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

CAN I PAY MY BOARD MEMBERS?

Nonprofit board members are motivated to serve by passion for an organization's mission—to improve the lives of children or the elderly, to provide homes for abandoned animals, or to secure jobs for our nation's veterans. While nonprofit board members do not generally expect to get paid for their altruism, it might seem unfair that those who serve in similar roles at for-profit corporations are often well compensated. And paying a board member might help attract talent or allow individuals who would not financially be able to volunteer their time to serve on your board. But paying nonprofit board members for their service raises many legal issues that are very difficult to overcome. This article discusses the types of payments a nonprofit might make to a board member and whether those types of payments are advisable.

There are three primary instances in which your nonprofit might write a check to a board member, and it is important to understand the distinctions among them as the risks associated with each are quite different. The first two, which may be permissible, are:

- **Reimbursement for reasonable expenses related to board service:** A board member may incur out of pocket expenses as a result of service on a board, such as transportation costs related to meetings or retreats or making copies for a board meeting. Your organization is not required to reimburse these expenses, but it is appropriate as long as the expenses are adequately documented and the costs are reasonable. Your nonprofit should have a written policy that identifies the types of expenses that are covered, and the details of the reimbursement process.
- **Payment for services unrelated to board service**: A board member may have a skill or operate a business that would benefit the nonprofit. For example, your organization may want to hire an accounting or PR firm owned by a board member, perhaps at a discounted rate. Nonprofits can agree to these types of arrangements with board members, but it is essential that any decisions in this regard be made in accordance with your nonprofit's Conflict of Interest Policy. Learn how to comply with your policy here.

The third possibility is payment for board service. A nonprofit might want to compensate board members for their service to the organization, such as the time spent attending meetings and helping with recruitment and board engagement. PBPA advises against compensating individuals for board service because of the numerous potential issues that may arise. Here are some of the pitfalls associated with this type of arrangement:

1. Waiving Volunteer Immunity

Congress passed the Volunteer Protection Act ("VPA") to encourage volunteerism by providing certain immunity to volunteers for acts that occur within the scope of their authority as volunteers for the organization The VPA also prevents an individual who files a lawsuit from recovering punitive damages against volunteers. Immunity extends to members of the board *unless they are paid for their services*. The Georgia General Assembly has enacted a similar statute, but does not extend immunity to officers of the nonprofit who are compensated for their service. As such, board members will lose important legal protections in exchange for their compensation. Paying board members may also impact your insurance coverage (read more about the importance of comprehensive insurance here). While you may hope to recruit board members by paying them, it may have the opposite effect as each board member (present and future) must be fully informed of these increased liability risks.

2. Running Afoul of IRS Rules

The IRS prohibits every 501(c)(3) nonprofit from paying its officers, directors and other insiders more than a reasonable amount for any goods or services they provide to the organization. Nonprofits that do not follow these rules, and any officer or director who approved what is called an "excess benefit" payment, may be subject to taxes, fines and other penalties. That fine can be up to 25 percent of the excess benefit, and up to 200 percent if the nonprofit fails to correct the mistake. A penalty can also be imposed on any managers that approved it. You can learn more about excess benefits here.

Because of the risk of hefty fines and penalties, paying board members for their service is uncommon, and typically happens only at large nonprofits and hospitals. In such cases, the organization must ensure that any board member compensation is not excessive and does not improperly benefit insiders. It sounds straightforward in concept, but is challenging in practice.

At a minimum, to minimize the risk of paying an excess benefit with board member compensation, your nonprofit would need to:

- Create an authorized body comprised of individuals with no interest in the transaction (so board members could not participate). It will be important to ensure that these individuals do not have other potential conflicts. For example, as the board oversees employee compensation, employees could not serve.
- The body would need to identify and evaluate comparable data to demonstrate that the rate of payment is fair.
- Decisions must be adequately documented and periodically revisited.

These steps might also require that the nonprofit make fundamental changes to its charter documents including its articles of incorporation and bylaws.

3. Complying with Transparency and Reporting Responsibilities

If a board member is paid over $600 per year, that individual will need to be issued an IRS Form 1099. In addition, you will need to disclose that your board members are paid on your annual IRS Form 990. As the IRS is particularly concerned about private benefits, your organization runs the risk of drawing an IRS audit, which is a costly and time-consuming endeavor.

Your nonprofit will also need to review grant applications, reports, budgets, annual reports and any other communications to supporters to ensure that you are up front that your board of directors is paid, as most donors and foundations do not expect their funds to be used in that way.

Some forms of payment to board members are reasonable, such as reimbursement for board-related expenses pursuant to a Reimbursement Policy. Even compensation to board members for non-board services may be appropriate, if the arrangement is approved pursuant to a nonprofit's Conflict of Interest Policy. However, payment to nonprofit board members for their board services is discouraged. If you do not have a Reimbursement Policy or Conflict of Interest Policy, or have other questions related to this article, reach out to your PBPA attorney for assistance.