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Nonprofit Hiring Toolkit: The Basics of What You Need to Know as a Nonprofit Employer in New Jersey

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I. Organizing Your Nonprofit and Obtaining a Federal Employer Identification Number

The first step for every organization starting a new nonprofit in New Jersey is incorporation. To become incorporated in New Jersey, your nonprofit needs to file a certificate of incorporation with the New Jersey Division of Revenue and Enterprise Services. Your certificate of incorporation should include some pertinent information regarding your nonprofit, including its name, its purpose, its address, the number of trustees, and the method of distribution of the nonprofit's assets upon dissolution. More information about organizing and incorporating your nonprofit in New Jersey can be found at [Starting a Nonprofit Organization in New Jersey – Questions and Answers](#). Once you've filled out your Certificate of Incorporation, you can file it online at [New Jersey's Online Business Formation](#) web page.

After you have legally organized your nonprofit by incorporating, you must obtain a Federal Employer Identification Number (FEIN) to use on tax returns and other documents submitted to the Internal Revenue Service (IRS). A FEIN is a unique nine-digit number assigned to business entities by the IRS for identification purposes. You can think of a FEIN like a social security number: without one, completing tax filings and other financial documents could be a nightmare, both legally and logistically. Luckily, obtaining a FEIN is a relatively simple process. Employers can apply online for a FEIN with the IRS's [EIN Assistant](#).

Note that the FEIN is necessary for nonprofits when filing for tax exemption.

II. Registering Your Nonprofit in New Jersey

Once you've filed your Certificate of Incorporation and obtained your FEIN, you must file a [REG-1E form](#) with the New Jersey Division of Taxation. Once you've completed the filing, about one week later your nonprofit should be able to obtain a Business Registration Certificate via the [On-Line Business Registration Certificate Service](#), which might be needed for public contracting and/or applying for State grants.

To learn more about forming and registering a nonprofit in New Jersey, see the following resources:

- New Jersey Division of Taxation's:
 - [Starting a Nonprofit Organization in New Jersey – Questions and Answers](#)
 - [Nonprofit Organizations](#)
 - [Business Registration Certificate](#)
- Pro Bono Partnership's [Tax and Filing Considerations for Small New Jersey Nonprofits](#)
- New Jersey Center for Nonprofit's [Forming a Non-Profit](#)

III. The Form I-9: Determining Employment Eligibility

Now that you've obtained your FEIN and registered to operate in the State of New Jersey, you can start thinking about hiring your first employee! Perhaps the most important step in the hiring process is completing the Form I-9 as required by United States Citizenship and Immigration Services (USCIS). Employers are required to properly complete a Form I-9 for all individuals they hire.

The I-9 is used to verify the identity and employment authorization status of all individuals hired for employment in the United States. Both employers and employees must complete the form. You can find the Form I-9 and other relevant documents on the website of the U.S. Citizenship and Immigration Services' [I-9, Employment Eligibility Verification](#) home page. The employee must complete Section 1 of the Form I-9 on the first day of employment, and you must complete Section 2 by no later than the end of the third business day after the employee starts working. Note that all employees, including noncitizens, must complete the Form I-9.

On the form, an employee must attest to the employee's employment authorization. The employee must also present the employer with acceptable documents evidencing identity and employment authorization. The employer cannot specify which documents the employee elects to present.

The employer must examine the employment eligibility and identity documents an employee presents to determine whether those documents reasonably appear to be genuine and relating to the employee. You must then record the document information on the Form I-9. A list of acceptable documents can be found on the last page of the form.

Once both you and your employee have completed the Form I-9, DO NOT file it with the USCIS or United States Immigrations and Customs Enforcement. Instead, retain the form in a separate I-9 folder. You must retain the form for three years after the employee's date of hire, or for one year after the employment is terminated, whichever is later. It is important that you maintain these records for the necessary time period, as you might be required to provide the forms for inspection by the U.S. Department of Labor or the U.S. Department of Justice upon request.

Employers should familiarize themselves with USCIS's I-9 [Handbook for Employers](#).

IV. Relevant Tax Documents

While many nonprofits are eligible for various tax exemptions, they are generally not exempt from withholding income taxes from an employee's wages and, in some situations, paying a matching amount. The relevant tax documents you should consider when hiring employees are discussed below.

A. Federal

1. The Form W-4

To determine how much in federal income tax is withheld from employees' wages, you should have them complete a federal [Form W-4](#) on or before their first day of employment. As with the Form I-9, a Form W-4 need not be filed with the IRS or any other agency. However, you should maintain these forms in a safe place as they might be subject to review upon request by the IRS.

2. The Form W-2

In addition to the Form W-4, you must provide each employee with a [Form W-2](#). The Form W-2 is used to report wages paid and taxes withheld for each employee from the prior calendar year. Once the employee has completed the Form W-2, you must file it with the Social Security Administration and the IRS. Such filings must be completed by January 31st of each calendar year unless you receive an extension of time to file.

3. The Form 941

Nonprofits are required to file a [Form 941](#) quarterly with the IRS. The form is a means by which businesses report Medicare, Social Security, and federal income tax withholding.

4. IRS Resources

To learn more about federal employment taxes, see the following IRS resources:

- [Exempt Employer's Toolkit](#) – see especially Publications 15 ([Employers' Tax Guide](#)), 15A ([Employer's Supplemental Tax Guide](#)), and 15B ([Employer's Guide to Fringe Benefits](#))
- [Employment Taxes for Exempt Organizations](#)
- [Employment Tax Exceptions and Exclusions for Exempt Organizations](#) – see the discussion of the exemption from federal FUTA (unemployment) tax for section 501(c)(3) organizations
- See also [Employment Taxes](#)

B. New Jersey

1. The Form NJ-W4

Like the federal Form W-4, the [Form NJ-W4](#) determines how much state income tax is withheld from an employee's wages. Like the Form W-4, the Form NJ-W4 need not be filed with the State, but should be maintained with other payroll documents so it can be made available to the New Jersey Division of Taxation upon request.

2. The Forms NJ-927 and WR-30

Similar to the federal Form 941, the Forms NJ-927 and WR-30 must be filed quarterly to report your wages paid and taxes withheld. A copy of the forms, as well as information about other New Jersey tax filings, can be found at [Employer Withholding Tax - Reporting and Remitting](#).

3. New Jersey Taxation Resources

To learn more about New Jersey employment taxes, see the following resources:

- New Jersey Division of Taxation’s [Employer Payroll Tax](#)
- New Jersey Division of Taxation’s [NJ Income Tax – Withholding](#)
- New Jersey Department of Labor and Workforce Development’s [Frequently Asked Questions – General Employer Information](#)

C. Other States

If you have employees working in other states, including remote workers, you will need to learn the payroll and tax rules for those states. In the case of remote workers, they might be eligible to benefits under the laws of more than one states.¹

V. Setting Up a Payroll System

Complying with Federal and State income tax laws can be daunting and rather confusing for those unfamiliar with accounting and business administration. That is why it is important for new businesses to set up a payroll system that accounts for proper withholdings and deductions. While you will likely enlist a payroll company to handle these matters, understanding the basics of what is required under both federal and state law is important for every business owner and administrator.²

¹ For example, as of April 2023, under New Jersey’s revised “mass layoff” law, an employee working remotely from Montana and reporting to a New Jersey location might be entitled to severance pay equal to one week’s pay for each full year of employment. See Jackson Lewis’ article, [New Jersey’s Expanded Mini-WARN Law to Take Effect April 2023](#), and Pro Bono Partnership’s article, [New Jersey’s Rules Governing Layoffs Become More Onerous \(and Costly\) for Larger Employers in April 2023](#).

Other states might also have different laws regarding things such as paid family and medical leave, leave for employees who are on certain types of active or inactive duty in the National Guard or as a Reserve of the Armed Forces, and leave to serve on a jury or vote in an election. Before your New Jersey-based nonprofit hires out-of-state individuals to work remotely, you should first familiarize yourself with the laws of their state of residences in order to determine what additional obligations you might have with respect to their employment. Your obligations with respect to New Jersey employees as it relates to both paid- and unpaid-leave is discussed in more detail below.

² Managing a payroll, paying employees on a timely basis, and remitting taxes to the federal and state agencies is very time consuming. Outsourcing payroll processing, and possibly benefits administration, to a third-party vendor can

A. Federal

Employers must withhold money from employees' paychecks to pay their federal income taxes based on the information provided in their W-4s. The employer does not pay any part of the income tax but is responsible for collecting and remitting the withheld taxes. Annual federal income tax withholding reports are filed using the Form W-2.

Employers must also withhold from an employee's wages Social Security and Medicare taxes. Social Security and Medicare reports are filed using Form I-941. Employers are also responsible for paying their share for Social Security and Medicare taxes.

However, as the IRS explains at [Section 501\(c\)\(3\) Organizations - FUTA Exemption](#), "employee[s] of a religious, charitable, educational or other organization described in section 501(c)(3) that are generally subject to FICA (Social Security and Medicare) taxes if the payments are \$100 or more for the year, are not subject to FUTA (unemployment) taxes."

B. State

Employers must withhold money from employees' paychecks to pay their state income taxes based on the information provided in their Form NJ-W4s.

Most employers must also withhold from employees' wages their contributions for disability insurance, workforce development, family leave insurance, and unemployment insurance (discussed in more detail below). Employers are also responsible for paying their share for disability insurance, workforce development, and unemployment insurance. Employers do not currently contribute for family leave insurance. See the New Jersey Department of Labor and Workforce Development's (NJDLWD) [Rate information, Contributions, and Due Dates](#).

save employers a lot of time, provide the employer access to the expertise the vendor has, and increase employee morale.

If payroll mistakes are made by the vendor, the employer normally is ultimately responsible to employees and taxing agencies. However, the federal and state departments of labor and taxing agencies might be more willing to waive penalties if the employer used a reputable vendor because it demonstrates the employer tried to implement a professional payroll process.

VI. Receiving Job Applications and Interviewing Applicants

We've covered the logistics, so now it is time to start receiving applications and interviewing candidates to help you run your business. While interviewing might seem like a straightforward process, there are still legal principles you should be aware of in order to minimize the risk of liability that might arise from the hiring process. For example, New Jersey's Law Against Discrimination (NJLAD) and other laws prohibit employment applications from asking questions about the applicant's:

- Ancestry, color, national origin, nationality, or race (including traits historically associated with race, such as, but not limited to, hair texture, hair type, and protective hairstyles);
- Creed (religion, religious practice, or observance of religious holidays);
- Age or date of birth;
- Civil union, domestic partnership, or marital status;
- Affectional or sexual orientation, gender identity or expression, or sex;
- Disability (including AIDS or HIV infection status);
- Pregnancy or breastfeeding;
- Domestic violence victim status;³
- Military service obligation;
- Genetic information or atypical hereditary cellular or blood trait;
- Smoking or use of tobacco products;
- User names or passwords to social networking websites, accounts, or profiles;⁴

³ See Pro Bono Partnership's article, [New Jersey SAFE Act: Unpaid Leave for Victims of Domestic or Sexual Violence](#).

⁴ See Pro Bono Partnership's article, [New Jersey Law Restricts Employers' Access to Private Social Media Accounts of Employees and Job Applicants](#).

- Arrest and criminal conviction records; and
- Unemployment status.⁵

While these topics normally cannot be covered in the initial employment application process (discussed below), employers have more freedom to investigate on a limited basis an applicant's background once the initial process is completed or, with lesser risk, after a job offer has been extended. What an employer can investigate about a prospective employee's background is covered in more detail below.

The restrictions applicable to employers in the application process under the NJLAD also extend to the interviewing process. In other words, even if you don't ask in the application, it would still be unlawful to ask applicants about their national origin or religious beliefs. For example, the following employment interview questions are prohibited under New Jersey law:

- Where were you born?;
- What languages do you typically speak at home?;
- Are you disabled?;
- Do you plan to get married?;
- Are you in a domestic partnership?;
- Do you have kids?;
- Do you plan on having kids?; and
- What religious holidays do you observe?

By contrast, it is acceptable to ask questions such as:

- Are you available to work on weekends?;
- Our hours are nine-to-five. Are you able to work those hours?; and

⁵ See Jackson Lewis' article, [*New Jersey Ban on 'Currently Employed' Requirement in Job Ads Resists Constitutional Challenge.*](#)

- This job requires you to lift materials that weigh up to 25 pounds. Are you able to perform this physical job requirement?

You should be aware of these restrictions, as even questions asked with an innocent intent might create legal liability for your business. Significantly, it is important to note that employers are prohibited from inquiring about an applicant's need for an accommodation due to the applicant's religious beliefs or medical conditions, including pregnancy, at the pre-offer stage. Similarly, an applicant need not disclose the need for an accommodation due to the applicant's religious beliefs or medical condition, including pregnancy, at the pre-offer stage.

Therefore, and by way of example, if an applicant states during the pre-offer application process that the applicant can work on weekends, is hired, and later requests time off on weekends due to the now-employee's bona fide religious beliefs, the employee cannot be disciplined for falsifying the employment application or lying during the application process because the applicant/employee was not obligated to disclose the need for an accommodation prior to an offer of employment being made.

In addition, New Jersey employers are prohibited from asking job applicants about their prior salary history, with certain exceptions. In particular, employers are not allowed to:

- Require applicants to disclose their salary histories (which include, but are not limited to, prior wages, salaries, and other compensation and benefits);
- Screen applicants based on their salary histories; or
- Require that applicants' salary histories satisfy any minimum or maximum criteria.⁶

So long as you are aware of these pitfalls, it is easier to navigate the risk inherent in the hiring process.

VII. Background Checks on Prospective Employees

Chances are you want your nonprofit to be a successful venture as quickly as possible. In order to achieve that goal, you need to ensure you hire the best possible candidates to fill the roles required to run your

⁶ See Jackson Lewis' article, [New Jersey Passes New Salary History Ban](#).

business. While some candidates might seem great when judged solely on their resume and preemployment interviews, a deeper look into their background might reveal some concerning information that would rightfully steer your organization away from retaining them as employees. This is why background checks are such an important tool for employers, as they enable you to uncover information about a candidate that you might not otherwise be privy to.

That said, there are certain rules and regulations employers must follow when performing background checks on prospective employees, especially if you choose to engage a third-party agency to gather background information.⁷

A. The Fair Credit Reporting Act

1. Consumer Reports

Many employers contract with outside agencies that gather background information and prepare so-called “consumer reports” about individuals being considered for employment. Consumer reports can include information from a variety of sources, including credit reports and criminal records, and so can serve multiple purposes and save employers time. However, when employers use consumer reports to make employment decisions, including hiring, retention, promotion, or reassignment, they must comply with the federal Fair Credit Reporting Act (FCRA), which is overseen and enforced by the federal [Consumer Financial Protection Bureau](#) and the [Federal Trade Commission](#), respectively.

Employers must take certain specific steps before they can obtain a consumer report, and before and after they take an adverse action based on that report, such as rejecting an applicant for employment. Before obtaining a consumer report employers must do the following:

- Advise applicants or employees that you might use information in their consumer report for decisions related to their employment;
 - This notice must be in writing and in a stand-alone format. The notice cannot be in or physically attached to an employment application. You can, however, include some minor additional information in the notice, like a brief description of the nature of consumer reports, but only if it does not confuse or detract from the notice;

⁷ For an in-depth discussion regarding background checks, see Pro Bono Partnership’s article, [Background Checks: An Overview and Considerations for New Jersey Nonprofits](#).

- Obtain written permission from the applicants or employees;
 - This authorization can be part of the consent form employers use to notify the person that they will obtain a consumer report. If the employer wants the authorization to allow it to obtain consumer reports throughout the person’s employment, such authorization must be stated clearly and conspicuously;
- Certify compliance to the consumer reporting company from which you are obtaining the applicants’ or employees’ information. An employer must certify that the employer:
 - Notified the applicants or employees and received their permission to obtain a consumer report;
 - Complied with all of the FCRA requirements; and
 - Will not discriminate against the applicants or employees or otherwise misuse the information, as provided by any applicable federal or state equal opportunity laws or regulations.

Additionally, if an employer is contemplating taking “adverse action” based on the information contained in a consumer report (e.g., rejecting an applicant), the employer must provide the applicant or employee:

- A “pre-adverse action notice” that the employer is considering taking adverse action;
- A copy of the consumer report relied on by the employer; and
- A copy of “A Summary of Your Rights Under the Fair Credit Reporting Act” (also known as “[Appendix K to Part 1022](#)”).

If, after providing an applicant or employee a period of time to respond to the pre-adverse action notice,⁸ the employer decides to move forward with the adverse action based in whole or in part on the contents of the consumer report, the employer is required to provide the applicant or employee an “adverse action notice.”

⁸ The Federal Trade Commission (FTC) has provided informal guidance that five business days might be appropriate, depending on the nature of the employer’s business. See FTC, [Advisory Opinion to Weisberg](#) (June 27, 1997).

Note that if your nonprofit orders a consumer report for just one purpose (e.g., in consideration of an applicant's prospective employment), you cannot then use the report for an entirely different purpose at that time or in the future.⁹

2. Investigative Consumer Reports

You can also obtain "investigative consumer reports," which are based on personal interviews concerning a person's character, general reputation, personal characteristics and lifestyle. If an employer seeks such a report it has additional obligations under the FCRA, including giving written notice that it will request, or has requested an investigative consumer report, and a statement to the applicant or employee that the person has a right to request additional disclosures and a summary of the scope and substance of the report.

3. Disposing of Consumer Reports

When you have finished using a consumer report you must securely dispose of the report and any information gathered from it. That can include burning, pulverizing, or shredding paper documents and disposing of electronic information so that it cannot be read or reconstructed. More information about disposing of consumer reports and related materials can be found at [Disposing of Consumer Report Information?](#)

B. New Jersey Laws Regarding Background Checks

1. Consumer Reports

In addition to the FCRA, New Jersey employers must also comply with the New Jersey statute regulating the use of consumer reports in employment. The requirements for obtaining consumer reports under the New Jersey Fair Credit Reporting Act (NJFCRA)¹⁰ are, for the most part, the same as the requirements under the FCRA, including that before procuring a consumer report, the employer must get applicants or employees' authorization in writing and provide them with a clear and conspicuous written disclosure that a consumer report might be obtained for employment purposes. The disclosure must be in a document that consists solely of the disclosures required under the FCRA and the NJFCRA, although it can also include a form for their written authorization.

⁹ See FTC, [Background Checks? Don't Double-Dip](#) (Feb. 16, 2017).

¹⁰ New Jersey Fair Credit Reporting Act, N.J.S.A. 56:11-28 to -41.

Before taking any adverse action based in whole or in part on a consumer report, applicants and employees must be provided with a copy of the consumer report and a written description of their rights as a consumer under both federal and state law.¹¹ An employer cannot obtain a consumer report that contains medical information without the written consent of the applicants or employees.

2. Criminal Background Checks

There is no New Jersey law prohibiting the use of non-expunged criminal conviction records in employment decisions, though New Jersey's "Ban the Box" law prohibits employers from asking about criminal convictions during the "initial employment application process," which is defined as:

the period beginning when an applicant for employment first makes an inquiry to an employer about a prospective employment position or job vacancy or when an employer first makes any inquiry to an applicant for employment about a prospective employment position or job vacancy, and ending when an employer has conducted a first interview, whether in person or by any other means[,] of an applicant for employment.¹²

Employers are, however, authorized to obtain records of convictions in New Jersey state courts and all records of convictions, regardless of age, unless expunged by law. To obtain this information, employers must complete the required forms and have them signed by the employee whose information is being requested. The signed certifications must specify that the employer is authorized to receive the information, that the records will be used for employment purposes only, and that they will not be given to unauthorized persons.

If criminal history record information might be used to disqualify a person from obtaining or holding a job position, the applicant must be given adequate notice to challenge the accuracy of any information obtained in a criminal history record and be afforded a reasonable period of time to correct or complete the record. See the discussion above regarding the FCRA.

¹¹ An employers should request a copy of the notice of rights required under the NJFCRA from the credit reporting agency the employer is using.

¹² New Jersey's ban-the-box law, which is known as "The Opportunity to Compete Act," is discussed in detail in Pro Bono Partnership's article, [*Background Checks: An Overview and Considerations for New Jersey Nonprofits*](#).

The New Jersey Division on Civil Rights (NJDCR) takes the position that in making employment decisions, employers cannot rely on arrests that have not resulted in convictions. However, an employer is permitted to conduct its own investigation into the facts that lead to an arrest and determine whether the facts leading to the arrest – not the arrest itself – warrant disqualifying the applicant from employment.

All criminal history records must be destroyed after serving their intended purposes.

VIII. Job Descriptions

Now that you understand the hiring process, you can start thinking about hiring employees who will help you run your nonprofit. Before you start interviewing candidates, they will need to know the kinds of jobs you are offering, and the expectations of those positions. That's where the job description comes in.

You can think of a job description as one- or two-page summary of the job you are offering. While a job description might not include every single detail about a position, it should provide candidates with an accurate description of what will be expected of them in a given position, as well as what they can expect from you as their employer.

For purposes of avoiding legal liability, the job description should always describe the essential functions of the position for purposes of complying with the NJLAD and the Americans with Disabilities Act (ADA). For example, although you are not permitted to inquire about an applicant's disability during the pre-employment process, you are permitted to withdraw a job offer from an applicant with a disability if it becomes clear that the applicant cannot do the essential functions of the job or would pose a direct threat (i.e., a significant risk of substantial harm) to the health or safety of the applicant or others.

However, you must always consider whether there is a reasonable accommodation available that would enable the applicant to perform the essential functions of the job in a way that would reduce any safety risk. You do not have to provide any accommodations that would pose an undue hardship.¹³

¹³ For more information about essential job functions and compliance with the ADA and similar laws, see the Equal Employment Opportunity Commission's [*The ADA: A Primer for Small Business*](#).

For employees that an employer classifies as exempt from overtime pay, their job descriptions should expressly set forth the types of duties that are required to qualify for one or more of the available exemptions *and* that the employees actually will be performing.¹⁴

By way of example, a good, thorough job description should contain the following information:

- Job title;
- A brief description of your nonprofit and its purpose;
- The job's purpose (i.e., what value does the position bring to your nonprofit?);
- The essential functions and duties of the position (i.e., what can the employee expect to do on a day-to-day basis?);
- Required qualifications (e.g., "a bachelor's degree in Communications or a related discipline;" "3-5 years of experience in nonprofit business administration");
- Preferred qualifications (e.g., "master's degree in Humanities or a related discipline is preferred, but not required"); and
- Working conditions (e.g., "this position might require you to regularly lift items weighing over 25 pounds;" "this position is sedentary and requires long periods of sitting at a desk").
- A reservation of right for the nonprofit to change at any time the job description or to reassign an employee to another position, as the needs of the nonprofit change.

Once you've drafted the job descriptions for the positions needed to staff your nonprofit, you should consider posting them in several places for maximum visibility. This might include any social media accounts belonging

¹⁴ To learn more about the job duties required for employees to be exempt from overtime, see the U.S. Department of Labor's Series 17 *Fact Sheets* at <https://www.dol.gov/agencies/whd/fact-sheets-numeric> and <https://www.dol.gov/agencies/whd/overtime/fact-sheets>. New Jersey currently follows the federal rules relating to which employees of nonprofits qualify as exempt from receiving overtime pay. See N.J.A.C. 12:56-7.2, at <https://www.nj.gov/labor/wageandhour/tools-resources/laws/wageandhourlaws.shtml#56-7.2>.

to you or your nonprofit, your nonprofit's website, free online job boards, industry-specific job boards, or on paid job boards.

IX. The Offer Letter

You've registered your nonprofit, obtained all the relevant tax documents, contracted with a company to process your payroll, and posted job descriptions. Now, it's time to hire your first employee! At this point, you have a good idea of how many employees your nonprofit will require, and the types of roles and duties those employees will take on. With that understanding, you can begin to interview candidates to fill those roles.¹⁵

Once you've settled on an ideal candidate, you will probably want to send that person an offer letter. The offer letter is a fundamental document in the employment relationship. Because of the significance of an offer letter, it is important to include some key pieces of information in the letter. That information should include:

- A clear statement acknowledging that the individual's employment with the organization will be on an at-will basis, unless a specific employment agreement is being offered in writing with different terms (at-will employment is discussed in more detail below);
- The organization's proposed hourly wage rate or weekly or monthly salary amount;
- The individual's schedule or set working hours;
- Information about the organization's payroll cycle (i.e., weekly, biweekly, or set pay days);

¹⁵ If your nonprofit utilizes the services of workers from a temporary help service firm, it might need to comply with New Jersey's complicated 2023 Temporary Workers' Bill of Rights Act. Among other things, that the new law requires certain temporary laborer "not be paid less than the average rate of pay and average cost of benefits, or the cash equivalent thereof, of employees of the third party client performing the same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions for the third party client at the time the temporary laborer is assigned to work at the third party client." To learn more, see Jackson Lewis' article, [New Jersey Enacts 'Bill of Rights' for Temporary Workers](#), Pro Bono Partnership's article, [NJ's New Temporary Workers' Bill of Rights Act Will Increase Costs for Employers](#), and the NJDLWD's [Temporary Workers in NJ: Rights and Protections](#).

- Information about the organization's practices and policies with regard to wages, vacation, sick leave, benefits and other comparable matters, or where to find such information;
- Information about employee training, including the date, time, and place for the training, if applicable;
- A job description of the role being offered, if same was not already covered in preemployment interviews;
- Information regarding noncompete or confidentiality agreements you expect the individual to sign;
- Requirement to satisfactorily complete the I-9 process in a timely manner; and
- Any other information you feel might be pertinent to the particular position being offered (e.g., whether there is an introductory period, etc.).

In addition to the above-referenced topics, it is important to include in the offer letter whether the offer of employment is contingent for any reason. For example, a job offer might be contingent on the applicant's completion of a satisfactory criminal background check, satisfactory physical exam, or a satisfactory controlled substance test, and/or the applicant's receipt of required certifications or licenses. These contingencies should always be specifically referenced in the offer letter so as to avoid any confusion about what is expected of the individual before employment with your nonprofit officially commences.

X. Determining Leave and Other Employee Benefits

As referenced above, your prospective employees likely will expect to receive sick leave, vacation time, and other benefits, such as health and life insurance, as part of their employment with your organization. While the amount of leave you provide employees, as well as the type of benefits you offer, will largely depend on the size of your organization, your funding, and other financial considerations, you should note that certain leave is required by law, and your failure to offer such leave could constitute a violation of law.

For example:

- Under the New Jersey Earned/Paid Sick Leave Act, most employers, including nonprofits, must provide one hour of paid sick leave for every 30 hours an employee works, up to 40 hours of paid sick leave in a given benefit year.¹⁶
- Under the federal Family and Medical Leave Act (FMLA), employers, including nonprofits, that have 50 or more employees must provide, among other things, up to 12 weeks of unpaid, job-protected leave per year so that an employee can attend to the care of the employee's newborn child, the placement with the employee of a child for adoption or foster care, the care for an immediate family member with a serious health condition, and/or self-care when the employee is unable to work due to a serious health condition.¹⁷
- Under the New Jersey Family Leave Act (NJFLA), employers, including nonprofits, that have 30 or more employees (only one of which needs to be located in New Jersey) must provide up to 12 weeks of unpaid, job-protected leave every two years so that an employee located in New Jersey can attend to the care of the employee's newborn child, the placement with the employee of a child for adoption or foster care, the care for a covered family member (which is defined extremely broadly) with a serious health condition, and/or certain other matters, but not for the employee's own serious health condition.¹⁸

Certainly, the above-referenced laws do not prohibit you from offering your employees more leave than that which is required by law. Nonetheless, you should be aware of your legal obligations when determining how much leave and what types of benefits you will offer your employees. Because the requirements under these laws and the laws discussed in the next section overlap and can differ in significant ways, it is critically important for you to study the requirements under each law and

¹⁶ See the Jackson Lewis and Pro Bono Partnership article, [New Jersey Paid Sick Leave Act](#).

¹⁷ The rules governing the FMLA, including with respect to employee eligibility, are complex and beyond the scope of this toolkit. See the U.S. Department of Labor's [Family and Medical Leave Act](#) web pages.

¹⁸ The rules governing the NJFLA, including with respect to employee eligibility, are complex and beyond the scope of this toolkit. See the New Jersey Division on Civil Rights' [Resources](#) web pages.

have the leave and benefit policies in your employee handbook reviewed by an employment lawyer.

XI. Reporting Your Employees and Independent Contractors to the State

A. New Jersey Child Support Employer Services Portal

Now that you've hired your first employees, you must report them in the New Jersey Child Support Employer Services Portal within 20 days of the employees' hire. You are required to provide each employee's name, mailing address, social security number, date of birth, and date of hire. You must also provide your business' name, address, and FEIN. The information recorded through the portal is matched against state and federal child support databases to locate parents who owe child support.

A New Jersey nonprofit must also report in the portal any independent contractors it engages if the contractors are unincorporated, such that the nonprofit is required to (1) have the contractors complete a federal [Form W-9](#) (instead of Form W-4) and (2) report to the IRS the payments to the contractors by filing federal [Form 1099-MISC](#), and in both forms the contractors' social security number (instead of a FEIN) is filled in.

The New Jersey Child Support Employer Services Portal can be accessed at <https://njcsesp.com>.¹⁹ Employers can arrange for their payroll vendor to handle new hire reporting.

XII. Obtaining the Necessary Insurance and Benefits

A. Workers' Compensation Insurance

New Jersey law requires that all New Jersey employers not covered by federal programs have workers' compensation coverage or be approved for self-insurance. Everything you need to know about workers'

¹⁹ The regulations governing the reporting of employees and independent contractors, N.J.A.C. 10:110 (Child Support Program), are available on the website of the New Jersey Department of Human Services, at <https://www.state.nj.us/humanservices/providers/rulefees/regs>. With respect to independent contractors, see N.J.A.C. 10:110–1A.1 (definitions of "Contractor" and "Independent Contractor") and N.J.A.C. 10:110–11.2(a) (reporting obligation applies to hiring and contracting).

compensation insurance from the NJDLWD can be found at <https://www.nj.gov/labor/workerscompensation/employer-requirements/index.shtml>.

B. Temporary Disability Insurance and Family Leave Insurance Benefits

Employers must participate in New Jersey's temporary disability insurance (NJTDI) and family leave insurance (NJFLI) benefits program and deduct payroll taxes for employees working in the State unless the employer provides employees coverage through a private insurance plan that meets the State's requirements. More information about NJTDI and NJFLI benefits from the NJDLWD can be found at <https://nj.gov/labor/myleavebenefits/employer/index.shtml>.

C. Liability Insurance

Although nonprofit organizations might have greater insulation from legal liability compared to for-profit entities, a prudent nonprofit manager should consider purchasing liability insurance applicable to its staff, who the nonprofit might be required to indemnify down the road. While liability insurance is not necessary, it might save your business money in the long run. Whether liability insurance is a wise purchase for your nonprofit requires a cost-benefit analysis, whereby the nonprofit and its insurance broker weigh the cost of insurance against the likelihood the nonprofit's trustees, officers, and employees might be sued for actions taken in the course of their duties with your organization.

For more information about insurance coverage for nonprofits, see:

- New Jersey Center for Nonprofit's [An Insurance Overview for New Jersey Non-Profits](#)
- Nonprofit Quarterly's [Directors and Officers Liability Insurance: Why It's Worth the Cost](#), which includes a discussion of the importance of employment practices liability insurance (EPLI)

XIII. Required Workplace Posters

If you've ever worked in an office or virtually any other workplace, chances are you've noticed various posters hanging on the walls or bulletin boards. These posters might include reminders for employees to wash their hands before returning to work from the bathroom, reminders for employees to maintain respectful workplace behavior, and information about certain

rights the employees have under both federal and state laws. These posters are not decorative, unlike the posters you might have had hanging in your bedroom as a teenager. Rather, employers are required to hang many of these posters in order to remind employees of their rights and the employer's obligations under various statutes.

An employer with remote employees who don't visit a physical location of the employer on a regular basis needs to distribute required notices to these employees. Making the notices available on an intranet accessible to all employees likely will satisfy the distribution requirement, but does not relieve the employer of the obligation to post hardcopies of required notices in each physical location within New Jersey.

Pro Bono Partnership has compiled a summary of, with links to, all of the federal and New Jersey notices that most small employers are required to post in the workplace. To obtain a copy, contact the [New Jersey office](#) of Pro Bono Partnership.

A. Federal Posters

Some of the statutes and regulations enforced by the federal government require that notices be provided to employees and/or posted in the workplace. Free electronic copies of many of these posters are provided by the U.S. Department of Labor, and are also available in languages other than English.

Federal law requires employers to give notice of and/or post notices regarding a numbers of laws, including:

- Minimum Wage;
- Occupational Safety and Health Act;
- Employee Polygraph Protection Act;
- Uniformed Services Employment and Reemployment Rights Act; and
- Title VII of the Civil Rights Act of 1964.

Please note that not all statutes and regulations require employers to post a notice, and some only require notice for certain employers. For example, the FMLA only applies to employers with 50 or more employees, so if you run a small business with only a few employees the FMLA does not apply to you and notice of it need not be given to your employees.

Information about some federal statutes and regulations, as well as the notice requirements for each, is available through the Department of Labor's [website](#).

B. State Posters

New Jersey requires employers operating in the State to post several notices provided by the NJDLWD and the NJDCR. Employers in New Jersey are required to post notices regarding the numerous laws, including:

- New Jersey Earned/Paid Sick Leave (MW-565) (must also give a copy to each New Jersey employee upon hire);
- Wage & Hour Law Abstract (MW-220);
- Child Labor Laws (MW-129);
- Reporting and Recordkeeping Requirements Under State Wage Benefit and Tax Laws (MW-400) (must also give a copy to each New Jersey employee upon hire);
- Payment of Wages (MW-17 & MW-17s);
- Schedule of Minors' Hours (MW-191);
- Family Leave Insurance (PR-2) (must also give a copy to each New Jersey employee upon hire);
- Unemployment & Disability Insurance (PR-1);
- CEPA (Whistleblower) (AD-270 & AD-270.1) (must, in English and Spanish, post and, if the employer has 10 or more employees anywhere, annually distribute to all New Jersey employees);
- New Jersey SAFE Act (AD-289) (applicable to employers with 25 or more employees anywhere);
- Gender Equity Notice (AD-290 & AD-290S) (applicable to employers with 50 or more employees anywhere; also a distribution and acknowledgment requirement, in English and Spanish, to all New Jersey employees upon hire and annually);
- NJ Law Prohibits Misclassification (MW-899);
- Employer Notice of Workers' Compensation Insurance Coverage (16 NJ A & 17 NJ, provided by the insurance carrier)

- New Jersey Family Leave Act (applicable to employers with 30 or more employees anywhere; also a distribution requirement to all New Jersey employees upon hire and annually);
- Discrimination in Employment (also an annual distribution requirement to all New Jersey employees); and
- Discrimination in Places of Public Accommodation.

Information about many of New Jersey's posting requirements, as well as copies of such notices in multiple languages, are provided by the NJDLWD's [website](#) and the NJDCR's [website](#).

XIV. Recordkeeping Requirements

Numerous federal and state laws require employers to maintain and retain employee records, which might in turn be inspected by the relevant agencies. Because most recordkeeping requirements for nonprofits are promulgated at the state level, those requirements and the information covered are discussed in detail below.²⁰

A. Recordkeeping for the New Jersey Wage and Hour and Wage Payment Laws

Under New Jersey's wage-and-hour and wage payment laws, employers are required to maintain a record for each employee that contains the following information:

- The name of the employee;
- The address of the employee;
- The birth date of the employee if the employee is under the age of 18;

²⁰ One of the required New Jersey workplace posters, [Employer Obligation to Maintain and Report Records Regarding Wages, Benefits, Taxes and Other Contributions and Assessments Pursuant to State Wage, Benefit and Tax Laws](#), has an extensive listing of the recordkeeping and reporting requirements.

Recordkeeping requirements under the federal Occupational Safety and Health Act are in the next section.

- The total hours worked by the employee during each day and each workweek;
- The earnings of each employee, including the regular hourly wage, gross to net amounts with itemized deductions, and the basis on which wages are paid;
- Regarding each employee who receives gratuities, the total gratuities received by the employee during the payroll week;
- Regarding each employee who receives gratuities, daily or weekly reports completed by the employee containing the following information:
 - The employee's name;
 - The employee's address;
 - The employee's social security number;
 - The name and address of the employer;
 - The calendar day or week covered by the report; and
 - The total amount of gratuities received; and
- Regarding each employee for whom the employer claims credit for food or lodging such as a cash substitute for the employee who received food or lodging supplied by the employer, information substantiating the cost of furnishing such food or lodgings, including but not limited to the nature and amount of any expenditures entering into the computation of the fair value of the food or lodging and the date required to compute the amount of the depreciated investment in any assets allocable to the furnishing of the lodgings, including the date of acquisition or construction, the original cost, the rate of depreciation and the total amount of accumulated depreciation on such assets.

These records must be maintained at your place of business in New Jersey for a period of six years.

The NJDLWD has extensive wage-hour information for employers on its [website](#). The applicable laws and regulations are at <https://www.nj.gov/labor/wageandhour/tools-resources/laws>.

B. Payroll Recordkeeping for the New Jersey Unemployment Compensation, Temporary Disability Benefits, and Family Leave Insurance Benefits Laws

Under New Jersey's unemployment compensation, temporary disability insurance (NJTDI), and family leave insurance (NJFLI) benefits laws, employers are required to maintain a record for each employee which contains the following information:

- The name of the employee;
- The address of the employee;
- The employee's social security number;
- The total remuneration paid in each pay period showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of New Jersey or of the United States, or the amount of remuneration actually received by the employee, whichever is higher, and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
- An entry under the heading "special payments" of the amount of any special payments, such as bonuses and gifts, which have been paid during the pay period but which relate to employment in a prior period. The following shall be shown separately under this heading:
 - Cash payments;
 - Cash value of other remuneration;
 - The nature of such payments; and
 - The period during which the services were performed for which special payments were payable;
- The date hired, rehired and returned to work after temporary layoff;
- The date separated from employment and the reason for separation;
- Such information as might be necessary to determine remuneration on a calendar week basis; and

- The number of base weeks (as the term “base week” is defined in N.J.S.A. 43:21-19(t)) and wages.

The NJDLWD has extensive information for employers about [recordkeeping](#), [unemployment compensation benefits](#), and [NJTDI/NJFLI benefits](#) on its website.

XV. Compliance with the Occupational Safety and Health Act

Whether you operate a for-profit or a nonprofit business, all employers are subject to the rules and regulations of the federal Occupational Safety and Health Act (OSH Act). While it might seem like only certain nonprofits would be covered under the OSH Act, such as a nonprofit engaged in the construction, repair, and renovation of homes in economically disadvantaged communities, all nonprofits that employ one or more people and engage in “interstate commerce” are covered.

Here is an overview of the OSH Act’s scope, exemptions, and requirements.

A. What is OSH Act?

The OSH Act was designed to “assure, as far as possible, every working man and woman in the nation safe working conditions and to preserve our human resources.” It attempts to achieve this end through a set of uniform national standards for workplace safety and health practices. The Occupational Safety and Health Administration (OSHA) within the U.S. Department of Labor administers and enforces those standards and makes surprise inspections to ensure that employers adhere to the regulations of occupational safety and health established by OSHA.

B. The Scope of OSH Act

The OSH Act governs occupational safety and health in the private employment sector (private businesses and nonprofit organizations). It applies to all workplaces and activities involved in interstate commerce, regardless of the number of employees. The term “interstate commerce” is given a very liberal interpretation, making OSHA applicable to most enterprises, with some specific exemptions.

C. Exemptions

The following employers are not covered by the OSH Act:

- Self-employed persons;
- Farms at which only immediate members of the farmer's family are employed;
- Working conditions regulated by other federal agencies under other federal statutes, including mining, nuclear energy and nuclear weapons manufacture, and many segments of the transportation industry; and
- Public sector employers (public sector employers must comply with state rules where applicable).

D. Your Duties Under the OSH Act

Perhaps the most important information you need about the OSH Act is what a nonprofit employer must do to comply with the law.²¹ The following presents a list of broad, general requirements you must comply with under the OSH Act:

- Provide a workplace free from recognized hazards that could cause death or serious bodily harm to employees, in accordance with standards issued by OSHA;
- Make copies of the OSHA standards available to employees upon request;
- Notify employees of their rights to information and provide training in accordance with OSHA standards;
- Identify and inspect workplace conditions and eliminate or diminish potential hazards;
- Label containers and post placards in the workplace to warn employees and visitors of potential hazards;
- Provide and require employees to wear proper personal protective equipment (PPE) whenever it is required;
- Make available the information, tools, and equipment needed to complete jobs safely;

²¹ See Pro Bono Partnership's article, [A Nonprofit's Guide to OSHA](#), and OSHA's [Small Business Safety and Health Handbook](#).

- Establish safety policies and programs to reduce accidents;
- Provide medical examinations;
- Report to the nearest OSHA regional office any fatalities due to a work-related incident and accidents and injuries that result in in-patient hospitalization, amputation, or loss of an eye;²²
- Provide employees or their representatives access to employee medical and exposure records;
- Prohibit discrimination against employees who properly exercise their rights under the OSH Act;
- Notify employees of violations and steps taken to correct the violations; and
- Verify with OSHA the implementation of violation abatement procedures.

E. Recordkeeping Under OSHA

OSHA requires that employers of 11 or more employees keep records of occupational injuries and illnesses for each work establishment. An establishment is a single physical location in which business is conducted or in which services or industrial operations are performed. For mobile worksites (for example, construction and utility industries), the establishment is the location in which the workers are supervised or in which their activities are based.

All occupational illnesses must be recorded regardless of severity. Occupational injuries must be recorded if they result in death, one or more lost workdays, restriction of work or motion, loss of consciousness, transfer to another job, or medical treatment. OSHA has developed the following special forms for completing and maintaining records of injuries and illnesses:

- OSHA Form 300, *Log of Work-Related Injuries and Illnesses* – the log contains a brief description of each recordable injury and illness.

²² It is important to note that a work-related fatality must be reported to OSHA within eight hours of the occurrence, and an in-patient hospitalization, amputation, or loss of an eye must be reported within 24 hours. You can find more information about reporting injuries on OSHA's [website](#).

- OSHA Form 300A, *Summary of Work-Related Injuries and Illnesses* – a list of injuries and illnesses that were recorded in the 300 Log during the previous calendar year, which must be posted in the workplace from February to April.
- OSHA 301, *Injury and Illness Incident Report* – includes detailed information about each injury or illness incident.

Links to these forms, as well as more information about OSHA's recordkeeping and reporting requirements, can be found on its [website](#).

XVI. Creating an Employee Handbook

While it is not required under either federal or state law, it is highly advisable to create a comprehensive employee handbook specific to your nonprofit organization that is distributed to all employees upon their hiring. An employee handbook should contain the following:

- An employment-at-will policy stating that neither the employee handbook nor any other employer communication creates a contract of employment for any duration and that the employer and employee both can terminate the employment relationship at any time without cause or notice;
- A certification to be signed by employees confirming that they received the handbook, read it, and accept the terms contained therein;
- A certification to be signed by employees acknowledging that all information about the nonprofit organization that is not publicly available is presumptively confidential and should not be disclosed to individuals outside of the organization;
- The nonprofit's mission statement;
- Information regarding the nonprofit's commitment to equal opportunity employment and a workplace that is free from (1) discrimination and harassment based on any protected characteristic and (2) retaliation for engaging in legally protected conduct;

- Policies and procedures regarding (1) complaints of workplace discrimination, harassment, retaliation, and other misconduct and (2) requests for reasonable accommodations for disabilities, pregnancy, and religious observances;
- Paid time off (PTO) policies, including how PTO is accrued, how PTO can be used, and whether and under what circumstances PTO (1) can be carried over from one year to the next and (2) will be paid to an employee upon separation of employment;
- Information regarding leave and benefits, including the NJ SAFE Act (for employers with 25 or more employee), the NJFLA (for employers with 30 or more employee), and the FMLA (for employers with 50 or more employee);
- A New Jersey Earned/Paid Sick Leave Act policy; and
- Other employment policies, procedures, and practices to consider, such as:
 - Expected conduct and any “introductory” (**not** “probationary”) employment period;
 - Performance reviews, including how each employee’s performance is analyzed and measured;
 - Disciplinary policies and procedures;
 - Policies and procedures regarding separation of an employee’s employment;²³
 - Payroll practices;
 - Social media policy;
 - Computer and information security policies and practices; and
 - Outside employment policy.

Please note that this is a non-exhaustive list of the kind of information typically contained in employee handbooks. If you feel it necessary to

²³ See Pro Bono Partnership’s articles, [Conducting an Employee Termination Meeting](#) and [New Jersey’s Revised Unemployment Compensation Claims Process](#).

include other information, you should consult with an employment lawyer to determine if including the information is a prudent decision.

XVII. Understanding At-Will Employment

Now that you've hired your first employee, it is important to understand what rights both you and your employees have when it comes to ending the employment relationship. New Jersey, like every other state except for Montana, recognizes a presumption that all employment is at-will unless otherwise stated in an employment contract. At-will employment means employees can be discharged with or without cause absent a well-delineated exception.²⁴ It also means employees are free to end the employment relationship at any time, with or without notice, and for any reason.

While employment in New Jersey is presumptively at-will, there are some scenarios where employees might be able to claim that the circumstances of their employment with you entitled them to greater job protections than other employees. Those situations are discussed briefly below.

A. Implied Contract

Courts recognize claims for breach of an implied contract based on handbook provisions, policies, or practices that create an expectation the provisions, policies, or practices will be followed. An oral promise that was supported by consideration might also give rise to an implied contract.

Employers can minimize the risk of implied contracts by including a clear and conspicuous disclaimer in an employee handbook. To ensure compliance with New Jersey Supreme Court opinions, a disclaimer should be included on the first page of the handbook prior to the Table of Contents and be capitalized, underlined, typed in bold, or otherwise presented in a manner which makes clear to the reader that the handbook does not create a contract of employment. For example, your employee handbook should contain language such as:

²⁴ Although "cause" is not required to justify a termination, normally it is a better practice to have a legitimate, nondiscriminatory reason in order to reduce the risk of litigation.

ABOUT THIS HANDBOOK

THE CONTENTS OF THIS HANDBOOK ARE GUIDELINES ONLY AND SUPERSEDE ANY PRIOR HANDBOOK. NEITHER THIS HANDBOOK NOR ANY OTHER COMPANY GUIDELINES, POLICIES, OR PRACTICES CREATE AN EMPLOYMENT CONTRACT OR ANY FORM OF CONTRACT. THE COMPANY HAS THE RIGHT, WITH OR WITHOUT NOTICE, IN AN INDIVIDUAL CASE OR GENERALLY, TO CHANGE ANY OF ITS GUIDELINES, POLICIES, PRACTICES, WORKING CONDITIONS, OR BENEFITS AT ANY TIME. THERE IS NO PROMISE OF ANY KIND BY THE COMPANY IN THE HANDBOOK AND, REGARDLESS OF WHAT THIS HANDBOOK SAYS, THE COMPANY PROMISES NOTHING.

NO ONE IS AUTHORIZED TO PROVIDE ANY EMPLOYEE WITH AN EMPLOYMENT CONTRACT OR SPECIAL ARRANGEMENT CONCERNING TERMS OR CONDITIONS OF EMPLOYMENT UNLESS THE CONTRACT OR ARRANGEMENT IS IN WRITING AND SIGNED BY THE COMPANY'S PRESIDENT AND THE EMPLOYEE. EMPLOYMENT WITH THE COMPANY IS AT-WILL AND CAN BE TERMINATED AT ANY TIME WITH OR WITHOUT CAUSE OR NOTICE BY THE EMPLOYEE OR THE COMPANY.

B. Public Policy

New Jersey courts have recognized an exception to the general at-will rule, stating that employees have a cause of action for wrongful termination when their discharge was contrary to a clear mandate of public policy. In other words, a discharge might be unlawful if it runs contrary to laws, regulations, or court decisions. For example, New Jersey courts have held that it is unlawful to retaliate against an employee who refuses to engage in illegal or criminal conduct. Similarly, a termination of an employee who in good faith reports illegal conduct in the workplace also likely would violate public policy.

XVIII. Conclusion

Now that you understand the very basics of business administration, human resources, recordkeeping, insurance, and legal liability, you are in a better position to run a successful nonprofit. Always remember that every business is like a living organism, wherein each part has to work in harmony for the whole to thrive. If at any point you feel weight of business ownership or management weighing you down, feel free to come back to this toolkit to ensure that all the basics are covered.

When in doubt about a particular employment action, consult with an employment lawyer.

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