



# Top 10 Questions Board Members Should Ask

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Spears  
Executive Director

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# Mission of Pro Bono Partnership of Atlanta

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To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals.

We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

# Client Criteria

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In order to be a client of Pro Bono Partnership of Atlanta, an organization must:

- Be a 501(c)(3) nonprofit.
- Be located in or serve the greater Atlanta area.
- Serve low-income or disadvantaged individuals.
- Be unable to afford legal services.

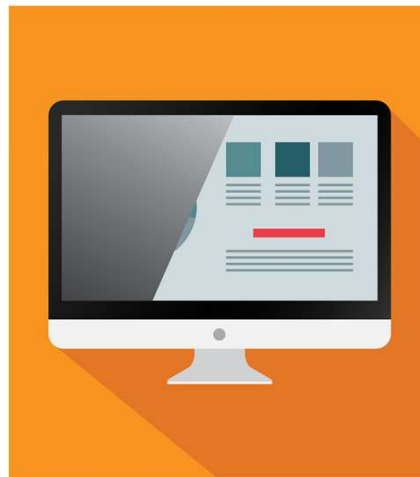
Visit our website at [www.pbpatl.org](http://www.pbpatl.org) to apply.

# PBPA Learning Center for Georgia Nonprofits

[www.pbpatl.org/resources](http://www.pbpatl.org/resources)

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# Legal Information

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This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

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# Introduction

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- 501(c)(3) tax-exempt nonprofit organizations are expected to be in compliance with many areas of law, including:
  - Employment
  - IRS Regulations
  - Insurance and Risk Management
  - Corporate Governance
  - State Taxes
  - Fundraising

# Introduction

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- Organizations that are not in compliance may face:
  - Audits, fines and penalties from the IRS, Georgia Department of Revenue and Department of Labor
  - Lawsuits
  - Theft or embezzlement
  - Loss of grants or donors
  - Criminal penalties
  - Loss of tax-exempt status

## *Question #1:*

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Are we sure that we're using independent contractors properly and are we paying all necessary payroll taxes?



# Employment

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- Contractors vs. Employees
  - IRS and USDOL look at many factors
  - Most important question is who has control
  - Consequences of getting it wrong can be severe
  - Additional Resource:  
[Proper Worker Classification in the Nonprofit Workplace: Avoiding Misclassification Issues \(pbpatl.org\)](http://pbpatl.org)

# IRS

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- Are we paying all necessary payroll taxes?
  - All institutions must withhold Federal Income Tax (FITW) and Social Security and Medicare taxes (FICA) for employees
  - 501(c)(3) tax-exempts do not have to pay Federal unemployment tax (FUTA)
  - Employees and Board Members may be personally liable for these taxes, penalties and interest.
  - Mistakes can be costly.

# Employment

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- Are we registered with Georgia Department of Labor and do we pay unemployment?
  - Nonprofit employers are not covered until they have 4 employees but must register as soon as they have one
  - Must choose between SUTA or reimbursable method
  - Additional resource:  
<http://www.pbpatl.org/nonprofit-legal-alerts/does-your-nonprofit-employ-four-or-more-know-your-unemployment-obligations>

## *Question #2:*

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Do we pay minimum wage and overtime as required by law?

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# Suit Says Even Ronald McDonald House Has to Pay Overtime

By Tresa Baldas | [All Articles](#)

The National Law Journal | September 18, 2009

The Ronald McDonald House Charities of South Florida is being sued in federal court for allegedly denying overtime to an assistant house manager. Given the status of the economy, one attorney says, nonprofits should brace for more wage-and-hour suits, especially from departing employees.

# Employment

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- Best to comply with Fair Labor Standards Act
- Most employees are non-exempt from FLSA
- Must be paid overtime for every hour over 40 in one week
- Must be paid minimum wage
- Have employees keep accurate time records

# Employment

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- Don't compensate volunteers
- Be careful about employees "volunteering"
  - Must be truly voluntary
  - Must not be the same type of services performed by the employee in his or her regular position

# Employment

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- Has an expert reviewed our worker classifications?
  - Volunteer vs. Employee
  - Employee vs. Contractor
  - Exempt vs. Non-exempt



# Employment

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- Additional Resources:
  - <http://www.pbpatl.org/resources/employees-volunteers/the-nuts-and-bolts-of-paying-employees>
  - <http://www.pbpatl.org/resources/employment-law-102-employees-the-fair-labor-standards-act>
  - <http://www.pbpatl.org/wp-content/uploads/2013/06/When-May-an-Employee-Also-Serve-as-a-Volunteer.pdf>

## *Question #3:*

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Are we sending in the appropriate Form 990 on time and does the Board review the form before we file?

### We Charged a Penalty on Your Exempt Organization Tax Return

#### Why Are You Getting This Notice?

We charged a penalty under Internal Revenue Code (IRC) section 6652(c) because your Form 990 was filed late. For more account detail, see the Tax Statement section shown below.

#### How We Calculated the Amount You Owe

##### Tax Statement

Tax on Return	\$0.00
Total Credits	\$0.00
Amount Previously Refunded to You	\$0.00
Overpayment	\$0.00
Penalty	\$9,240.00
Interest	\$0.00
<b>Total Amount You Owe</b>	<b>\$9,240.00</b>

To avoid additional penalty and/or interest, please allow enough mailing time so that we receive your payment by **April 22, 2013**.

#### Payment Instructions

Make your check or money order payable to the United States Treasury. Write your taxpayer identification number on your payment and mail it with the stub portion of this notice to:

Internal Revenue Service  
P.O. Box 9941  
Ogden, UT 84409

# IRS

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- Are we current on our Form 990 filings?
  - Board members should carefully review the Form 990 before it is filed
  - Changes to the governing documents or mission and significant changes to activities need to be disclosed to the IRS
  - Additional Resource:  
<http://www.pbpatl.org/resources/frequently-asked-questions-about-the-form-990>

# IRS

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- Are we completing the proper form?
  - Form 990
  - Form 990-EZ (short form)
    - Exempt organizations with gross receipts <\$200,000, and total assets <\$500,000 at the end of the year
  - Form 990 N (e-postcard)
    - Exempt organizations with gross receipts normally  $\leq$ \$50,000
  - Form 990 – T
    - Exempt organizations with more than \$1,000 in gross income from an unrelated business activity

# *Question #4:*

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Are we following our  
conflict of interest policy?

## Angel Food Ministries Founders Plead Guilty to Fraud, Theft Charges

Wesly Joseph Wingo, aka Pastor Joe Wingo, his wife Linda and their son plead guilty in the U.S. District Court in Macon on Monday. They will be sentenced in May.

Posted by [Deanna Allen](#) (Editor), February 26, 2013 at 10:51 pm

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The U.S. Attorney's Office in Macon confirmed that Pastor Joseph Wingo, his wife Linda and son Andy plead guilty to conspiring with each other and others to bilk millions from Angel Food Ministries. A fellow business associate, Harry Michaels, was also charged in the case.

According to a spokesperson at the clerk's office in the U.S. District Court in Macon, the Wingos plead guilty to 40 of the 49 counts in the original indictment, filed in December 2011. Sentencing in the case is scheduled for May 29, 2013. Joe and Andy Wingo had remained in jail awaiting the trial.

# Corporate Governance

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- A good conflict of interest (COI) policy:
  - Requires directors and staff to act solely in the interests of the charity without regard for personal interests
  - Includes written procedures for determining whether a COI exists, and
  - Lays out what to do in the event a COI is identified
- IRS encourages annual monitoring of COI policy through certification and disclosure forms
- Additional Resources

<http://www.pbpatl.org/resources/conflict-of-interest-policies-disclosure-monitoring-and-enforcement/>

<https://www.irs.gov/charities-non-profits/form-1023-purpose-of-conflict-of-interest-policy>



# Question #5:

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What are the greatest risks we face  
in our work and  
what are we doing to address them?

# The Atlanta Journal-Constitution

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## Driver of addiction recovery van charged in deadly crash on I-85



Credit: Georgia Department of Transportation

# Insurance and Risk Management

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- Do we have participants and volunteers sign liability releases?
  - Generally enforceable in GA, waivers help protect organization from lawsuits and set expectations of participants
  - Should be clear, conspicuous, and unambiguous
  - Additional Resources:  
<http://www.pbpatl.org/resources/securing-waivers-of-liability-from-volunteers-of-nonprofit-organizations/>

# Insurance and Risk Management

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- Do we perform background checks where necessary?
  - Important when working with vulnerable populations
  - Need signed release and consent form
  - Additional Resource:  
<http://www.pbpatl.org/resources/background-checks/>  
[http://www.pbpatl.org/wp-content/uploads/2011/12/Background\\_Screening\\_for\\_Volunteers\\_and\\_Employees\\_12-10-10\\_6\\_1.pdf](http://www.pbpatl.org/wp-content/uploads/2011/12/Background_Screening_for_Volunteers_and_Employees_12-10-10_6_1.pdf)

# Insurance and Risk Management

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- Do we provide the necessary tools and training for staff and volunteers to do their jobs safely?
- Do we protect private information of clients, staff and volunteers?

<http://nonprofitrisk.org/>

## *Question #6:*

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Do we have the insurance that we need at appropriate levels?

# Insurance and Risk Management

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- Categories of Coverage:
  - Property & Casualty
  - Employment Practices Liability
  - Directors & Officers
  - Workers' Compensation (Required if you have 3 employees)
- Important to find a knowledgeable insurance broker
- Additional Resource
  - <http://www.pbpatl.org/resources/nonprofits-guide-to-risk-management-and-insurance/>
  - <http://www.pbpatl.org/resources/insurance-and-risk-management-101-for-nonprofits/>
  - <http://www.pbpatl.org/resources/workers-compensation-insurance-required-by-law-for-most-georgia-nonprofits/>

# Stay Tuned...

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Part II of  
“Top 10 Questions Board Members Should Ask”

September 29, 2022  
10am



Questions?

# Pro Bono Partnership of Atlanta

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