

More About Nonprofits and Labor Laws

04.25.18 | Linda J. Rosenthal, JD



In [A Reminder to Nonprofit Employers](#), we discussed common fallacies that many nonprofit directors and staff believe; these mistaken ideas can and do cause their organizations (and them!) a boatload of trouble.

First, many people associated with 501(c)(3)s focus only on federal *tax-exemption* laws and compliance with those complex rules and regulations. They are either unaware of – or ignore – other federal and state laws that can and often do apply across-the-board to the nonprofit as well as the for-profit sector. For instance, most labor laws that apply to businesses apply to nonprofits, too. Second, because charities enjoy favored status under the law and do important work in their communities, directors and staff are sometimes lulled into thinking that the rules – including labor laws – can be relaxed from time to time due to exigent circumstances. While there are some exceptions for the nonprofit community, the safe course of action is to assume that all general worker laws apply.

Labor Laws Require Timely Wages Payment

In a recent question-and-answer column in the Washington Post, business adviser Karla L. Miller [passes on a question](#) posed by an employee of a nonprofit that serves limited-income families. This worker – who is leaving shortly to study for a master’s degree – wants to know if she should blow the whistle on the organization that seems to have ongoing cash-flow problems. Workers don’t always get paid on time.

Specifically, the nonprofit issues paper checks to all employees every two weeks, but the only way these workers can get their money is to cash the check at the bank used by the organization. Apparently, on a fairly frequent basis, there isn’t enough money in the group’s bank account to cover all of the employees’ checks. Those who delay may have to wait up to a week to get paid. This would-be whistleblower mentions that some of the workers are foreign-born and are unaware that workers in the U.S. expect to get paid on a regular basis.

Ms. Miller's response is clear and unequivocal: This is both morally wrong and illegal, notwithstanding that nonprofits – understandably – have fluctuations in cash flow, the cause of which is often outside their control.

Under the federal Fair Labor Standards Act, wages must be paid on a regular schedule. State labor agencies generally have rules and regulations about what the term “regular payday” means. See, for example, California's Department of Industrial Relations website:

In California, wages, with some exceptions ... , must be paid at least twice during each calendar month on the days designated in advance as regular paydays. The employer must establish a regular payday and is required to post a notice that shows the day, time and location of payment.

This rule applies to *all* employers – for-profit *and* nonprofit.

Fudging this rule – for instance, in the way this nonprofit gives employees checks that may or may not be backed by sufficient funds – doesn't meet this payment standard. A check that can't be covered right away is a “worthless piece of paper.”

The responsibility for regular payment of workers is not a staff issue. A nonprofit's board of directors has certain fiduciary duties, one of which is to make sure that the organization is “managing funds properly and not committing labor violations.”

Another area of liability in the particular case addressed by Ms. Miller is a matter of banking law; it's illegal to intentionally issue bad checks.

Whistleblower Protections

An important matter raised in connection with this question-and-answer posed to Ms. Miller for her column is reporting violations and getting the problem fixed.

The employee, herself, raised the matter of blowing the whistle on this nonprofit's illegal practice. She had a gut feeling that her situation – that is, about to leave for graduate study – made her a perfect candidate to alert authorities so that her vulnerable coworkers can be protected in the future.

Ms. Miller concurred; it's certainly easier for a departing employee to raise the alarm than for current employees to complain.

In Whistleblower Policy for Nonprofits, we explained that the law grants substantial protections to any worker who asserts rights or reports wrongdoing. There are also laws against an employer retaliating against a complaining employee.

The federal law is the Sarbanes-Oxley Act. In California, workers have rights as well under the state's whistleblower statute. Even before significant amendments effective January 1, 2014, California Labor Code section 1102.5 included protections broader than in the federal statute.

Nonprofits – like all employers – should have formal, whistleblower-protection policies in place that explain the legal protections afforded to workers as well as the procedures for reporting problems.

Conclusion

On a related issue, if nonprofits are having trouble paying their workers, they are likely also behind on making payroll tax deposits – or thinking about delaying those payments for a while. Managing cash-flow problems in this way is “excruciatingly common” but extremely dangerous, as we explained in Payroll Taxes: The One Payment a Nonprofit Should NEVER Skip. The IRS will impose huge penalties

that often balloon out-of-control to the point that the organization can *never* recover.