

# Implementing A Workers' Compensation Program

*For Your Local Association*

Provided by  
Educators Insurance Agency, Inc.

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888.908.6822

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## **MTA Guidance To Local Associations Regarding the Appropriate Handling of Local Officer and Employees Salary Payments**

As a result of recent requests for legal services and discussions at MTA meetings, we are aware that MTA locals have different practices in the treatment of officers and other individuals who perform compensated services for locals. Some locals treat these individuals as independent contractors, and other locals treat them as employees. After a careful review of current Internal Revenue Service (IRS) law with a tax attorney, MTA is advising its locals that officers and other members who are compensated for services should be treated as employees, whether or not the local is incorporated, whatever the amount of compensation they receive and whether or not the compensation is provided by salary, stipend or dues forgiveness.

**We understand that implementing this advice will involve some MTA locals in new procedures and expenditures. This memo is designed to help you understand the legal requirements, which involve (1) paying taxes and (2) securing workers' compensation insurance. We are also providing suggestions for meeting those obligations. One option for locals is to engage a payroll services firm. MTA has arranged for Automated Data Processing (ADP) to provide locals with the needed payroll services at a discount. Advice and assistance on workers' compensation insurance is available from Educators Insurance Agency (EIA). Details on how to get help from ADP and EIA follow later in this memo.**

**How your local deals with taxes for persons who provide services to the local depends on whether the person is an employee or an independent contractor.** The IRS distinguishes between employees and independent contractors on the basis of control. To assist organizations in making this distinction, it has published its guidance in, among other things, Employer's Tax Guide (Circular E) (available on the Web at <http://www.irs.gov/pub/irs-pdf/p15.pdf>) and Employer's Supplemental Tax Guide (Publication 15A) (available on the Web at <http://www.irs.gov/pub/irs-pdf/p15a.pdf>).

Publication 15A states the general rule: "... an individual is an independent contractor if you, the person for whom the services are performed, have the right to control or direct only the result of the work and not the means and methods of accomplishing the result." It then discusses various factors that illustrate either the control or independence of the worker. For instance, if the worker is subject to instructions, is guaranteed a specific amount of compensation and is a key player in the regular business of the entity, he or she is more likely to be an employee. On the other hand, if the worker can make his or her services available to the general public, may realize a profit or loss and is hired for a specific project, the worker is more likely to be an independent contractor.

Applying these concepts to MTA local officers and local members compensated for services to the local leads us to conclude that, in most instances, the IRS would consider such officers and other paid members to be employees of the local. In addition, Publication 15 specifically states: "An officer of a corporation is generally an employee: however, an officer who performs no services or only minor services, and neither receives nor is entitled to receive any pay, is not considered an employee." Publication 15A speaks specifically about nonprofits. It says that

nonprofits are *not* exempt from withholding except that if an employee of a nonprofit receives less than \$100 during a calendar year, such wages are not subject to withholding for Social Security and Medicare. Employees who receive less than \$50 in a quarter do not need to pay federal unemployment taxes for that quarter.

The bottom line is that if a person is treated as an independent contractor without reasonable basis for so doing and the IRS takes the position that such person is an employee, the employer is liable for all of the taxes discussed in these IRS publications and could, in some instances, also be subject to penalties. MTA Legal Services will provide legal assistance to any local facing an inquiry from the IRS.

Based on the above, we advise you to comply with the legal requirements that apply to your local as an employer by withholding federal income taxes, Social Security, Medicare and unemployment taxes. This obligation does not apply to full-time release officers whose salary is being paid by the school district with reimbursement by the local.

Treating officers and other committee members as employees of the local requires locals to act as a paymaster and perform payroll related accounting functions. These include:

- Withholding federal income taxes, state income taxes, Social Security and Medicare taxes from employees' pay checks.
- Paying federal and state unemployment taxes. (There is a federal credit available for payments made to a state unemployment system. Therefore, the Commonwealth's Division of Unemployment Assistance should be contacted at the time payroll deductions begin.)
- Paying the employer's share of Social Security and Medicare taxes. (The Medicare tax exemption for persons who started teaching prior to 1986 applies to employment by school districts, but not to employment by one of our locals.)
- Remitting these taxes to the proper federal and state authorities when due.
- Preparing and providing an annual W-2 tax statement to all employees and the proper federal and state taxing authorities.
- Obtaining workers' compensation insurance coverage.

There are many resources online where you can research what is necessary to set up a payroll function within your local association. Helpful information on payroll can be found on the following pages of IRS and Commonwealth of Massachusetts Web sites:

<http://www.irs.gov/businesses/small/article/0,,id=172179,00.html>

<http://www.mass.gov/?pageID=mg2subtopic&L=4&L0=Home&L1=Business&L2=Tax+%26+Reporting&L3=Payroll+Taxes&sid=massgov2>

Alternatively, you can elect to obtain advice from a small accounting practitioner who may also provide payroll services.

As noted earlier, MTA has contacted Automated Data Processing (ADP), an established payroll service company, which is willing to work with our locals through its small business services division. MTA has been using ADP for its payroll for a number of years and recommends their services. ADP has offered our locals special package pricing for processing payroll, including payroll checks, tax filings and deposits and annual W-2 preparation. Attached is the pricing offered to locals that decide to participate in this program. Due to the complexity of payroll, we strongly suggest you take advantage of this option. The ADP contact who will assist you with your set up and related questions is Jana Abramson, Relationship Manager, ADP Small Business Services. Her contact information follows:

Phone: 781.622.3327  
Cell Phone: 617.875.6552  
Email Address: [jana\\_abramson@ADP.com](mailto:jana_abramson@ADP.com)

Educators Insurance Agency has proudly served the insurance needs of MTA members since 1995 and is available to assist locals in obtaining workers' compensation insurance for officers and other members who are employees of the local. MTA issued a memorandum to locals in 2002 advising that "a local association affiliated with MTA has a legal obligation to carry workers' compensation insurance for officers and agents of the local who are compensated for work done on behalf of the local, whether that compensation takes the form of a stipend, salary and/or dues forgiveness in lieu of payment." To obtain assistance from EIA, call 888.908.6822.

Finally, we would remind you that payroll taxes, payroll services and insurance are reimbursable expenses under MTA's Local Office Support Policy.

If you have any questions, please feel free to contact Kathleen Conway, Director of Finance and Accounting, at 617.878.8309.

Att: ADP Proposal for MTA Locals

# Automatic Data Processing Small Business Services

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# EXECUTIVE FEATURE SUMMARY

## PAYROLL OUTPUT EXPECTATIONS

### *Every Payroll*

- *Paychecks and Register*
- *Tax and Department Summaries*
- *Payroll Worksheet*
- *Employee Listing of Changes and New Hires*
- *Various Optional Reports provided at NO CHARGE*

### *Every Quarter*

- *Payroll Recap Report*
- *Wage and Tax Register*
- *Employee Earnings Records*
- *Statements of Deposits and Filings, done on your behalf*

### *Year-End*

- *8.5" x 11" laser-printed Employee Earnings Summaries- W-2's*
- *Federal, State and local recaps*
- *Statements of Deposits and Filings, done on your behalf*

# *Proposal*

<b>Employees Quarterly Payroll</b>	<b>Per Quarter</b>
<b><u>INCLUDES</u></b>	
Payroll & Taxes <i>Payroll Checks</i> <i>Tax Filings and deposits</i>	\$95.00
Mail Delivery	\$2.00
Data Access Suite <i>Electronic Reports</i> <i>Data Export</i>	<i>Included</i>
<b><u>TOTAL PACKAGE PRICING</u></b>	<b><u>\$97.00</u></b>
<b><i>Year End Information</i></b> <i>\$30.00 Base Plus \$5.40 per W-2</i>	

**To:**

**From:**

**Date:**

**Re:** Workers' Compensation Insurance – MTA Local Association Employees

Please complete the enclosed application to secure a Workers' Compensation quote. The cost of coverage is based on the type of business, number of employees and estimated annual payroll. Be sure to include a list of the employees to be covered – including their name, title, annual compensation and duties. Once completed, forward the application and employee listing to Educators Insurance Agency, 440 Lincoln Street, Worcester, MA 01653.

Once we have secured a quote and you have approved it, a policy will be issued. The premium will be billed to you in four (4) installment payments.

If you have any questions or need additional information please call EIA at 888.908.6822.



**INDIVIDUALS INCLUDED/EXCLUDED**

PARTNERS, OFFICERS, RELATIVES TO BE INCLUDED OR EXCLUDED. (Remuneration to be included must be part of rating information section.)								
#	NAME	DATE OF BIRTH	TITLE/ RELATIONSHIP	OWNER- SHIP %	DUTIES	INC/EXC	CLASS CODE	REMUNERATION

**PRIOR CARRIER INFORMATION/LOSS HISTORY**

PROVIDE INFORMATION FOR THE PAST 5 YEARS AND USE THE REMARKS SECTION FOR LOSS DETAILS							LOSS RUN ATTACHED
YEAR	CARRIER & POLICY NUMBER	ANNUAL PREMIUM	MOD	# CLAIMS	AMOUNT PAID	RESERVE	
	CO: POL #:						
	CO: POL #:						
	CO: POL #:						
	CO: POL #:						
	CO: POL #:						
	CO: POL #:						

**NATURE OF BUSINESS/DESCRIPTION OF OPERATIONS**

GIVE COMMENTS AND DESCRIPTIONS OF BUSINESS, OPERATIONS AND PRODUCTS: MANUFACTURING-- RAW MATERIALS, PROCESSES, PRODUCT, EQUIPMENT, CONTRACTOR-- TYPE OF WORK, SUB-CONTRACTS; MERCANTILE--MERCHANDISE, CUSTOMERS, DELIVERIES; SERVICE--TYPE, LOCATION, FARM--ACREAGE, ANIMALS, MACHINERY, SUB-CONTRACTS.

**GENERAL INFORMATION**

EXPLAIN ALL "YES" RESPONSES	YES	NO	EXPLAIN ALL "YES" RESPONSES	YES	NO
1. DOES APPLICANT OWN, OPERATE OR LEASE AIRCRAFT/WATERCRAFT?			16. ARE PHYSICALS REQUIRED AFTER OFFERS OF EMPLOYMENT ARE MADE?		
2. DO/HAVE PAST, PRESENT OR DISCONTINUED OPERATIONS INVOLVE(D) STORING, TREATING, DISCHARGING, APPLYING, DISPOSING, OR TRANSPORTING OF HAZARDOUS MATERIAL? (e.g. landfills, wastes, fuel tanks, etc)			17. ANY OTHER INSURANCE WITH THIS INSURER?		
3. ANY WORK PERFORMED UNDERGROUND OR ABOVE 15 FEET?			18. ANY PRIOR COVERAGE DECLINED/ CANCELLED/NON-RENEWED (Last 3 years)? NOT APPLICABLE IN MO		
4. ANY WORK PERFORMED ON BARGES, VESSELS, DOCKS, BRIDGE OVER WATER?			19. ARE EMPLOYEE HEALTH PLANS PROVIDED?		
5. IS APPLICANT ENGAGED IN ANY OTHER TYPE OF BUSINESS?			20. IS THERE A LABOR INTERCHANGE WITH ANY OTHER BUSINESS/SUBSIDIARY?		
6. ARE SUB-CONTRACTORS USED? (IF YES, GIVE % OF WORK SUBCONTRACTED)			21. DO YOU LEASE EMPLOYEES TO OR FROM OTHER EMPLOYERS?		
7. ANY WORK SUBLET WITHOUT CERTIFICATES OF INS.?			22. DO ANY EMPLOYEES PREDOMINANTLY WORK AT HOME?		
8. IS A WRITTEN SAFETY PROGRAM IN OPERATION?			23. ANY TAX LIENS OR BANKRUPTCY WITHIN THE LAST 5 YEARS?		
9. ANY GROUP TRANSPORTATION PROVIDED?			24. ANY UNDISPUTED AND UNPAID WORKERS COMPENSATION PREMIUM DUE FROM YOU OR ANY COMMONLY MANAGED OR OWNED ENTERPRISES? IF YES, EXPLAIN INCLUDING ENTITY NAME(S) AND POLICY NUMBER(S).		
10. ANY EMPLOYEES UNDER 16 OR OVER 60 YEARS OF AGE?			<b>CONTACT INFORMATION</b>		
11. ANY SEASONAL EMPLOYEES?			IN- SPECTION	PHONE: NAME:	
12. IS THERE ANY VOLUNTEER OR DONATED LABOR?			ACCTNG RECORD	PHONE: NAME:	
13. ANY EMPLOYEES WITH PHYSICAL HANDICAPS?			CLAIMS INFO	PHONE: NAME:	
14. DO EMPLOYEES TRAVEL OUT OF STATE?					
15. ARE ATHLETIC TEAMS SPONSORED?					

APPLICABLE IN TENNESSEE: IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE OR MISLEADING INFORMATION TO ANY PARTY TO A WORKERS COMPENSATION TRANSACTION FOR THE PURPOSE OF COMMITTING FRAUD. PENALTIES INCLUDE IMPRISONMENT, FINES AND DENIAL OF INSURANCE BENEFITS. ANY PERSON WHO KNOWINGLY AND WITH INTENT TO FRAUD ANY INSURANCE COMPANY OR ANOTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS THE PERSON TO CRIMINAL AND (NY: SUBSTANTIAL) CIVIL PENALTIES. (NOT APPLICABLE IN CO, HI, NE, OH, OK, OR, VT; IN DC, LA, ME AND VA, INSURANCE BENEFITS MAY ALSO BE DENIED)

REMARKS

APPLICANT'S SIGNATURE \_\_\_\_\_ PRODUCER'S SIGNATURE \_\_\_\_\_

Local Education Association Name:

Contact Person Name:

E-mail:

Positions to be covered under the Workers' Compensation Plan and corresponding total annual compensation for each position. **(Note: we will need the title, name, compensation and duties specifically of the President, Vice President, Treasurer, Recording Secretary and Corresponding Secretary.)**

President:	\$
Vice President:	\$
Treasurer:	\$
Rec. Secretary:	\$
Corr. Secretary:	\$
Prof. Rights Chair:	\$
Negotiations Chair:	\$
Membership Chair:	\$
Scholarship Chair:	\$
Social Chair:	\$
Political Action Chair:	\$
<b>Total Compensations:</b>	<b>\$</b>