paid correctly, or if they are not covered by Workers' Compensation when they should be, then your organization can be fined or sued.**

To make sure your organization is compliant with wage laws, you'll need to understand three kinds of people: employees (paid), independent contractors, and volunteers (unpaid). Once you sort people into the correct category, you'll know which laws apply to them.

### Employees and Paid Interns

**Under wage law, employees are divided into Exempt and Non-Exempt categories.**

Minimum Wage Act protections must guide how you pay your "non-exempt" workers, including minimum wage and overtime. There are also very specific rules that say who is exempt from this. They include certain job duties and minimum annual pay thresholds.

You are required to purchase Workers' Compensation coverage for both exempt and non-exempt employees.



- Determine which of your employees are Non-Exempt. Make sure they are tracking their hours and getting paid for all time worked.

### Independent Contractors

**If your independent contractors don't pass the 6-part test, they're actually employees. Your organization is responsible for verifying the status of independent contractors.**

There is a 6-part test that each independent contractor needs to pass. If they don't pass, they're an employee. That means they're subject to the wage and Workers' Compensation rules mentioned above.



- Make a list of any Independent Contractors working for your organization. Verify that they have passed the 6-part test.
- If they don't pass the test, make sure they get set up as employees.

### Volunteers and Unpaid Interns

**Volunteers who receive payment or a gift with a monetary value could be considered employees. Organizations often opt to cover volunteers through the Workers' Compensation program.**

A volunteer gives freely of their time and talents without expectation of pay. Interns have an educational plan that guides what they do for your organization. If unpaid workers (volunteers or interns) receive a gift that they consider significant or in lieu of payment, they may be determined to be employees. The value of anything given must be evaluated against the labor provided to make sure minimum wage laws were met.

You can elect Workers' Compensation coverage for your volunteers — it's optional, but the cost is very reasonable. It covers their medical expenses if they get hurt, but it doesn't cover any lost wages.



- Review any payments or gifts given to volunteers. Make sure they are not in lieu of payment.
- Add the question of Workers' Compensation for volunteers to your board agenda.

## 2. Budget with worker-related rules in mind

**Your people are your organization's biggest asset. If you don't allocate the right funding for staff and professional development, it's difficult to get the work done and done safely. Accidents can be expensive for an organization, both in terms of direct cost and in terms of your ability to recruit staff and volunteers.**



## Three budget ideas for your board to consider:

### 1. Staffing levels

**Having the right number of people to do the work keeps employees from getting overwhelmed, frustrated, and possibly even injured.** Your commitment to how you staff the work demonstrates a commitment to staff well-being and helps the organization to be more sustainable.

- Ask the Executive Director to talk at your next meeting about staffing levels. Explore this topic from the perspective of whether staff and volunteers have what they need to be safe and healthy. Consider not just the dollar amount but the impact these investments have on the sustainability of your mission.

### 2. Safety and health for everyone

**Keeping your people safe and healthy is both a legal requirement and a risk item for your board to discuss.** Allocating funds for safety and health is one way you can address it. Here are some areas where you can demonstrate your commitment to safety in the budget:

- Paying for staff to attend first aid classes and allowing them time to do so
  - Buying equipment that allows volunteers to work more safely, such as ladders and carts
  - Keeping a supply of quality personal protective equipment, like gloves. You are required to provide the equipment needed to keep people safe.
- Add an agenda item to talk about safety at your next board meeting. What are the risks to the organization? How can you avoid those risks?
  - Review the budget and address safety items. Is there enough allocated to keep your people safe and healthy?

### 3. Workers' compensation

**Your organization's safety record impacts how much Workers' Compensation costs you pay. Electing to cover your volunteers with Workers' Compensation could demonstrate the board's commitment to safety and ultimately could save money.**

Workers' Compensation is an insurance program to help workers heal and return to work should an accident happen. It is required for your paid employees. You can also elect to cover your volunteers, and the cost is very reasonable because it only covers their medical costs, not lost wages.

- Explore how much you pay for Workers' Comp. Find out what your experience factor is. If it's greater than 1, talk about changes your organization can make to operate more safely.
- If you rely on volunteers to accomplish a significant part of your mission, add an agenda item to discuss whether you should elect Workers' Compensation coverage for them.

## 3. Set a safe and healthy culture

**The board sets the culture for the organization. You can have a lot of positive influence.**

Every organization is required to have an Accident Prevention Program (APP), a written document that describes the steps you will take to avoid and respond to accidents. It outlines how you will proactively work to keep your staff and volunteers safe and healthy.

**Your APP is a great place to document and communicate a strong safety culture.** Having all your safety and health information written down in one place makes it easy to share it with new employees and volunteers. Talk to your Executive Director and make sure your APP is complete and up to date. An APP is also required for your employees who work at home.

- Share this guide with all board members, so everyone knows why it's important to talk about these issues and what steps they can take.
- Talk about staffing levels and whether you have the right people to do the work.



- Talk about professional development for staff and volunteers. Board members are volunteers, too, so don't forget orientation and training for the board.
- Talk about safety and health at board meetings. Find out if people have what they need to stay safe.
- Celebrate and support safety and health practice. Make sure your staff are conducting safety meetings or have a safety committee as required by law.
- Respond to any safety concerns with a sense of accountability. As we said earlier, this is a risk issue, and the board is ultimately responsible for organizational risk.

## 4. Keep good records

**Your organization can be doing all the right things, but if you're not keeping the right records, your organization is at risk of lawsuits, fines, or both.**

It's important to confirm that your staff knows what kind of records they're required to keep and that they have systems in place to store them securely. Privacy and security are critical areas to address, since this is a big risk area. Don't try to cut corners here — you don't want these records to be compromised or hacked, and there will probably be costs to keeping your records secure.

There are three kinds of records to consider:

- Employee-related records
  - Independent contract records
  - Safety records
- Find out how the organization is organizing and storing these records. Do they need updated or enhanced systems?
  - Find out how much cybersecurity risk your organization faces and how you are addressing it.
  - Discuss budget items for data storage and security.

## 5. Review risk to protect your organization and people

**The board is responsible for risks to the organization. Insurance can mitigate some risk, but it's better to avoid it by addressing it proactively.**

Good governance requires the board to be aware of and mitigate risks of all types that might jeopardize the work of the organization. We've called out a number of these risks in the four sections above, including:

- Misclassifying personnel
- Paying someone as an independent contractor when they don't meet the 6-part test
- Systems and procedures that don't support safe operations
- Inappropriate or incomplete recordkeeping
- Insecure data

Find out how your leadership team is addressing the issues we've called out. What are the opportunities to improve? Have there been any concerns in the past?

- Include one of these risk areas in your board agenda and talk about it proactively.

**Tip:** Go to [lmi.wa.gov/Consultation](https://lmi.wa.gov/Consultation) and schedule a free safety consultation from Labor & Industries

L&I offers free safety consultations, and there's an easy-to-find link on their website to schedule one. It's one way your staff can make sure they're keeping the correct records around safety and health.