



ROBINSON BRADSHAW & HINSON

NONPROFIT
ORGANIZATIONS
ARTICLE

ROBINSON BRADSHAW & HINSON

FEBRUARY 2010

House Managers and Seasonal Unemployment- Protect Your Housing Corporation



By Dianne Chipps Bailey and Kelly A. Koeninger

As employers, housing corporations must pay unemployment insurance taxes. These taxes vary depending on your experience rating. Employers, including housing corporations, earn a higher or lower tax rate depending on the number of unemployment claims that are made by former employees.

In recent months, an increasing number of housing corporation employees have applied for unemployment benefits during school breaks. This trend may negatively affect the individual housing corporation's experience rating, which may increase the amount of unemployment insurance tax it owes.

To protect your housing corporation's experience rating, it may be helpful to consider how you structure the pay of your employees. For those employees who are considered exempt from overtime pay, paying salaries on a monthly basis over the course of the entire calendar year (rather than on a weekly basis that excludes school vacations) may help housing corporations avoid potential unemployment claims. Under federal law, it is permissible to pay exempt employees a salary on a month to month basis regardless of hours worked; other employees must be paid as they accrue their wages. If you use this approach for exempt employees, you may require those employees to perform tasks or be on call during times when they are less busy because the university is not in session (including holiday breaks and the summer months).

In most cases, however, it would be impractical for housing corporations to pay nonexempt employees on a monthly basis as a potential means of forestalling unemployment claims. Rather, it is generally most economical to pay such employees on an hourly basis only for the hours they actually work (plus time and one-half for hours worked in excess of forty hours in any work week). Therefore, unless there is work for the employees to do, it is generally not feasible for a housing corporation to structure its employment relationship with non-exempt employees such that even during holiday breaks and the summer months they will be considered employed.

To determine whether an employee is exempt or non-exempt for purposes of federal wage and hour laws (i.e., whether the employee is exempt from the payment of overtime wages regardless of the number of hours worked), many factors must be considered. Generally, employees who supervise two or more employees and earn at least \$455 per week will be considered exempt. Many but not all house managers will qualify as exempt employees.

Should you have questions related to the classification of employees as exempt or non-exempt, unemployment insurance taxes or any other legal issue related to your fraternal organization, please do not hesitate to contact Dianne Bailey at (704) 377-8323 or [dbailey@rbh.com](mailto:d Bailey@rbh.com).

Robinson, Bradshaw & Hinson, P.A. is distinctive in its commitment to providing specialized legal services to nonprofit organizations, including national fraternities, sororities and their affiliate foundations and housing corporations. We have extensive experience representing a diverse group of nonprofits in all aspects of their organization, administration and management. As a corporate and commercial law firm, we are uniquely positioned to provide sophisticated and cost-effective counseling and representation to our fraternal organization clients.