



THINKING AHEAD

MEMORANDUM

DATE: July 28, 2021
TO: Holmes Murphy Clients
FROM: Mick McGill, Vice President – Client Service | Shareholder
Holmes Murphy Fraternal Practice
SUBJECT: Employee Classification | Fair Labor Standards Act

Proper employment of chapter-based employees has become a real concern over the course of the last several years. Recently, we have seen litigation arise out of improper employment and violations of state minimum wage laws and the Fair Labor Standards Act. Below are basic and fundamental items which we believe are important to keep in mind as you work to properly employ house directors and kitchen employees.

- 1) Laws in each state can differ so any final employment agreement utilized should be reviewed with inter/national organization staff and/or local legal counsel to ensure other language is not required.
- 2) Where both the chapter and house corporation are listed in the sample employment agreements, the only entity that should remain in the final agreement is that which is the actual employer of the employee.
- 3) All staff you employ under one of these agreements must be W2 employees and not 1099 independent contractors. The employment agreements do not allow the worker to meet the independent contractor test. With W2 employment, you are also required to protect the employee from work related injuries. While all states may not mandate the purchase of Workers Compensation coverage the purchase of this insurance protection is the most sensible and cost-effective way to address the exposure. Holmes Murphy can assist you with placement if needed.

We are frequently asked if chapter-based employees be treated as exempt (salaried) versus non-exempt (non-salaried) employees. As a general rule, it is very difficult to meet the exempt classification and is safest to classify the employee as non-exempt. Effective January 1, 2020, the requirements to obtain exempt status are as follows:

- 1) Pay the employee a minimum of \$684 a week excluding all room and board if the room and board is for the benefit of the employer (having the House Director live in the house benefits the employer).
- 2) Have duties that meet the exempt category which include;
 - a. Management of a department as a primary duty.



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- b. Regularly direct the work of two or more full time employees or full-time equivalents for a total of 80 or more hours per week. Supervision of volunteers or independent contractors (e.g. cleaning crew or landscapers) are not counted toward the purposes of this test.
 - c. The employee must have authority to hire or fire the employees they manage or make suggestions as to hiring or firing that are given "particular weight."
- 3) If the employee is a House Director and lives in the house over the summer and takes on uncompensated duties, you are increasing the number of weeks worked and decreasing the weekly compensation to meet the weekly pay test. It would be safest to either employ and pay the House Director for twelve (12) months and have them work for that period of time or employ him or her for nine (09) months and if they are allowed to remain in the facility in the summer it is clear that they have no employment duties during this time. Clarification in the employment agreement is the safest way to address this concern.

EXHIBIT A TO HOUSE DIRECTOR EMPLOYMENT AGREEMENT

HOUSE DIRECTOR'S JOB DUTIES

- Required to reside in Chapter's facility during the academic year, with the exception of breaks (i.e., Thanksgiving, Winter and Spring breaks).
- Be available on weekends and evenings in case of emergency.
- Manage day-to-day operations of the Chapter's facility.
- Maintain a relationship with the Chapter that will promote a healthy living environment, including advising undergraduate officers on fraternity/sorority, scholastic and personal matters, as well as policies with regard to hazing, alcohol, pets, smoking and general conduct.
- Supervise all staff, contractors, vendors, gardeners, cleaning and maintenance staff.
- Manage the budget, including food service, household supplies and, if requested by the House Corporation, contractor bids.
- Identify and report any maintenance issues to House Corporation and, if requested by the House Corporation, oversee maintenance of the physical structure of the Chapter's facility, including renovations and repairs.
- Coordinate health, fire and safety inspections with appropriate entities.
- Coordinate opening and closing of the Chapter's facility, including managing room keys and visually inspecting the member's room during check-in/check-out for any damage and documenting any such damage.
- Eat evening meals with undergraduate Chapter member as schedule permits.
- Meet undergraduate Chapter executive board on a regular basis to discuss general conditions within the fraternity/sorority and to offer suggestions in response to any concerns by the Housing Advisor.
- Provide support for undergraduate Chapter members.
- Serve as a liaison between the Chapter, House Corporation, Alumni/ae, and parents.
- Report any activity with potential housing and/or Chapter conduct issues.
- Uphold the policies and standards of the Chapter.
- Able to endure the physical demands of managing a property. This includes, but is not limited to, transporting equipment, standing for long periods of time, bending, lifting objects no heavier than 20 pounds, climbing stairs, walking distances. Please note that lifting objects heavier than 20 pounds and climbing ladders should not be responsibilities of the House Director.
- Perform additional duties as directed by the Housing Advisor.

The following Sample Contract is provided as a reference only and no guarantee is made as to the adequacy of the Contract as to any specific situation. Please consult with qualified local counsel before using any portion of this Contract. This is especially important as applicable laws can vary widely from State to State.

HOUSE DIRECTOR EMPLOYMENT AGREEMENT

This HOUSE DIRECTOR EMPLOYMENT AGREEMENT ("Agreement") is entered into this ____ day of _____, 20____, by and between _____ individually (the "House Director"), _____ (the "House Corporation"), and _____ Chapter (the "Chapter") of the _____ Fraternity, Inc., having the address of _____.

1. Employment of House Director and Duties. The House Director shall be employed by the Chapter to carry out the duties outlined in the attached Exhibit A and other duties as assigned by the Chapter's Housing Advisor. The House Director shall also perform her duties in conformity with the rules of the college/university pertaining to student conduct and Greek life, as well as rules and/or policies adopted by _____.
2. Term of Agreement. The term of this Agreement shall begin on the ____ day of _____, 20____ and shall terminate on the ____ day of _____, 20____, (the "Termination Date") unless this Agreement is terminated prior to the Termination Date as provided in Paragraph 11. The House Director shall not perform duties during breaks in the college/university academic year (i.e., Thanksgiving, Winter, and Spring breaks) without the prior written approval of the Chapter's Housing Advisor.
3. Compensation. The House Director shall be paid a rate of ____ per hour for services performed under this Agreement.
4. Hours Worked. The House Director is authorized to work up to _____ hours per week performing services under this Agreement. The House Director agrees that all other time during the week (with the exception of unscheduled work as described in paragraph 6) is "off-the-clock" time for sleeping or personal activities and pursuits inside or outside the Chapter facility and will not be considered hours worked performing duties under this Agreement. In the event that the work week is less than 7 days due to a break in the academic year or the termination of this Agreement, the number of authorized work hours for such week(s) shall be pro-rated accordingly.
5. Recording Time Worked. The House Director agrees to accurately record all time worked and to provide such documentation, along with her signature verifying the accuracy of such information, to the Chapter's Housing Advisor in the manner directed by the Chapter's Housing Advisor.
6. Unscheduled Work. Except in the case of an emergency, the House Director must obtain written permission from the Chapter's Housing Advisor before working hours during any week in excess of the number set forth in Paragraph 4. The House Director will be paid for all hours worked regardless of whether she received permission to do so. However, if the House Director works additional hours without permission, she may be subject to discipline, up to and including the termination of this Agreement.

7. Living Accommodations. The House Director shall reside in the Chapter's facility starting , 20__ until _____, 20___. The House Director's living accommodations at the Chapter facility may include additional time with prior written approval from the House Corporation specifying the dates that the House Director shall have such additional accommodations. The House Director's right to reside in the Chapter's facility shall expire upon termination of this Agreement for any reason. The value of living accommodations for the House Director shall not be considered a portion of her compensation.
8. Inspection and Maintenance of Accommodations. The House Director acknowledges and agrees that the House Director's living accommodations may be inspected without prior notice by representatives of the Chapter and/or the House Corporation. The House Director agrees to return the living accommodations in substantially the same condition as received, normal wear and tear excepted. Any property of House Director remaining in the Chapter's facility or on or about any adjacent land after termination of this Agreement shall be deemed abandoned and may be disposed of by the Chapter and/or the House Corporation at House Director's expenses without any liability to them.
9. Meal Plan. The House Director shall be offered the same meal plan offered to undergraduate members of the Chapter who reside in the Chapter's facility during the academic year. The value of the meal plan for the House Director shall not be considered a portion of her compensation.
10. Release of Liability. All property kept by the House Director within the Chapter's facility or on or about any adjacent land shall be kept at her sole risk (including but not limited to electronics, cars, books or clothing) ("Personal Property"). House Director releases and forever discharges the Chapter and/or the House Corporation from all claims arising from loss, theft, damage or destruction of Personal Property regardless of cause, including but not limited to claims arising out of negligence, recklessness or intentional misconduct by the Chapter and/or the House Corporation. This paragraph does not release any claim the House Director can make under any insurance policy procured by House Director. House Director is encouraged to procure insurance to protect her from loss or damage to Personal Property and for her personal liability when she is not performing her duties under this Agreement.
11. Termination. This Agreement may be terminated by either party with _____days' prior written notice to the other party. In the event that the Chapter terminates this Agreement as a result of the House Director's dishonest, illegal or immoral conduct, this Agreement shall terminate immediately upon written notice to the House Director. This Agreement shall terminate upon the death or disability of the House Director to the extent that she is unable to perform her duties under this Agreement with or without reasonable accommodation. The House Director shall only be paid for work performed through the Termination Date or the earlier termination of this Agreement. Notice of termination under this paragraph shall be (a) personally delivered; (b) sent by registered or certified mail, postage prepaid, return receipt requested; or (c) sent by an overnight courier service that provides written confirmation of delivery at the following addresses:

House Director:

Chapter:

Any party to this Agreement may give a written notice of change of address to the other party to this Agreement.

12. Governing Law and Consent to Jurisdiction. This Agreement shall be interpreted and enforced in accordance with the laws of the State where the Chapter facility is located. Any dispute or claim arising under this Agreement shall be resolved exclusively by courts located in the county and state where the Chapter facility is located.
13. Miscellaneous.
 - a. No amendment or change to this Agreement shall be effective unless in writing and executed by all parties hereto.
 - b. This Agreement may not be assigned.
 - c. If any of the provisions contained in this Agreement shall for any reason be held unenforceable in any respect, such enforceability shall not affect any other provision of this Agreement or the validity of the Agreement as a whole.
 - d. Headings used in this Agreement are only for convenience and do not constitute a substantive part of this Agreement.
 - e. This Agreement constitutes the entire agreement of the parties concerning the subject matter herein and supersedes any prior understandings or agreements, whether written or oral.

House Director-Signature

House Director-Printed Name

Chapter President-Signature

Chapter President-Printed Name

House Corporation President-Signature

House Corporation President-
Printed Name