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EMPLOYMENT LAW

A Reminder to Nonprofit Employers

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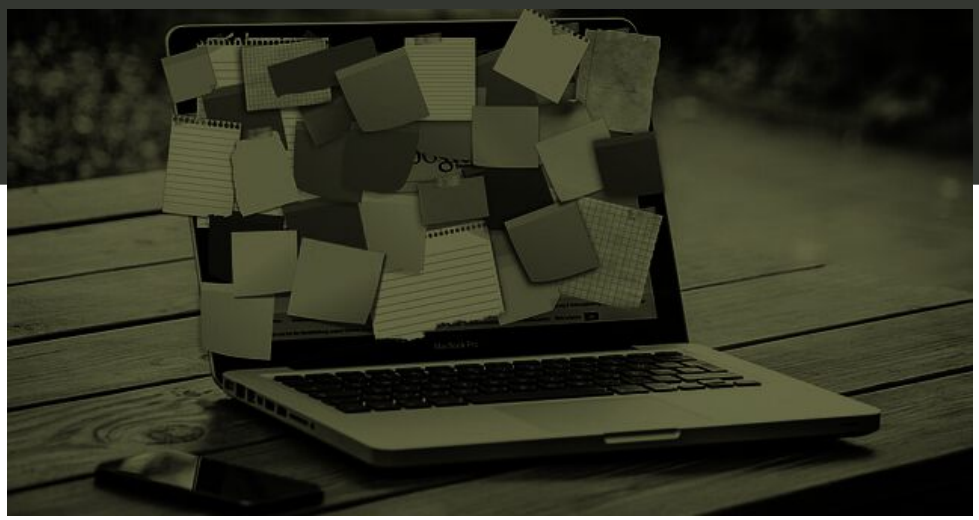

Nonprofit charities get lots of perks: tax savings, deductible contributions, and preferred postal rates, to name just some.

This preferential status lulls many boards and staff into a false sense of believing the rules that apply to regular corporations and regular workplaces don't apply to them.

But they do! The safest approach for nonprofits is to assume that *all* laws and regulations that apply to businesses and employers generally apply to charities (and other nonprofits) as well.

You're Still on the Hook for Some Taxes

Perhaps the most common mistake that nonprofits make is to (incorrectly) assume that the prized tax exemption applies to *all* taxes. It doesn't. It applies *only* to *income* taxes.

A nonprofit's federal tax exemption refers only to *income* tax at the federal level. The corresponding state tax exemption refers only to *income* tax at the same level. These tax exemptions do *not* create any exemption for *other* federal taxes or (automatically) for state income taxes.

That means that a nonprofit employer must report the income of any employee and to withhold the necessary amounts under federal tax schedules. The organization also must withhold social security and Medicare taxes (FICA), and federal unemployment tax (FUTA), unless it is specifically exempt from these obligations pursuant to the tax-exemption determination letter. There are state taxation equivalents that apply, too.

Here are the forms and returns that California employers must file:

- Employee's Withholding Certificate (Form W-4) for each employee
- Corporation Federal Quarterly Withholding Returns (Form 941-E) and bank deposits of withheld income taxes and social security taxes
- Annual Federal Wage and Tax Statement (Form W-2) for each employee
- California employer Registration Form – California Income Tax Withholding Form (SE-44) – California Unemployment and Disability Insurance (quarterly)
- Annual Federal Unemployment Tax Return

Failing to withhold and report these amounts is a *big* deal. There are consequences, including stiff penalties: to the organization, its directors and the employees.

Another common mistake is to misclassify people performing services as independent contractors when in fact they are employees. These rules are tricky and complicated, and innocent mistakes often occur. Those mistakes are costly, particularly if the employer intentionally mislabels the worker. In that event, the employer may be personally liable for penalties and damages.

You Have to Follow All Sorts of Labor Laws

Employers must abide by federal and state labor laws that protect the rights and govern the working conditions of workers. These duties – including payment of minimum wage, overtime, and giving required meal- and rest-breaks – generally apply both to for-profit and nonprofit organizations.

Charities, though, are permitted to have volunteers perform certain types of duties without triggering application of these laws. Those are "bona fide volunteers." Otherwise, the minimum wage and overtime rules apply to "employees" of charities.

Failing to comply with these rules can trigger actions by labor officials as well as by aggrieved employees, resulting in potentially large damages.

A particular issue that trips up many employers is the classification of employees incorrectly for purposes of determining who is entitled to overtime pay.

In addition to these rules regarding pay and working conditions, there are federal and state anti-discrimination or anti-harassment rules. Generally, nonprofits are subject to these rules, although certain religious organizations may be exempt from some of them.

You Should Dot All the I's and Cross All the T's

In some cases, the employment relationship should be formalized with an employment contract.

Generally, the nonprofit should adopt employment policies and prepare and distribute an employee handbook. It's a good idea for several reasons: the employer and employee know what to expect from one another, and each worker receives the same information about workplaces rules and procedures. It's also useful to protect the organization if an employee later sues.

Commonly included provisions include: working hours and attendance policies; salaries and benefits; rules prohibiting drug or alcohol abuse; clearly stated prohibitions against harassment, and rules for

reporting it; and procedures for discipline, complaints, and termination.

Conclusion

Like for-profit employers, nonprofits should approach the entire employment relationship in a carefully considered manner.

The days are long gone when employers could "wing it" with employees, hiring and firing workers on the fly, and making up policies as needed along the way.

— Linda J. Rosenthal, J.D., FPLG Information & Research Director