

**PBPA Podcast Transcript**  
**Key Issues in Payroll Compliance**  
**(23:40 minutes)**



Sireesha ([00:03](#)):

After a nonprofit has their corporate and tax exempt documentation lined up and has raised some funds, they may be ready to hire their first employee. But even before that first hire, they need to think about a payroll system to ensure employees are paid accurately and on time. In this episode of the PBPA Podcast, Kadale Lubin will talk to us about legal requirements to efficiently manage payroll. This foundational understanding of payroll compliance is a primer for new nonprofits and a reminder of best practices for seasoned employers, too.

Sireesha ([00:50](#)):

Hello and welcome to the PBPA Podcast. In each episode of the PBPA Podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at [pbpatl.org](http://pbpatl.org). Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel, contact your attorney for guidance on your nonprofits' specific situation.

Sireesha ([02:00](#)):

Kadale Lubin is an associate with Ford Harrison. Her practice is focused on employment and labor law, including litigating claims under the ADA, FMLA and FLSA. We are thrilled to have you here today to talk to us about the legal aspects of "Payroll 101".

Kadale ([02:18](#)):

Thank you for having me on the podcast. I'm happy to be here to support the Pro Bono Partnership of Atlanta.

Sireesha ([02:27](#)):

Let's start by talking about the many options for running payroll. What are some of those options that are available to small nonprofits?

Kadale ([02:36](#)):

Sure. I would say some options that are available to nonprofits could be outsourcing payroll services if, if they choose to. So companies like ADP, for example, will completely take care of all of that for you. And they do have different packages that may work better for a nonprofit as opposed to a for-profit business. So if the, if the nonprofit doesn't want to deal with the hassle, they can have them take care of it. Can also just get a payroll software where nonprofit would manage it themselves. Employees could keep track of their time sometimes through their mobile device or remotely. They can clock in and out from their phone. They can do it once they arrive at the office if they happen to work in person. So that's more of a hands-on approach where you are, and by you I mean the nonprofit, you're regulating it and making sure that you're staying on top of how employees are tracking their time.

Kadale (03:39):

Uh, the next option would just be to hire a bookkeeper <laugh> and have that person specifically handle this for you. And that can be an employee of the company. Um, so there's a few different options. Like I said, you don't have to completely outsource it to a big payroll software such as ADP, but you can kind of choose what works best for your company. And if you're starting out, it may be best to get a more affordable software and have employees keep track of time through something like that as opposed to completely giving it away to a third party right at the beginning.

Sireesha (04:22):

Yeah. And in these options you mentioned by, you mentioned doing it completely by yourself by run, running, payroll by hand. And one thing we generally recommend at PBPA to our clients is that it's not advisable. Um, it's really hard. There's a lot to keep track of, and there is, uh, you're prone to error. Inevitably there will be an error and that could lead to fines and fees later on. That would outbalance whatever savings the nonprofit might incur by trying to keep it in-house and doing it all by hand. So those ideas of the payroll software is a good place to start.

Kadale (05:02):

Agreed.

Sireesha (05:03):

And Kadale, my next question is, you know, our, our conversation today is gonna be focusing a lot on compliance, but if a nonprofit is hiring a payroll specialist or using kind of a specialty software, doesn't that service provider ensure that the payroll is all done correctly? Why? Why does a nonprofit have to worry about the ins and outs of payroll compliance if they have some sort of third party payroll service provider?

Kadale (05:30):

I mean, in a perfect world, the nonprofit wouldn't have, would not have to worry about it. And the third party service provider would make sure that they're in compliance with all, you know, the IRS regulations, all the regulations under the Fair Labor Standards Act. All the agencies, they would ensure that they're completely in compliance with. In reality, that's not how it happens. And companies can still be vulnerable if they're not keeping an eye or keeping a hand in what that payroll company is doing. Ultimately, although you've delegated that responsibility, the nonprofit can still be held accountable if things slip through the cracks. You don't wanna just completely neglect your payroll <laugh> practices hoping that, uh, you're in the clear. So I would hate to see a nonprofit fall victim to something like that. And obviously if there's an agreement between the nonprofit and the third party company, you can sort of build in some kind of protection to say that, you know, you need to comply with all state and federal laws, make sure that you're holding us to the highest standard. But that said, you wanna make sure that you're still keeping a hand in the pot as the nonprofit because you can't completely delegate all of your responsibility, unfortunately. Not just in payroll, but in everything <laugh>.

Sireesha (06:55):

Yeah, that's a good point. In everything! But one of the unique aspects of payroll is the, any violations under FLSA can even go to some officers and even board of members out a board of directors. And well, insurance may cover those officers and directors. You don't want to be relying on insurance. It's best to stay on top of the payroll and make sure you know what your nonprofit has to uniquely comply with.

And one payroll compliance factor that is completely in the hands of nonprofit employers is the proper classification of employees. Kadale, let's talk about that. What is the difference between exempt and non-exempt employees?

Kadale ([07:40](#)):

Sure. So, under the Fair Labor Standards Act, which sometimes we refer to it as "Flisa" just so it's easier on the tongue, that federal statute defines how employees should be classified. So typically employees can be classified as exempt or non-exempt, and that's just referring to wage and hour categories. So typically that's just saying, okay, we're gonna pay this employee overtime or we're not gonna pay this employee overtime. So, an exempt employee will typically be paid a salary, meaning that they're exempt from the overtime provisions. And there's different categories of how you would ensure that an employee falls into that category. So you might have a professional exemption, an administrative exemption, an executive exemption. So, me as an attorney, as a professional, I typically do not receive overtime pay at my full-time job. However, a non-exempt employee is not paid salary. They're paid hourly.

Kadale ([08:47](#)):

And so with that, as a nonprofit, you wanna be extremely careful to ensure that you're maintaining the proper timekeeping records. If they're working over 40 hours a week, these employees should be getting paid time and a half for any hours in excess of 40 per the Fair Labor Standards Act. And if not, then your organization is at risk for wage and hour violation, which is never a fun time when you have to reach out to an attorney to defend you in a wage and hour violation. I mean, that's how we stay in business, but it's usually not good for the nonprofit 'cause that is a very costly violation. And recently the threshold for the salaried employees, it's fluctuated as of July 1st. I believe it's increased from \$644 to \$844. And I may have the numbers slightly off, but you just have to keep an eye on these state agencies because they're constantly changing the requirements. And if you're supposed to pay an employee at a certain amount in order for them to be exempt, you wanna make sure that your organization is in the loop when it comes to that.

Sireesha ([10:01](#)):

And Kadale, my next few questions relate to non-exempt employees. As you mentioned, those are the ones that are, that are eligible for overtime. You're talking about salaried versus hourly pay. Can a non-exempt employee be paid on a salaried basis?

Kadale ([10:21](#)):

Yes, they can. Most times you'll find that they're paid hourly, but they can be paid salary and that's not a violation of the FLSA. However, if you are paying them salary, you still have to keep in mind those timekeeping constraints. So they still would need to be paid overtime if they're working over 40 hours a week. So however you calculate what their hourly rate might turn out to be, you wanna make sure that this employee is still keeping track of time or you're making sure that your company keeps track of that time. Because again, anything in excess of 40 hours needs to be paid time-and-a-half. So, but yes, to answer your question, you can pay a non-exempt employee a salary.

Sireesha ([11:06](#)):

Okay. And in the case of that salary non-exempt employee, but they're not paid hourly, what if they do work overtime? How would one go about calculating that overtime pay?

Kadale ([11:19](#)):

So I would say the easiest way you could do it is you can look at the salary that you're paying them and you can divide that by the amount of hours that they've worked for the week. And then you would basically calculate their rate of pay. And once you have that number, you want to multiply that by 1.5 to make sure that you know how many hours they've worked in excess of 40. And then you also know what that rate needs to be for anything greater than the hourly rate that you've calculated. Because compliance is key.

Sireesha ([11:53](#)):

Yes, key. And what if we're in a situation where an employee is absolutely certain that this salaried non-exempt employee will never work overtime? Does an employer still have to track their hours? That's

Kadale ([12:09](#)):

A really good question. In a situation if the employer is 100% certain that this employee will never, ever work one hour over 40 hours ever throughout the course of their employment, still track their hours. Um, obviously things happen in an organization and employees may get pulled to the left or the right and you have to have them work a little extra or have them come in a little bit earlier. You never wanna be in the situation where you think you're completely foolproof and now all of a sudden you have an employee that worked 50 or 60 hours in one week on an off week and um, you didn't properly account for that or pay them for that. So to be on the safe side, if you have an hourly or if you have a non-exempt employee that is paid a salary or that may be that is paid hourly. Still properly keep track of their time!

Sireesha ([13:01](#)):

Okay. And that leads me to my next question. Speaking of time tracking, do you have any general tips for tracking employee time?

Kadale ([13:10](#)):

Yeah! So depending on the strategy that you choose as an organization, I think it's nice to have some kind of flexibility when you're keeping track of an employee's hours in the age of remote work. Not all employees are clocking in at an office or starting work at a desk. They might have to do some tasks at home before coming in. So I think having a flexibility option where they can clock in remotely, either through an app or through a website at home, that sometimes helps. I would also say make sure that you have a designated person, even if you don't have a payroll specialist, but just have someone who is making sure that you're keeping on track of your spreadsheets or however you're organizing this information. 'Cause with timekeeping and <laugh> payroll documentation is key, like I said before. And God forbid you get into a situation where you now have a class action lawsuit, which is what I'm dealing with now for an organization that we're defending.

Kadale ([14:16](#)):

Having records that don't have any dates, that don't have any times that <laugh>, don't make sense makes it very difficult to defend an organization if and when that time comes. So make sure that you're properly dating things, that you're putting things in the right categories. Staying organized really, because otherwise if it becomes very difficult to look back 3, 4, 5 years down the road and interpret what happened in a certain week, if number one you don't have any records or number two, you don't

know where those records are. It's hard to make the argument when we don't have any documentation to point to.

Kadale ([14:54](#)):

So best practices is to stay on top of your record keeping. If your organization is having trouble doing that themselves, designate a person that can do that or that will do that monthly or weekly or however often you choose to do it. That way you can avoid a mistake. Or in the event that you're audited for some reason, which happens more often than we'd like to say, you know exactly where to go to pull those documents. And if we have to defend you, we know exactly where to go to pull those documents and we know what to refer to when we're saying, oh no, this organization did not violate any wage in our laws because we have all the documentation. All their employees got paid overtime that needed to be paid overtime, exhibit a <laugh>. But it's hard to do that if you don't have the records or if you don't know where they are.

Sireesha ([15:46](#)):

That is such great insight, Kadale. I'm sure for any listener, a nonprofit employer or employee who gets frustrated with doing those time sheets every week or every two weeks, this is a reminder for those employers why it's so important to, to stay on top of it yourself and to make sure your employees are getting those time sheets completed timely. Now my next question has to do with, small organizations who might be trying to have more cost saving practices and are thinking about running payroll only monthly to, you know, save on those costs. Can a Georgia employer pay their employees only on a monthly basis?

Kadale ([16:31](#)):

Um, well, the direct answer is no. In Georgia employees should be paid twice a month. It may vary in other states, but even if we're trying to save some coins and cut some corners by doing this only monthly, like I said before, it will not help in the long run. A lot can happen in the course of a month and if that organization is not staying on top of it or they're not in the loop, they can once again expose themselves to violations. So my recommendation is to not try to do this monthly. Number one, you don't wanna violate Georgia law or federal law. Number two, it's just not good practically speaking because you can miss a lot. Especially when most companies are paying their employees more often than that, twice a month. You wanna make sure that you are catching anything that can slip through the cracks.

Sireesha ([17:27](#)):

And my next question, we're switching gears now and we're going to talk about, um, basically unemployment tax. We're gonna talk about "SUTA", which is for the state and "FUTA", which is federal. What should nonprofit employers know about these payroll taxes?

Kadale ([17:44](#)):

Well, I would say for the state or the federal payroll taxes, as a nonprofit, especially for the state, there are some special circumstances under Georgia law.

Sireesha ([17:56](#)):

And I do want to bring attention to the attention of our listeners that we have a webcast on the topic of unemployment options. In Georgia for nonprofits here, you do have a couple options and you do have

some flexibility in terms of how you pay into the state fund. There's a reimbursement option, there's a contributory option. There's a lot of details on this, but do check out that webcast. I'll drop a link to that on this podcast episode's webpage. So look for it there. And I do also want to mention that don't assume that your payroll company knows the rules or exemptions or special options that are available to nonprofits. The majority of payroll companies, clients are for-profit entities, so they may not be aware of what options are available in each state. And even, for example, 501(c)(3)s don't have to pay FUTA, you don't have to worry about that. And then in Georgia, you have a couple options for SUTA.

Kadale ([19:01](#)):

I was just gonna add, which goes back to our earlier discussion on completely delegating that responsibility to a third party company. You as an organization, you're in the best position to know what you need as a nonprofit. And if you have a third party company, their processes might be streamlined for for-profit companies. And so they may not be looking at the same level of detail at the laws or the regulations that they would need if they're helping a nonprofit organization as opposed to a for-profit company. So you do wanna do your due diligence and just make sure that you have a general knowledge or a general understanding of the state and federal laws that you need to follow, even if you are delegating that to someone else.

Sireesha ([19:49](#)):

And now Kadale, I'm gonna bring up my last question. How long does an employer need to hold onto those payroll records?

Kadale ([19:57](#)):

Typically, if you follow the IRS guidelines, four years should be the standard to be on the safe side. You don't want to get rid of anything or destroy any documentation ahead of four years if you're trying to abide by the IRS guidelines. Which every organization should abide by those IRS guidelines. And by hold on to them mean, we mean that you need to know where they are. I can't tell you how many times we've gone to clients or we've emailed them asking for records, asking for documentation, and they'll tell us that they're in a file closet or they move buildings and they didn't bring those boxes over to the new location. And so they're not sure where we can find them. That is a problem <laugh>. So holding onto those records, hopefully you have a database where you can do that if you've been listening to anything that we've said so far. But make sure that you can easily access them and get them to the agency or your attorney or, whoever you need to get them to quickly.

Sireesha ([21:10](#)):

Very true. And I also want to, in terms of guidelines, I wanna mention a document retention policy. If a nonprofit has a document retention policy, make sure that you're doing whatever's in your document retention policy. If your policy says that you hold onto it for five years, for example, then hold onto it for five years or modify your policy to reflect your actual practice. And I I just bring that up because the IRS does ask about specifically, does your nonprofit have these three policies: they ask about whistleblower policy, they ask about conflict of interest policy, and they always ask about a document retention policy when you file your 990. So, I like to elevate this topic because if your nonprofit does not have a document retention policy, they should consider creating one.

Kadale ([22:02](#)):

A hundred percent. I agree. And there's no use in having a policy if you're not gonna follow it. So if your organization has this policy, I will just say, you should have this policy. You just wanna make sure that you're sticking to whatever's in there or like we said, update it to something that you can actually abide by.

Sireesha ([22:22](#)):

Kadale, thank you so much for walking us through all of these important payroll considerations. This is such great insight and guidance by addressing these payroll considerations early on, our nonprofit listeners can minimize compliance issues, streamline operations, and maintain positive relationships with employees.

Kadale ([22:44](#)):

You're welcome. I'm so happy to be here. Thank you for having me. And I hope that all the nonprofit leadership management that's listening will find this helpful. And if they need help, they can always reach out.

Sireesha ([22:58](#)):

We hope that you found this episode of the PBPA Podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.