

## **VOLUNTEER AND TRAINEE GUIDELINES<sup>1</sup>**

Volunteers and trainees are encouraged and welcomed by Pace University. The University is pleased to include in its community individuals who wish to donate their services as well as those whose academic and professional experiences will be enhanced by participation as a trainee or similar position.

Ordinarily, an employment relationship is created when individuals provide services to an employer and consequently the individuals are considered to be employees entitled to wages. However, an employment relationship is not created by volunteers who donate their services to a non-profit or public institution for their own personal purposes or pleasures. Trainees, who in furtherance of their academic and professional development provide services to a non-profit, public or private institution incidentally to a bona fide training program, also are not considered employees.

There are legal consequences if individuals providing services to an employer are improperly classified. The United States and New York State Departments of Labor are responsible for ensuring that employers do not escape their legal obligation to pay employees wages (including overtime) by improperly classifying employees as volunteers or trainees. An individual who is entitled under the law to compensation cannot waive that right and therefore the employer and the individual cannot agree to forego compensation that is required by law. An employer found to have misclassified an employee as a volunteer or trainee, may be subject to civil penalties such as back pay and benefits and liquidated damages, as well as criminal actions. Thus, it is very important at the onset for the employer and the individual to clarify the nature and purpose of their relationship.

### **VOLUNTEERS**

There are many opportunities for volunteers at Pace University, but there are certain important exceptions. For example, a volunteer generally cannot donate services performed by paid employees or that cause an employee to be displaced or to incur reduced work hours. The services of a volunteer must be of a charitable or humanitarian



3. The trainees do not displace regular employees or fill vacant positions, and employees have not been relieved of assigned duties in order to transfer those duties to a trainee; but, trainees work under the close supervision of University employees; and

4. In providing the training, the University derives no immediate advantages from the activities of the trainees, actually be impeded; and

5. The trainees are not necessarily entitled to a job at the conclusion of the training period and are free to be employed elsewhere in the same field; and

6. The University and the trainees understand that the trainee is not entitled to wages for the time spent in training, and each trainee is given written notice that he or she will not receive any wages for the training, and is not considered to be an employee for purpose of the minimum wage law; and

7. The trainees do not receive employee benefits; and

8. The training is general so as to qualify the trainees to work in any similar business rather than designed specifically for a job with the University; and

9. Any clinical training is performed under the supervision and direction of individuals knowledgeable and experienced in the activities being performed; and

10. The screening process for the internship program is not the same as for employment, and does not appear to be for that purpose, but involves only criteria relevant for admission to an independent educational program; and

11. Advertisements for the training program are couched clearly in terms of education or training, rather than employment, although the University may indicate that qualified graduates may be considered for employment.

If each of the eleven factors is satisfied, no employment relationship is created, no wages must be paid, and the individual may be classified as a trainee.

### **PROCEDURE**

Human Resources is responsible for classifying volunteers and trainees in accordance with the factors identified above, and assigning them to appropriate placements. Only if the individual meets a recognized exception to the employment relationship will he or she be classified as a volunteer or trainee not entitled to wages. If it is determined that the proposed volunteer services or trainee experiences are not an exception and thus must be classified as employment, Human Resources will confer with the appropriate University administrators and employees to determine if the services or experiences can be restructured so that the individual can be classified properly as a volunteer or trainee.

In conjunction with the appropriate University administrators and employees, Human Resources shall create a description for each volunteer and trainee position. For volunteer positions, the descriptions will include at a minimum the title of the volunteer position, the services to be provided by the volunteer, and the name and title of the employee overseeing the volunteer activities. Human Resources shall, in conjunction with the appropriate faculty member or academic advisor, create a description for each trainee position.<sup>3</sup> The description will include no less than the title of the position (e.g., alumni marketing trainee, law office intern), the experiences to be provided to the trainee, and the name and title of the University employee overseeing the training program.

Using objective criteria, volunteers will be screened to ensure that they are qualified to provide the proposed services. University employees overseeing the volunteer activities should ensure that volunteers are providing only those services agreed to and deriving the principal benefit from those services. Such employees should provide feedback to volunteers in order to provide encouragement and recognition of their services. Similarly, trainees should be screened to ensure that they are qualified for the position and consequently will benefit from the experience. University employees overseeing the training program must ensure that those identified in the trainee position description and the trainees are deriving the expected benefits from their experience at the University.

Human Resources will ensure that each volunteer and trainee completes any applicable safety or other training before providing any services or participating in a trainee program. Human Resources will confer with the appropriate University administrators to determine whether volunteers and trainees should be restricted from participating in certain areas of the University (for example, laboratories where hazardous materials are stored or used) or

confidential; they