

## **NOT FOR PROFIT ORGANIZATIONS FAQS**

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### ***Definition***

A not for profit organization is a corporate entity that has received a designation from the IRS as a tax-exempt organization under section 501(c)(3).

### ***Qualifications***

The purpose of the organization must be primarily in furtherance of purposes allowed under Section 501(c)(3).

### ***Tax Effect***

The entity is exempt from federal income taxes (but for only as long as it continues to meet the requirements of Section 501(c)(3).

Employees are exempt from FUTA.

The entity has a tax-exempt identification number.

***Q. Will the not-for-profit organization (“NFP”) risk losing its tax-exempt status by agreeing to a PEO relationship?***

A. There is no case or ruling in point; however, there is no prohibition against a NFP leasing its employees. The organization is not receiving any income from the arrangement, and the PEO does not in any way affect its tax exempt mission or purpose. Moreover, the NFP remains the common law employer after the PEO contract. Therefore, there is no basis in our opinion for the NFP to lose its tax-exempt status.

***Q. Can the NFP participate in a 401(k)?***

A. Yes, the Small Employer Job Protection Act, passed in 1996, allowed for the first time 501(c)(3) organizations to receive 401(k) benefits. Be aware, however, that if the NFP has an existing 503(b) plan, it cannot be rolled into a 401(k) plan.

***Q. Will the PEO report wages under its FEIN?***

A. Yes. The PEO reports all wages under its own FEIN. There is no recognized method to single out just those leased employees of a PEO that are employed at the worksite of a NFP, and “exempt” their wages.

The good news is that the only added expense for the NFP employees is FUTA, which is approximately \$56 per employee. The PEO will need to price the client to recover this \$56 in that it will not be able to pass it through directly.

***Other issues:***

***SUTA***

In some states (including Florida), a NFP can, in effect, opt out of the unemployment insurance pool and self-fund unemployment benefits. This should not be a concern for the NFP in that after the PEO agreement is signed, the PEO becomes responsible for SUTA. The only potential issue is if there is a bar or waiting period for a NFP to “self-insure” unemployment after the PEO agreement terminates.

***Clergy***

NFPs that are religious organizations present a complication. A minister is exempt from social security taxes, and may be eligible for a tax-free housing allowance. The PEO should consult legal counsel as to how to handle such issues.

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