

# VIS® CONNECTIONS

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We are happy to provide you our publication for nonprofit risk managers, as part of our service to you. The titles in the contents section link directly to their articles. If you need to change the email address to which this is sent, please [contact us](#). Be sure to include your name, organization and address. You also are welcome to call us at 800.222.8920 for assistance. For risk management guidance between the quarterly issues of *VIS Connections*, we invite you to follow our blog at [www.volunteerinsure.org](http://www.volunteerinsure.org).

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## **Internal afouls**

Imagine a board member asking at the next meeting, “Now that summer is over and our intern is back in college, how would you evaluate her performance for us over the past three months?”

You reply, “It was an exercise in frustration, for her and for us. We couldn't give her anything meaningful to do, because we aren't allowed to derive any meaningful advantage from her work.”

“Says who?”

“The Labor Department has a [six-part test for unpaid internships](#),” you explain. “Part #4 requires that, quote, ‘the employer that provides the training derives no meaningful advantage from the activities of the intern; and on occasion its operations may actually be impeded.’ If we fail that part or any other part of the test, the intern might sue us, claiming that she really was an employee and therefore is entitled to wages for what we intended as an unpaid internship.”

Another board member: “I know that test applies to for-profits, and it’s the reason I stopped offering internships at my company. But aren’t there different rules for nonprofits?”

You: “Well, the Labor Department’s guidance says exceptions for organizations like ours are, in their words, ‘generally permissible’ as long as the interns don’t expect compensation. But they also say they’re reviewing the need for additional guidance. Meanwhile, for-profits and nonprofits alike are on edge because of a New York federal judge’s ruling that interns working on the *Black Swan* movie [were really employees and so are entitled to back pay](#). That ruling came down in May, the day before our intern started. So I played it safe and made sure that nothing she did could benefit us in any way. That’s why she quit in July.”

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Ridiculous? Yes, but the *Black Swan* ruling by Judge William H. Pauley III has raised the threat level that employers might violate the Fair Labor Standards Act (FLSA), if they offer unpaid internships and don’t thread the needle on the six-part test. There are suits now against Conde Nast, Time Warner Music, Gawker and a number of other organizations, by former interns seeking back pay. To many observers, the judge’s ruling was a surprise. However, it might portend a shift in labor law for *all* employers, according to Michael Wyland of [Sumption & Wyland](#), a Sioux Falls, SD firm that provides consulting services for both nonprofit and for-profit organizations.

“Generally speaking, the trajectory of labor law is to apply labor laws to all workers, regardless of where they work, for whom they work, or the nature of the employment arrangement,” Michael says.

So while the Labor Department today says exceptions to the six-part test are “generally permissible” for nonprofits, it also says it is considering new guidance, and Judge Pauley’s ruling might affect that guidance. Moreover, if an internship is not integrated with a school curriculum, passing the six-part test can be more difficult, judging by several Labor Department opinion letters.

Michael adds, “The first thing to remember about employment relationships is that, in employment law, an individual performing services for another is presumed to be an employee unless the presumed employer can demonstrate otherwise.” Failure to demonstrate otherwise can be expensive for an organization that thought it was engaging an intern for three months in which valuable career experience would substitute for pay.

## Minimizing the risk

So what's to be done? Eliminate unpaid internships? There are those who would cheer that move on principle, if not as a risk-avoidance strategy. The British trade union Unite is campaigning for an end to the "elitist" practice of unpaid internships in Britain. The theory is that only the privileged can afford those experiences, while employers get free labor. And when a nonprofit founded by Facebook Chief Operating Officer Sheryl Sandberg solicited for unpaid interns, she was criticized by some on the grounds that because she is exceptionally wealthy, she is obliged to pay all those who work for her.

At the same time, however, many interns and would-be interns are taking to social media to declare their willingness to work night and weekend jobs at minimum wage to support themselves for three months, to have the chance at an unpaid internship that will provide career experience and enhance their resumes. Also, as Susan Ellis and Rob Jackson note in their recent article in [e-Volunteerism](#), "The Sparking Controversy About Volunteer Internships," "We have seen an endless stream of stories about the value of volunteering for unemployed people seeking new jobs. And volunteer resources managers have grabbed onto the concept and terminology of 'internships' as a great way to attract a wide range of new volunteers into new roles that provide a degree of status and co-worker respect. Many students prefer to be called interns rather than volunteers, again in the belief that the former implies more serious engagement." (As Susan also has written, volunteer managers should not buy into that "more serious engagement" perception even if interns do.)

Furthermore, unpaid internships – like volunteering in general -- are one way to stretch a nonprofit's human resources. As Susan and Rob note, "Charitable organizations fund themselves by asking for money from donors; why is it wrong to also ask for donated time and skills?"

Michael Wyland's advice: "Given the trends in employment law applying standards to all employers and the renewed focus on internships being designed for the benefit of interns rather than the companies and organizations using interns, it seems prudent for nonprofit and government employers to assess their internship programs in light of the FLSA six-point test as well as any applicable state employment laws. This assessment may be a first-time event where internship programs have evolved rather than been designed. Even where internship programs have been designed, a reassessment may correct design flaws, such as where the organization has designed a program in such a way as to shade benefit toward the organization rather than the intern.

"Assuring compliance with existing law and anticipating likely or potential changes is more than good governance and good management. Well-designed internship programs protect the organization from charges of exploitation and allow the internship relationship to exist on a firm basis of understanding and mutual benefit. Nonprofit organizations especially wish to be seen as good corporate citizens and good stewards of resources. The people associated with an organization, including those perceived as vulnerable without the protections of employment, are an important element of a nonprofit's stewardship responsibility."

## Getting everyone on the same page

The National Council of Nonprofits, [in an article on internships](#), points out that although unpaid interns are volunteers (regardless of job titles) it still is a good idea to have the intern clarify in writing, at the beginning of the internship, that he or she understands there is no employment relationship and no expectation of compensation.

What if a stipend is paid – an amount intended to help the intern pay basic living expenses, that is less than minimum wage? To keep the intern out of the “employee” classification, the internship must satisfy specific “training” criteria described in the [Labor Department guidance](#). See [Fair Labor Standards Act Opinion Letter 2005-51](#) for further guidance on stipends.

In all cases, Michael Wyland says, be careful about exercising too much control over the work of an intern – or any other volunteer, for that matter. “The FLSA is all about control,” he says. “A ‘controlled’ volunteer is an employee. The more structured the opportunity is, and the longer it lasts (whether episodic or continual), the more likely it’s employment under a deceptive name.”

One more caution – Make sure your interns understand that you don’t want them to [pull all-nighters for their internships](#).

## Resources

A 2010 [article in Blue Avocado](#) provides guidance on internships and stipends.

Labor Department opinion letters on the Fair Labor Standards Act:  
<http://www.dol.gov/whd/opinion/flsa.htm>

State employment laws, in a list published by Law For Change --  
<http://www.lawforchange.org/lfc/Employment.asp>

Intern Programs Incorporated – [www.internprogramsinc.com](http://www.internprogramsinc.com) – Offers workshops and other training on evaluating the need for internship programs and designing effective ones.

Related article in this issue – See below: **Do your volunteers know what expenses are deductible?**

## Do your volunteers know what expenses are deductible?

Volunteers are allowed to deduct many of the expenses they incur in their volunteer activity, if they are not reimbursed for those expenses, and if they itemize deductions on their tax return. To guide your volunteers in this area, and minimize the risk that they might take deductions that

aren't allowable, consider referring them to [IRS Publication 526](#). The section on "Out of pocket expenses in giving services" is just before the section on "Expenses of whaling captains."

### **Volunteers who receive reimbursement or stipends**

We often are asked whether volunteers who are reimbursed for their expenses, or who receive stipends, are eligible for our Volunteers Insurance Service (VIS) program. In almost all cases, the answer is yes. For example, nonprofit organizations that operate transportation assistance programs using volunteer drivers often reimburse for mileage, or allow clients to reimburse drivers directly. Also, Americorps programs pay their participants stipends that are intended to cover basic living expenses. Those volunteers are eligible for coverage in our program. If you have questions about eligibility of a particular volunteer activity, please contact [Vicki Brooks](#) or [Joan Wankmiller](#) at 800.222.8920.

There is no minimum or maximum age requirement for volunteers in our program. Except for fire and rescue volunteers, emergency medical technicians and the actual players on sports teams, virtually all volunteers are eligible.

### **Resource**

*"Getting volunteers started the right way"* is a volunteer-orientation guide VIS has prepared for organizations that participate in our program. The information on tax-deductible expenses is one of the items we suggest to include in your orientation materials. For a free copy of the two-page guide, please email or call VIS Executive Director [William Henry](#), 800.222.8920.

## **Mayo Clinic's safety tips for older drivers**

If you have volunteer drivers who are elderly, you might wish to pass along the following seven tips recently published by the Mayo Clinic (tips that might be useful in your own family, or family members of your younger volunteers, too). These tips can help elders drive safely for longer than they otherwise might.

1. **Physical activity helps prolong the safe-driving years.** Staying physically active, whether through a strength and flexibility routine or just brisk walking every day, can help make it easier to turn the steering wheel, to look over your shoulder, and perform other movements needed in driving and parking.
2. **Have regular hearing and vision tests.** As people age, they often don't notice the changes in hearing and vision that those around them notice. Have tests on a schedule recommended by your doctor, and make sure there's no impairment interfering with safe driving.

3. **Manage chronic conditions and medication.** Driving safety can be affected by chronic conditions and the medications for them. Tell your doctor about your intended driving, so your driving schedule can remain compatible with your health condition and medications. Many drugs affecting driving skills, even when you are feeling fine.
4. **Adjust.** Just as you might need to adjust the rearview mirror if someone else has been driving your car, and just as driving itself involves constant adjustments, the effects of aging might require other adjustments for your comfort. For example, if your hands hurt when gripping the steering wheel, use a steering wheel cover that makes holding and turning the wheel more comfortable. Your doctor also might refer you to an occupational therapist, who can offer assistive devices to help you drive or suggest specific exercises to help you overcome your limitations. Is your vehicle still right for you? Many older people find that larger vehicles offer the advantage of being easy to get into and out of, and some vehicles feature larger, easier-to-read instrument displays than others.
5. **Your schedule isn't set in stone.** If you have difficulty seeing the road at night, or are not as comfortable as you once were driving in inclement weather or in unfamiliar areas, let your volunteer supervisor know, so your schedule can be adjusted.
6. **Plan your trip.** When you get into your vehicle, be prepared for the whole trip and nothing but the trip. Plan your route ahead of time so that you don't find yourself trying to read a map or printed directions while driving. If you use a GPS device, enter your destination before you start driving. If necessary, call ahead for directions or major landmarks near your destination. While you're driving, don't do anything that takes your focus from the road — such as eating, using a cell phone or adjusting the radio.
7. **Refresh those skills.** Updating your driving skills might even earn you a discount on your car insurance, depending on your policy. Look for courses through a community education program or other organizations that serve older adults (See **Resources**, below.) Also, know when it's time to consider other alternatives. If you become confused while you're driving or you're concerned for *any* reason about your ability to drive safely -- or if loved ones or others have expressed concern -- it might be best to stop driving. Giving up your car keys doesn't need to end your independence. Instead, consider it a way to keep yourself and others safe on the road. There are a growing number of volunteer-based transportation programs, maybe some very near you, or even the organization you volunteer for now. Let another volunteer pay you back for the service you've put in behind the wheel all those years.

## Resources

Hartford Insurance “Life Ahead” series – <http://hartfordauto.thehartford.com/Safe-Driving>

The Beverly Foundation – [www.beverlyfoundation.org](http://www.beverlyfoundation.org)

American Automobile Association – <http://seniordriving.aaa.com>

## Five keys to smooth claims-handling

- When reporting an accident medical claim, please make certain you are using the current QBE Proof of Loss form, which is on the website at <http://www.cimaworld.com/nonprofits/claims-what-to-do/>. Or just [email](#) Vicki Brooks or Joan Wankmiller or call them at 800.222.8920 and they can email you the current form.
- Page 1 of the form **MUST** be completed and signed by the organization. Please do not give the form to the volunteer to complete and submit. The volunteer will complete page two of the form at the organization’s request. It is then the responsibility of the organization, not the volunteer, to report the claim.
- The Proof of Loss form **MUST** contain the organization’s client code at the end of the first line on the form, after the sponsoring organization’s name. Otherwise we might not be able to identify the organization, and the claim cannot be processed.
- It is important to submit the proof of loss form as soon as an injury is reported, even if there are no medical bills at that time. Please fax the form, or scan it and [email](#) it to us.
- For volunteer liability and excess automobile liability claims or potential claims, call Vicki or Joan right away, and they will take the information. Remember, the insurance policy requires “timely” reporting of claims, so it is important to contact us as soon as you know that there *might* be a claim. Don’t wait to see if the situation will resolve itself. Don’t let your attorney decide whether to report the claim. Call us right away, so the insurance company can be put on notice.

## What can Robert Galbraith do?

Why would a publisher take a chance on Robert Galbraith? A former military policeman with experience in private security; fine. That’s good background for a crime author, and the manuscript was well-written. But this was his first novel. Publishers who take on too many unestablished authors are soon out of the publishing business. So several declined before one, Sphere, accepted. Like most novels by obscure authors, *The Cuckoo’s Calling* languished. Only a few hundred copies sold until someone even more obscure – a friend of the wife of a lawyer

representing an extremely popular author – Tweeted that Robert Galbraith is actually that same extremely popular author – J K Rowling of *Harry Potter* fame. *The Cuckoo's Calling* shot to Number One on Amazon in a hurry. Same book, just seen in a different light.

Do you regularly take the opportunity to view your volunteers in a different light? To give volunteers the chance to reinvent themselves in the organization, or perhaps reinvent the way they carry out their current assignments? If they are good at what they do now, and seem to carry out responsibilities cheerfully, it can be tempting to maintain the status quo, and recruit new volunteers for those new positions. But you do run the risk of missing the opportunity to use those veteran volunteers' talents – talents you might not know they have – in a way that helps advance the mission. The risk *behind* the risk is that someone might begin to feel taken for granted, and leave.

With older volunteers, in particular, studies show that there can be a disconnect between their actual abilities/interests, and what others perceive about them. Their proficiency with technology and their willingness to master new technical skills, for example, often are underestimated. And when older volunteers express skepticism about new initiatives, it's not necessarily because they're "stuck in their ways." Sometimes it's because they have been around long enough to know the difference between an idea that has been thought through and one that hasn't. Before they commit to a new project, they want to be convinced that the project won't just meander and die.

So look for opportunities to reevaluate how your human resources are being used...rethinking who does what, and how they do it. Your volunteers might have discovered aspects of their work that you didn't know about. If you engage supervisors to evaluate volunteer assignments, you might find that volunteers are being asked to do things that no longer are relevant to the organization's success.

If you discover that some reinvention is in order, that can be a great thing for the organization – taking some time now, but increasing efficiency to save time in the long run. (Standard disclaimer: Always ask "What could possibly go wrong?" Evaluate the risks you can identify, and look for ways to minimize or transfer those risks.)

By the way, the *Cuckoo's Calling* experience was déjà vu for J K Rowling. She had been through the same process of publisher rejection in 1996 – before Bloomsbury decided to look at the unknown writer and her boy wizard in the light of new possibilities.

## **VIS members now eligible for discounts on products and services**

Volunteers Insurance Service Association now offers our members discounts from several top providers of products and services that might be useful, or even essential, to your operations. They include background check services; publications on nonprofit management; programs for



scheduling and tracking volunteer activity; consulting; executive coaching; interim staffing; and training on a variety of nonprofit management topics, fundraising, social media and more.

To see what is available to you as a benefit of participation in VIS, please go to <http://www.cimaworld.com/nonprofits/vis-member-discounts/>. Instructions for identifying yourself as a VIS member are provided. If you have any questions or need help with taking advantage of the discounts, please contact VIS Executive Director [William Henry](#) by email or at 800.222.8920.

## VIS® Commitment

Volunteers Insurance Service is committed to providing its members a complete resource for the nonprofit organization's risk management needs. Our services include:

- Publishing *VIS® Connections* as one of our information resources for members;
- Maintaining for members' use a library of information relating to management of risks in the nonprofit organization;
- Researching available and appropriate insurance relating to volunteer activities;
- Designing and administering insurance programs, and compiling underwriting information;
- Providing consultation on risk management issues at no additional charge to our members, via a toll-free line (800.222.8920 or 800.468.4200);
- Assisting members, on request, with matters relating to insurance.

Insurance and administrative services are provided to VIS® and its members by The CIMA Companies, Inc. and/or one of its affiliated companies.

VIS®'s Articles of Incorporation, Financial Information, and a list of the members of VIS®'s Board of Directors are available to VIS® Members upon request.

## CIMA licensing information

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