



The Top Four Legal Risk Management Issues Facing Nonprofits: What You Can Do to Mitigate Your Exposure

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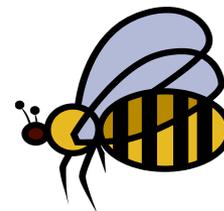
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Social Media



“Enjoy the Buzz but Don’t Get Stung”

- Great opportunity but not without risk
- Not just the Wild West out there
 - Federal Trade Commission rules on endorsements and testimonials
 - National Labor Relations Board new guidance
- Develop a policy that works for your culture
 - Business use
 - Personal use for business purposes
 - Personal use unrelated to business purposes



Your Social Media Policy

- Right tone for your culture
 - How much of a “personality” is allowed?
- Transparency about identity as employee or volunteer
- Disclaimer about not speaking on behalf of the organization
- Refer to your workplace guidelines or code of ethics
- If you want to seize the opportunity, offer training or a messaging center



Employment Liability

Key Areas of Risk

1. Terminations
 - Use of progressive discipline
 - Review process prior to termination
 - Exit interviews
2. Performance reviews and counseling
 - Regularity and content of reviews
 - Documentation of counseling
 - Consistency of disciplinary action



Employment Liability

Key Areas of Risk

3. Wage and hour compliance (FLSA)
4. FMLA practices
5. Employee privacy/monitoring



Employment Liability *Steps to Mitigate Risk*

- Routine supervisor training
- Increased documentation of performance management and progressive discipline
- Pre-termination review by counsel
- Legal review of existing HR policies, employee handbook

Perception of fairness is key!



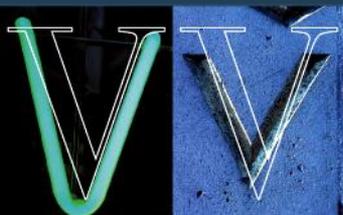
Risk from Affiliated Entities

- State chapters or affiliates
 - How much separation is “right” for you?
 - Are you liable for their activities?
 - Reputational risk
- What steps can you take to address this risk?
 - Clarity on the relationship in the governing documents
 - Clarity to the public in communications
 - Insurance
 - Education, training and counsel



Risk from Related Tax-Exempt and Taxable Entities

- Meeting the IRS standards for separation while still functioning in an efficient manner – finding the right balance and protecting your tax exemption
 - One overarching strategic plan with sub-plans
 - Separate boards (with overlap), be scrupulous about separate finances
 - What is separate day-to-day management?
 - PACs and taxable subsidiaries require special care
- Probably not as efficient as if you were one organization, but there are counterbalancing considerations – the price you pay ...



Risk from Related Tax-Exempt and Taxable Entities

- Tax-exempt purposes / substantial non-exempt purposes
- Private inurement / excessive compensation / intermediate sanctions
- Private benefit (501)(c)(3) organizations only)



Corporate Governance

- Emphasis on increased transparency and accountability
 - Heightened focus on governance in IRS Form 990
 - Charity Navigator/BBB Wise Giving standards
 - Reputational risk paramount -- poor governance, once exposed, leads to loss of public confidence
 - Increased audit risk?
- Legal risks associated with failure to comply with articles of incorporation and bylaws, and state nonprofit corporation law (of state of incorporation)
- Fiduciary duties of board members: duties of care, loyalty, and obedience



Corporate Governance

- What steps can you take to address this risk?
 - Provide orientation and training for your board and senior management – directors should be informed, ask questions, attend meetings; directors and senior managers should be aware of governing documents and applicable law
 - Don't rely on your tax preparer alone to prepare your Form 990 responses; involve senior program personnel, communications, legal
 - Don't just check the box! Ensure policies – once adopted – are effectively implemented (e.g., whistleblower protection, document retention, conflicts of interest, compensation)



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Questions and Discussion



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