

## **New York Not-for-Profit Governance Reminders for the New Year**

### ***Reminder of 2022 Changes to the Labor Law***

For several years, New York's Not-for-Profit Corporation Law (the "N-PCL") has required some organizations to have policies protecting whistleblowing directors, officers, employees, volunteers and certain "key persons" from retaliation. And since early 2022, New York's Labor Law has provided anti-retaliation protection for an even broader class of people, including independent contractors who are natural persons and former employees. Under the Labor Law rules, notice of the applicable whistleblower protections must be posted in a conspicuous location if there is a physical office and must also be circulated to employees in digital form either by email or on the organization's website.

All New York employers should make sure their postings are up-to-date, and New York organizations with whistleblower policies designed to be compliant with the N-PCL should revisit them to incorporate provisions consistent with the Labor Law.

### ***N-PCL Amendments at the End of 2022***

On November 21, 2022, New York State Governor Kathy Hochul signed into law the N-PCL Modernization Act (the "Act"), which updates certain sections of the N-PCL. These changes provide helpful clarifications for New York not-for-profit corporations related to issues that have long been sources of confusion.

### **Consent by Electronic Means**

The Act provides that when members and directors act by unanimous electronic consent, the consent may be sent by electronic mail or "other electronic means." The N-PCL previously provided for action to be taken by unanimous written and electronic consent for members under N-PCL Section 614 and for directors under N-PCL Section 708. The Act now provides that such consent may be transmitted not only through electronic mail, but also electronic portals and other technology, the use of which has become widespread.

### **Terms for Directors Elected to Fill a Vacancy**

The Act modifies the length of the term of service for directors elected to fill a vacancy on the board of directors. Section 705(c) of the N-PCL has been amended by the Act to provide that unless otherwise provided in the certificate of incorporation or bylaws, a director elected or appointed to fill a vacancy in an unexpired term will hold office until (i) the end of the term for which the director whose seat is being filled was originally elected or (ii) for a term to be determined by the board and ending at an annual meeting. Under the prior language of the statute, such director's term would end at the succeeding annual meeting at which the election of directors was the regular order of business. This change provides additional flexibility for boards when filling vacancies. Importantly, it allows vacancies to be filled for longer periods, which can be useful when managing board members that are divided into multiple staggered classes whose terms end in different years.

### **Clarifying Quorum**

The Act makes a drafting change to Section 708(d) of the N-PCL, to clarify that when a director is not present at a meeting of the board of directors at the time of a vote due to a conflict of interest or related party transaction, such director will be considered present for purposes of determining if a quorum is present for the vote.

Organizations governed by the N-PCL may want to review their Bylaws and Conflict of Interest Policies to consider the implications of these amendments. In particular, organizations may need to amend their Bylaws if they want to allow for board vacancies to be filled for any period beyond the next annual meeting.

**This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.**

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