

POLICY AND PROCEDURE HR44

Subject: HR44 APPROPRIATE UTILIZATION OF UNPAID PERSONS POLICY	Effective Date: August 2011
Applies to: All Houston Methodist Business Units in the United States of America	Date Revised/Reviewed: July 2013
Scope: All areas that utilize Volunteers, Unpaid Students/Interns/Trainees, or allow observers	Target Review Date: 07/31/2016
Originating Area: Human Resources	

POLICY STATEMENT

It is the policy of Houston Methodist (“HM”) to abide by federal and state wage and hour laws and other relevant and applicable regulations in the establishment, implementation, and utilization of “unpaid” individuals within the context of any HM Volunteer, Student, Training, Internships, and Observing programs and/or opportunities. This policy and procedure provides guidelines for utilizing such individuals on our campuses. The term “Unpaid Persons” includes [Volunteers, Students, Interns, Trainees, and Observers](#).

HM reserves the right to refuse to offer an unpaid student/training/observing/volunteer opportunity in the event it is too disruptive or may jeopardize the quality or safety of HM operations.

Volunteers, Students, Trainees, Interns and Clinical Observers are permissible provided they meet the definition and requirements of one of the categories in sections I.A. through I.E. below and all of the requirements for on-boarding and/or entering the organization are followed.

I. DEFINITIONS AND CATEGORY REQUIREMENTS

A. Students, Interns and/or Trainees:

Students/Interns/Trainees who work for or who are supervised by their university or another employer, pursuant to a program required for the fulfillment of their academic degree requirements, may not be considered to be “employees” under the Fair Labor Standards Act.

Graduate research assistants, Student extern experiences and job shadowing experiences are predominately for the benefit of the Student/Intern/Trainee as part of their career development and may be part of their regular curriculum requirements for their degree. Such situations generally are treated as non-employees and are therefore unpaid.

1. **Student Intern:**

A Student Intern is an individual providing services and/or participating in activities who is not paid, is not classified as “employee”, and who meets the following criteria:

- a. The training received within HM is similar to that which would be provided in an educational environment even though such training may include actual operation and performance of duties within HM facilities; and
- b. The training is for the benefit of the Student/Intern; and
- c. The Student/Intern does not displace a regular employee, but does however work under the close supervision of a HM employee; and
- d. The HM facility(ies) who provide(s) the internship derives no immediate advantage from the activities of the Student Intern and occasionally HM operations may actually be impeded; and
- e. The Student Intern is not entitled to and should have no expectation for a job at the end of the Student/Internship/training period; and
- f. HM or the HM-specific facility and the Student/Intern fully understand and agree that the Student/Intern is not entitled to compensation in any manner for the time spent in training in this capacity.

2. **Trainee:** Houston Methodist distinguishes *Trainees* from other Students as follows:

A Trainee is an individual participating in a particular learning engagement at a high school, college or graduate school level. These individuals come through the Houston Methodist Research Institute (“HMRI”), Houston Methodist Institute for Technology, Innovation, and Education (“MITIE”), the Graduate Medical Education (“GME”) Student Learner program or other HM “Institute/Program” that is structured, overseen by the HM Institute/Program, and provides the Trainee with knowledge and skills that are either incidental to completion of his/her degree program or in line with a completed degree program. In addition, the opportunity at HM must be specific preparation required for the individual’s professional field in accordance with the individual’s degree.

3. **Student Intern/Trainee Requirements:**

- a. **Student Interns/Trainees at a HM Business Unit other than HMRI** must be actively enrolled in an undergraduate or graduate academic program with a current Academic Affiliation agreement confirmed on file in the HM Education Institute (EI).
- b. **Student Interns/Trainees within HMRI** must be actively enrolled in an undergraduate or graduate academic program with a current Academic Affiliation agreement approved by Legal Services and on file in the HMRI Faculty Affairs Department.
- c. Departments must provide a detailed summary of expectations and outcomes for a standardized curriculum for review by HR and either HM EI, or HMRI, as applicable. The activities of the program or project must be in line with the Student Intern’s/Trainee’s degree or career path beyond graduation.

- d. Student Interns/Trainees report to the sponsoring member of management (or Principal Investigator for HMRI – See RE45 for more detailed definitions and requirements by HMRI for Unpaid Persons).

B. Clinical Observers:

1. HM may be able to support clinical observerships on a limited basis. **A Clinical Observership is a shadowing experience of at least 2 days and no more than two (2) one-month rotations per specialty.** A Clinical Observership is a voluntary experience that **does not** constitute medical education, graduate medical education, continuing medical education, or any training leading to licensure or board certification but involves spending time observing clinical professionals in patient care environments and or delivery of patient care services. An Unpaid Person completing a Clinical Observership may not provide any direct patient care. The purpose for defining access to HM premises for individuals in Clinical Observerships is to provide an environment that is safe for patients, clinical staff, medical trainees, and medical staff; to respect patients' rights to privacy and confidentiality; and to enhance the experience of the observers.
2. Job shadowing experiences in non-clinical areas such as Accounting, Finance, Administration, etc. are not included in this definition and are not subject to the same scrutiny, as long as the students are not receiving academic course credit for the experience. However individuals shadowing in areas where they have access to confidential information (i.e. Executive Administration, Business Practices, Risk Management, Human Resources, etc.) should sign a confidentiality agreement before beginning a shadowing experience.
3. Clinical Observer Experiences require different approval processes as follows:
 - a. Clinical Observers at Houston Methodist Hospital in the Texas Medical Center and all satellite locations that report to Executive Management at HMH must be approved through [HMEI](#).
 - b. Clinical Observers in TMH Physician's Organization and all satellite locations must be approved through HMRI.
 - c. Clinical Observer Experiences initiated through Houston Methodist International must be approved and processed through Houston Methodist Global Healthcare Services's Observer Procedure.
4. Clinical Observer Experiences at the following locations must be approved according to the attached [On-boarding Procedure](#):
 - HOUSTON METHODIST SUGAR LAND HOSPITAL
 - HOUSTON METHODIST WEST HOUSTON HOSPITAL
 - HOUSTON METHODIST WILLOWBROOK HOSPITAL
 - SAN JACINTO HOUSTON METHODIST HOSPITAL, which includes San Jacinto Family Practice Education Foundation and San Jacinto Medical Group.

C. Volunteers:

1. Volunteers are individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious or humanitarian objectives, not as employees and without expectation of compensation, are not considered by the Department of Labor to be “employees” of religious, charitable, or similar non-profit organizations that receive their services. Minimum wage, overtime, and record-keeping requirements do not apply to bona fide Volunteers. Individuals generally may not volunteer to perform services for their own employer which are related to the kind of work the employee is paid to do (see “Employee Volunteer” definition below).
2. Typical Volunteer activities for non-profit hospitals include but are not limited to the following: Participating as a lay minister for patient outreach; circulating the book/media/comfort cart for use by patients and their visitors; providing companionship to patients; providing waiting room attendant services as a resource to patient visitors especially in the ICU setting where access to patients is limited/restricted; serving as a greeter to help patients and visitors find their way and feel welcome at HM; creating artwork and/or leading comforting patient activities such as crocheting, knitting, painting, journaling, sewing, music, etc.; offering pet therapy services; and/or related activities.
3. Recent graduates (high school, undergraduate, or graduate) who wish to volunteer for HM by participating in activities and/or providing services that will give them practical exposure related to their career paths/degree programs may do so under the following conditions:
 - a. The activities must meet the same criteria as the Student/Intern/Trainee criteria listed earlier in this policy,
 - b. The activity must take place within the 12 months immediately following the individual’s graduation date from the relevant degree program, and
 - c. The individual must be approved by the HM Business Unit HR management for the specified activity and time period.

D. **Employee Volunteers:**

1. Employee Volunteers are employees of HM who volunteer as “unpaid” Volunteers for HM provided the volunteer hours and activities meet the following criteria:
 - a. The time spent volunteering is not during the employee’s regularly scheduled work hours,
 - b. The specific activity is not mandated by HM nor would the employee be punished in any way by declining to volunteer,
 - c. The employee’s volunteer hours are tracked through the applicable HM Volunteer Office,
 - d. The employee’s volunteer activities and responsibilities are outside the scope of the essential functions of the job held by the employee at HM, and
 - e. HM clearly communicates prior to receiving the volunteer services that the employee’s volunteer time is not considered “work time,” will not be compensated, and is not mandatory.

According to FLSA and the Department of Labor Opinion Letters on this topic, employees who provide the same services at volunteer events that they provide during normal work hours must be compensated for those services, including overtime pay if applicable. Employees who volunteer for an event during their regularly scheduled work hours must also be compensated for that time.

2. An example of a **permissible unpaid Employee Volunteer assignment** is:

An RN who is a non-exempt employee of HM volunteers to assist with a community health event outside his/her normally scheduled work hours by passing out flyers, assisting in crowd control, handing out memorabilia to participants, etc.

3. Two examples of **prohibited unpaid Employee Volunteer assignments** are:

- A Patient Care Assistant who is a non-exempt employee of HM volunteers to assist with a community health event during his/her normally scheduled work hours by passing out flyers, assisting with crowd control, handing out thank you memorabilia to participants, etc. (*Note – this is prohibited because he/she must be paid for the time that he would normally have been scheduled to work*).
- An RN who is a non-exempt employee of HM volunteers to assist with a community health event outside his/her normally scheduled work hours by providing immunizations, blood pressure checks, and similar wellness assessment activities. (*Note – this is prohibited because the work provided is very similar to the work that would be provided during the normal course of activities in his/her regularly paid position at HM*).

E. **Foreign National:**

1. A Foreign National is any person who is not a U.S. citizen or national, U.S. permanent resident (aka “green card” holder), or person with U.S. refugee or asylee status.
2. Individuals must be asked if they are Foreign Nationals before allowing them to participate in an Unpaid Person program for any HM Business Unit. Foreign Nationals are subject to greater compliance review by U.S. export control, immigration, and other laws and regulations. Foreign Nationals are not prohibited from participating as an Unpaid Person provided **they receive clearance by HR Immigration Services and Legal Services** (when applicable for Export Control purposes) in accordance with [HM Procedure BP32](#).

II. **PROCEDURE**

A. **Assessing Appropriateness of Invitation or Appointment of an Unpaid Person**

1. ***Prior to engagement***, management must contact Human Resources at anytime during which a relationship is contemplated with an Unpaid Person that meets the definition of this policy and procedure, unless the individual has participated in the applicable HM or Volunteer Program and has satisfied all requirements of the program, **and**

2. The activities the individual will be involved in fit the description in section I.C.2. regarding “Typical Volunteer Activities.”
3. Human Resources will consider the utilization, duties and assignments anticipated for the proposed Unpaid Person, the fulfillment of the definition and criteria stipulated for classification of Volunteer, Student, Trainee, Intern, Clinical Observer, or other Unpaid Person status and the application of HM policy in approving such an engagement. Human Resources will determine the appropriate channel for processing the individual to bring him/her into the organization, including but not limited to Volunteer Services, HM EI, HMRI Faculty Affairs Office or Human Resources.

B. On-boarding Unpaid Persons Prior to Participation in HM Activities or Services

Regardless of the channel identified above *and prior to* engaging the individual for any activities or services, all Unpaid Persons must be screened as follows:

1. Completion of the Export Control Review Forms in accordance with BP32 Export Controls and Sanctions Laws with approval by HR-Immigration.

NOTE: All Unpaid Persons at HM for longer than 2 weeks who are identified as Foreign Nationals through completion of the Export Control Review forms listed above **must be cleared by HR-Immigration before they may start to ensure their visa status is valid for the purpose of their visit at Houston Methodist.**

2. Successful clearance of a drug screen and criminal background check.
3. Completion of any identified in-services required for their safety or compliance as part of the activities they will be involved in at HM.
4. Obtaining a badge in accordance with their category as defined in this policy. The badge is to be worn at all times in accordance with [HR34 Identification Badges](#).
5. Sign the HM Volunteer Acknowledgement Form (Volunteers only).

C. Unpaid Person Exits from HM

Upon completion of their applicable program, all Unpaid Persons must return their badges and any other HM materials to the sponsoring manager or the department that processed them (i.e. Human Resources, Volunteer Services, HM EI, etc.).

III. MANAGEMENT RESPONSIBILITIES

- A. Carefully evaluate and document opportunities for Unpaid Person activities for consideration by appropriate overseeing departments.
- B. Refrain from utilizing Unpaid Persons for services or involving them in activities without prior approval from the relevant departments identified in this policy.
- C. Ensure Unpaid Persons selected for activities and services meet the minimum qualifications to perform those services or participate in those activities to ensure the safety of the Unpaid Person, HM employees and patients, security of proprietary information and technology, and compliance with any applicable regulations or laws (i.e. Export Control laws, Applicable Accreditation regulations, Immigration Compliance, etc.).

- D. Ensure Unpaid Persons wear their badges at all times and comply with the requirements of their category (i.e. compliance with access restrictions to specific departments, patient areas, information, technology, etc. as applicable).
- E. Ensure all Unpaid Persons return their badges and confirm with the department that processed their on-boarding that they are no longer an Unpaid Person at HM.

IV. HUMAN RESOURCES RESPONSIBILITIES

- A. Carefully evaluate the documented opportunities for Unpaid Persons to determine the appropriate channel for on-boarding the individual into HM, if permissible.
- B. Ensure management understands their obligations under this policy.
- C. Partner closely with Volunteer Services, HM, and HMRI faculty affairs when applicable, advising them of their obligations under FLSA or referring them to Legal Services for evaluation if necessary.
- D. Ensure Unpaid Person badges are returned and destroyed if issued by HR.
- E. Ensure all Foreign Nationals have been approved by HR-Immigration prior to approving the individual for a visit.
- F. Ensure all Unpaid Persons requiring safety in-service clearance using the MARS (Methodist Administrative Resource System) MyLearning system are set up appropriately as a Person of Interest within MARS. This includes ending the POI assignment in MARS as of the approved end-date of the individual's engagement at Methodist.

V. HR-IMMIGRATION (a System HR department at Corporate)

- A. Evaluate the activities and/or services proposed for Foreign Nationals to come to HM in an Unpaid Person status and advise management on available sponsorship and permissible visa options.
- B. Ensure Foreign National On-boarding Compliance for any Unpaid Person at Houston Methodist for longer than two weeks. **All Foreign Nationals:**
 - i. Must complete the Export Control Compliance paperwork as referenced in section II.B. of this policy and Policy BP32.
 - ii. Working, providing services, or participating in activities in the HMRI may have additional Export Control Compliance requirements to complete before being granted access to HMRI facilities.
 - iii. Must cease activities/services at HM upon expiration of their USCIS permission to participate in those activities/services.

VI. HM EDUCATION INSTITUTE RESPONSIBILITIES

- A. Evaluate proposals for Unpaid Persons to determine if they meet the requirements of each program.
- B. Educate management and Unpaid Persons of their obligations under the program.
- C. Ensure appropriate HR, HR-Immigration, and export control clearance has taken place before granting permission to individuals to participate in the program.

VII. VOLUNTEER SERVICES RESPONSIBILITIES

- A. Evaluate requests for Volunteers. Ensure that any requests that appear to be Students, Interns, Trainees, or Clinical Observers are routed through HR, HM EI, or HMRI (as applicable) for approval.
- B. Ensure that all approved Volunteers for HM meet the definition of a "Volunteer" in accordance with this policy and consult Human Resources for advice when there is doubt.
- C. Ensure that all Volunteers complete the Export Control Compliance screening documents and review them in accordance with BP32 before authorizing them to provide Volunteer services.

- D. Ensure all Foreign Nationals are approved through HR-Immigration prior to being granted authorization to provide Volunteer services.
- E. **Ensure all Volunteers carefully read and sign the [Volunteer Acknowledgement Form](#).**

COUNCILS OR COMMITTEES REVIEWING OR APPROVING POLICY

HR Director Policy Review Committee
Business Practices

AUTHORITATIVE REFERENCES

- Fair Labor Standards Act: <http://www.dol.gov/whd/flsa/index.htm>
- Department of Labor definition of Volunteers: <http://www.dol.gov/elaws/esa/flsa/docs/volunteers.asp>
- Department of Labor Opinion Letter on Employed Volunteers: http://www.dol.gov/whd/opinion/FLSA/2005/2005_09_16_33_FLSA.pdf
- Department of Labor definition of Trainees and Interns: <http://www.dol.gov/elaws/esa/flsa/docs/trainees.asp>
- Texas Workforce Commission: http://www.twc.state.tx.us/news/efte/advanced_flsa_issues.html#interns_trainees
- TMH Education Institute Clinical Observership Procedure
- [HMRI Procedure RE45 – On-Boarding Processes](#)
- [HM BP32 Export Control and Sanctions Laws](#)

VIII. SIGNATURE OF APPROVING EXECUTIVE

Lauren P. Rykert
Senior Vice President, Human Resources

Date Signed

Revision	Date	Changed by	Revision Summary
3	July 28, 2013	Michelle Parker	Updated language in accordance with new HR System implementation (MARS) and associated processes, updated name to Houston Methodist, Houston Methodist Research Institute, Houston Methodist Education Institute Houston Methodist Global Healthcare Services, and other rebranded business units in the system. Changed references from “entity” to “business units.” Added requirement that Unpaid Persons requiring safety in-services in MARS be set up by HR in the system and ended according to the end of their engagement at HM.