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Thomas S. Brazier
Past Grand Exalted Ruler
Co-Sponsor California-Hawaii, Sponsor Utah

A Fraternal Organization

April 6, 2018

CHEA Member
5450 E. Lamona Avenue
Fresno, CA 93727-2224

Dear CHEA member,

If a person provides services to a lodge, or one of its related business entities and he is an “employee”, the lodge must pay him/her minimum wage. If he/she is not an “employee” but a true “volunteer”, they don’t. That is the last simple thing in this area of employment.

What the heck is an “employee?” What is a “volunteer?” We Sponsors can’t tell you that since each situation is so different. There’s no way a State Association can tell you whether a person providing lodge services is one or the other. There are state and federal definitions of an *employee* and a *volunteer* and depending on what the lodge has a person doing, and how they do it, they may be mis-classifying such persons as “employees”, or “volunteers”. It is expensive to mis-qualify a person as a “volunteer” when they are an “employee”.

We are fortunate to have at our disposal the Area 7 Chairman of Auditing and Accounting, Ron Celeste. He has prepared a statement which accompanies this letter. Generally, he can’t tell you whether a specific relationship with a lodge renders a performer a “volunteer” or an “employee”. Only a person skilled as a labor lawyer or perhaps a human resource expert can really help you with that.

We are also incredibly fortunate to have Jeanie Talbot working with us as a consultant. She, at no expense to the Order or the California-Hawaii Elks Association, advises us through seminars regarding the pitfalls of various actions between lodges and “employees” and/or “volunteers”. Generally, Jeanie can’t tell you if a specific person is an “employee” or a “volunteer”. It does not matter whether that person performing services is or is not an Elk member. State and federal employment law usually trumps Elks law. Using Elks law as an excuse to try to trump state or federal employment law could create an expensive retaliation claim on top of whatever employee grievance is claimed. Whenever you take an adverse employee action against an Elk member where that person is also an Elk employee, you must consider state and federal employment law on one hand and the Annotated Constitution and Statutes of the BPOE on the other.

We suggest you consider going over, with the local lodge lawyer or a human resource professional, the local lodge’s policies with respect to compensation for persons performing services for the lodge so that they may be properly classified.

cc: Honorable Jim Grillo, PGER Sponsor
Robert Duitsman, CHEA First Vice President
Ed Johnson, Area 7 Member, GL Committee on Judiciary
CHEA District Leaders
CHEA Officers and Trustees
CHEA Past Presidents
All State Lodges

Fraternally,


THOMAS S. BRAZIER, PGER


LOUIS “JIM” GRILLO, PGER

Attachment – CHEA memo from Ron Celeste re minimum wage.

To All Lodges in California:

Memo: California Minimum Wage Requirements for Non-Profit Organizations

The Federal Law under U.S. Department of Labor Wage and Hour Division, Section 10b25, states "an employment relationship does not exist for persons who volunteer their services, including those who are elected to a fraternal order not as employees and without contemplation of pay. The payment of a nominal sum would not affect the status of a bona fide volunteer". However, in researching the Minimum Wage requirements in California, there does not appear to be an exception for Non-Profit Organizations including Fraternal Orders.

California Labor Codes 3351, 1191 and others cover the labor laws regarding Minimum Wage. Minimum Wage laws have existed in California since 1916 (.16/hr) so this is not new law. All employees, including elected officers must be paid Minimum Wage. It is important to note that the Minimum Wage differs in the various cities of California. For instance, the minimum wage in San Diego is \$11.50/hour while the minimum wage in San Francisco is \$14.00/hour. The minimum wage would be applied based on the city where the Lodge is located. Officers of Elks Lodges are either considered employees or volunteers.

No employee position in an Elks Lodge justifies the "exemption" classification, including a Lodge Secretary. Club Managers are similar to that of retail store managers with duties including food and liquor purchases, inventory, supervising employee time records and scheduling shift times, etc. These functions are not considered exempt level duties. All employment positions in Elks Lodges are deemed non-exempt, subject to the minimum wage requirements.

An individual who is paid for performing tasks in a specific position cannot voluntarily perform tasks in the position for which that person is being compensated. For example, a member cannot go from a paid bartender to a volunteer bartender. However, a paid office employee could volunteer as a bartender. Thus, paid positions must be distinctly different from volunteer work.

It appears that a Lodge's By-Laws would have to be amended to include language regarding Lodge Officers. I see two reasonable options:

- 1) Lodge Officers are volunteers and are not compensated. However, volunteers may receive reasonable mileage, food and non-alcoholic beverages.
- 2) Lodge Officers are considered employees subject to minimum wage requirements as set forth within the jurisdiction based on the location of the Lodge.

Some Lodges will find these requirements onerous but it is important to conduct Lodge business in keeping with the laws of California and of the Order.

Fraternally,

Ronald J. Celeste
GLAA-Area 7