2017 Nonprofit Training Series:
Protecting Your Nonprofit’s Precious Assets – Top 5 Risks
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Our Purpose

The Nonprofit Collaborative (NP Collaborative) is a network of individual Southern California-based nonprofit consultants dedicated to serving charitable organizations.

Individually we provide a variety of reliable resources to help your nonprofit organization grow and thrive. When you work with any of us, feel confident that we have the resources of other top industry experts that can collaborate with your organization’s best interest at the forefront.
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Introduction to the Nonprofit Risks

Lillian Romero-Gomez
President
Baker, Romero & Associates
Insurance Brokers, Inc.
What is Risk Management?

Risk Management prepares your organization for the unexpected. It deals with uncertainty and risk.
Risk Management Basics

- Establish a risk management team
- Identify risk
- Evaluate risk
- Control risk (*Waivers, Mou’s, Insurance*)
- Review
BR — Claims and Incidents Reported in 2016

- **Property**: underinsured (co insurance penalty), business interruption, vacant building-remodel, Rain, property not maintained

- **Crime**: Fidelity Bond – volunteer stole gift cards – issues with bookkeeper being independent contractor and not properly screened or insured (no coverage for I.C.)

- **Cyber**: Phishing, Stolen Data due to theft of laptop or other device, stolen data from rogue employee, website data breach

- **Non Owned Auto Liability**: Volunteer operating their own vehicle involved in at fault accident on “company” time, EMPLOYEE PICKING UP LUNCH FOR STAFF INVOLVED IS AT FAULT AUTO ACCIDENT. Social worker making home visits involved in at fault accident.

- **Employment Practice Liability (D&O)**: Wage and Hour (lunch break, overtime issues, exempt / non exempt), Wrongful Termination claims, Discrimination claims, Injured employee also sues under EPLI

- **Workers’ compensation**: Injured employees - Back, Leg and Arm Injuries, Stress claims, Automobile related injuries, intern injured and claimed he was an employee, independent contractor injured
Risk Management Tips – Ins Company?

• What is the Best Rating of an insurance company?

• Is the insurance company admitted or non admitted? (D-1 Notice)

D-1 Notice
Your insurance policy is written with a “non admitted” insurance carrier if you see this type of Notice with your policy.

NOTICE:
1. THE INSURANCE POLICY THAT YOU [HAVE PURCHASED] [ARE APPLYING TO PURCHASE] IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED “NONADMITTED” OR “SURPLUS LINE” INSURERS.

2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT THAT APPLY TO CALIFORNIA LICENSED INSURERS.

3. THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

4. THE INSURER SHOULD BE LICENSED EITHER AS A FOREIGN INSURER IN ANOTHER STATE IN THE UNITED STATES OR AS A NON-UNITED STATES (ALIEN) INSURER. YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR “SURPLUS LINE” BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: 1-800-927-4357. ASK WHETHER OR NOT THE INSURER IS LICENSED AS A FOREIGN OR NON-UNITED STATES (ALIEN) INSURER AND FOR ADDITIONAL INFORMATION ABOUT THE INSURER. YOU MAY ALSO CONTACT THE NAIC’S INTERNET WEB SITE AT WWW.NAIC.ORG.

5. FOREIGN INSURERS SHOULD BE LICENSED BY A STATE IN THE UNITED STATES AND YOU MAY CONTACT THAT STATE’S DEPARTMENT OF INSURANCE TO OBTAIN MORE INFORMATION ABOUT THAT INSURER.

6. FOR NON-UNITED STATES (ALIEN) INSURERS, THE INSURER SHOULD BE LICENSED BY A COUNTRY OUTSIDE OF THE UNITED
Top Risk #5
Property

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President
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Insurance Brokers, Inc.
1. Insure your buildings and personal property to reflect Replacement Cost value

2. Replacement Cost Value: Cost to restore or replace damaged property without deduction for depreciation.

3. Coinsurance: A standard property clause compares the limit of insurance purchased to the true value of the property insured (at least 80% of actual value of property).


INSURANCE

1. Consider additional property insurance coverages:
   - **Ordinance or Law Coverage**- Cost to demolish the undamaged portion of the building, cost to replace construction as required by law, cost to clear the land of debris after demolition
   - **Equipment Breakdown**- Damage caused by power surges, mechanical breakdowns, motor burnout, etc.
   - **Business Interruption (Extra Expense)**- Pays the actual loss of business income sustained and extra expenses incurred, due to the suspension of the insured’s operations from a covered physical loss.
   - **Property of Others?**
   - **Earthquake and Flood?**
Top Risk #4
Non-Owned Auto

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Non-Owned Auto

- Non Owned Automobile Liability- Coverage for the policyholder against liability incurred while driving an auto not owned or hired by the policyholder or resulting from the use of someone else’s auto on the insured’s behalf, such as an employee using a personal car for the employer’s business purpose.

1. Set policies as to when employees and volunteers can use their vehicle i.e. meal delivery, errands, transportation.
2. Determine the number of employees or volunteers who can drive in one car
3. Enroll in a safety training program for all drivers (employees/volunteers/interns)

- INSURANCE REQUIREMENTS:
1. Employees OR volunteers who use their own vehicles on behalf of their employer must show proof of their current automobile insurance.
2. MVR must be obtained for each driver on an annual basis. Follow the driver guidelines outlined by the insurance carrier.
Top Risk #3
Crime and Fraud

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Janet Fohrman, CFE
CEO
Fohrman & Fohrman, Inc.
Dishonesty and unethical business practices are common.

Why?

- Pursuit of Wealth and Riches – Living beyond means
- Greed
- Vices – gambling, addiction
- Grievances against the employer (my salary is too low)
Basic Controls Over Cash

• Segregation of duties between custodians of cash and investments and those involved with record keeping for cash and investments

• Dual controls and approvals over cash and investment transactions

• Use of positive pay check verification through the bank

• Required mandatory vacations
Wire Transfer Frauds

Recent Global surge

• FBI warns of surge in wire-transfer fraud via spoofed emails.

• In today's digital age of Facebook and LinkedIn, wire fraud schemes that rely on targeted email phishing have become increasingly common and sophisticated.

  • Relay on human fallibility
Key Elements of a Successful Fraud Prevention Program

• Tone at the top
• Codes of Conduct and Ethical Standards
• Fraud Prevention Manual
• Strong Internal Control and Procedures
• Continuous Monitoring of Financial Transactions
Controls

General Internal Control Principles

• Segregation of Duties
  • Initiate
  • Execute
• Approval Signatures
• Authenticate all requests
• Replace paper checks with electronic payments when possible
• Use Positive Pay
• Protect on-line credentials
• Monitor accounts
• Educate Staff
Top Risk #2
Worker Classification

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HR NETwork, Inc.

Casey Hale
Attorney at Law
Brown & Streza, LLC
Fair Labor Standards Act (FLSA)

**Min. Wage**
Minimum amount of hourly pay

**Equal Pay**
Equal pay for "equal work" by both sexes working in same establishment

**Record Keeping**
Records of wages, hours, and other items

**Exemption Regs (New)**
Defines positions exempt from overtime

**Child Labor**
Applies to anyone under 18 who is still in school.

**Overtime**
For non-exempt employees, overtime pay is based on the number of hours worked in a week.
Eight-Hour Day Restoration & Workplace Flexibility Act (a.k.a. California Wage Code)

**Meal Breaks**
Guidelines for when meals & breaks must be provided

**Make-up Work**
Making up hours of work lost due to personal obligations without incurring OT

**Alt. Workweek**
Daily work hours outside a standard eight hour per day schedule

**Daily Overtime**
For non-exempt employees, overtime pay is based on the number of hours worked in a day
Fines & Penalties

**FLSA**

*Civil*
- Child Labor = $10,000
- Min. Wage/OT = $1000 + Double Back Pay
- Back Wages = 2 Years

*Criminal*
- 1st Willful = $10,000
- 2nd Willful = Imprisonment
- Back Wages = 3 Years (willful)

**CA Wage Code**

*Willful = Unpaid OT wages, attorney’s fees, interest and waiting time penalties*

*Civil*
- Missed Meal Period/Break = 1 Hr Pay/each offense
- Child Labor = $500-$10,000 + criminal penalties
- Back Wages = 4 Years

*Fines & Penalties = $50/emp./day*
- 1st Offense = $50/emp./day
- 2nd Offense = $100/emp./day

*Child Labor = $500-$10,000 + criminal penalties*
- Back Wages = 2 Years

*Back Wages = 4 Years*
Non-Exempt

- Paid by the hour
- Does not qualify as exempt under Federal and State Exemption classifications

All Jobs
Exemptions

- Paid a salary which is a pre-determined amount of compensation
- Paid a full weekly salary for any week in which they perform work, regardless of number of hours or days worked
Exemption Classification 2-Prong Test

Salary Basis Test

Job Duties Test
Executive Exemption

CALIFORNIA

- Managerial in nature and performed at least 50% of the time
- Supervises at least two full-time or four part-time employees
- Manages a recognized department or subdivision
- Hires/fires employees; recommendations are given weight
- Customarily and regularly exercises discretionary powers

2017 Minimum Salary Requirement

$10.00/ Hour Min Wage: Compensated at a rate of $800 or more per week ($3466.67 monthly or $41,600 annually)

$10.50/ Hour Min Wage: Compensated at a rate of $840 or more per week ($3640 monthly or $43,680 annually)

Salary is not reduced for quality or quantity of work
Administrative Exemption

**CALIFORNIA**

- Performs **office/non-manual work directly related to management policies**, general business operations or the employer’s customers; **OR**

- Performs **specialized/technical work**, under general supervision, requiring **special training, experience, or knowledge**; **OR**

- Directly assists an employee in a bona fide executive or administrative capacity **OR**

- Performs work directly related to the **administration of a school system**

- Customarily and regularly exercises independent judgment

- More than **50% of work time is spent engaged in the criteria listed above**

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**2017 Minimum Salary Requirement**

- **$10.00/Hour Min Wage**: Compensated at a rate of **$800 or more per week** ($3466.67 monthly or $41,600 annually)

- **$10.50/Hour Min Wage**: Compensated at a rate of **$840 or more per week** ($3640 monthly or $43,680 annually)

- Salary is not reduced for quality or quantity of work
Professional Exemption

**CALIFORNIA**

- Practices one of these **recognized professions**: Law, Teaching, CPA, Engineering, Medical, Architecture, Optometry, Dentistry OR

Primary duty requires knowledge of an **advanced type in a field of science or learning** acquired by prolonged course of specialized instruction and study OR

Performs work that is original/creative in character in a **recognized field of artistic endeavor** and cannot be produced by a person with general training

- Performs work that is intellectual and varied and is of a character that the output cannot be standard in terms of time

- Customarily and regularly exercises independent judgment

**2017 Minimum Salary Requirement**

- **$10.00/Hour Min Wage**: Compensated at a rate of **$800 or more per week** ($3466.67 monthly or $41,600 annually)

- **$10.50/Hour Min Wage**: Compensated at a rate of **$840 or more per week** ($3640 monthly or $43,680 annually)

- Salary is not reduced for quality or quantity of work
**Computer Exemption**

**CALIFORNIA**

- **2017**: The minimum hourly rate of pay increases to **$42.35** (from **$41.85** - 1.2% increase).
  - The minimum monthly salary increases to **$7,352.62**.
  - The minimum annual salary increases to **$88,231.36**.

- Proficient in the practical application of specialized information related to **computer systems analysis, programming, and software engineering**

- Primary duties consist of at least one of the following as show below.
  - Primarily engaged in work that is intellectual or creative
  - Exercises independent judgment

*Note*: Licensed Physicians & Surgeons Rate increases to **$77.15** per hour
Salesperson Exemption

<table>
<thead>
<tr>
<th>CALIFORNIA</th>
<th>FEDERAL</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Outside Sales</strong></td>
<td><strong>Outside Sales</strong></td>
</tr>
<tr>
<td>• Must be at least 18 years old</td>
<td>• Primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; <strong>AND</strong></td>
</tr>
<tr>
<td>• Spends more than 50% of time away from employer's place of business, selling tangible or intangible items, or obtaining orders or contracts for products or services</td>
<td>• Customarily and regularly engaged away from the employer’s place or places of business.</td>
</tr>
<tr>
<td><strong>Inside Sales</strong></td>
<td></td>
</tr>
<tr>
<td>• Employee earns at least 1.5 times the minimum wage</td>
<td></td>
</tr>
<tr>
<td>• More than half the employee's compensation represents commissions</td>
<td></td>
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</tbody>
</table>
Highly Compensated Employees (Fed Only)

**Defined:**

- Performs office or non-manual work
- Paid total annual compensation of $100,000 or more
- Customarily and regularly performs at least one of the duties from the executive, administrative or professional exemption requirements.
Salary/Fee Basis Requirements

**Salary Basis (Fed & State):**

- Employee receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis.

- The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee’s work.

- Employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked.

- Exempt employees do not need to be paid for any workweek in which they perform no work.

- If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

**FED DOL: 2016 FLSA OT Rule Injunction**

- The U.S. DOL adopted a regulation to increase the federal minimum exempt salary to $47,476/year.

- On November 22, 2016, a federal court district judge granted an injunction that stopped this increase from going into effect.
Permissible Pay Deductions for Exempt Employees

Fed and State:

• Employee is absent from work for a day/more (or partial day) for personal reasons other than sick or accident*

• Employee is absent for a day/more (or partial day) because of sickness or disability*

• Deduction is made in accordance with a bona fide plan, policy, or practice of providing compensation for loss of salary

• The employer imposes penalties in good faith for major safety violation

• Employee is on a reduced schedule or on intermittent family and medical leave

• Workers’ Compensation, Family/Medical Leave, or Pregnancy Disability Leave

• The initial and terminal weeks of employment

Fed Only:

• Disciplinary reasons
Exempt Pay – Special Circumstances

- Time off other than Holiday, Sick, Vacation (PTO)
- Jury Duty
- Reduced Work Schedule
- Forced Vacation
- Mandatory Time Off
Wage Theft Prevention Act
Required "Notice to Employee"
Overtime

CA Code overrides FLSA

• 1.5 times pay over 8 hours in one day

• 2 times pay over 12 hours in one day

• 1.5 times pay after 40 hours in one “workweek”

• 1.5 times pay for first 8 hours worked on the 7th day of the workweek
## Meal Periods/Breaks

<table>
<thead>
<tr>
<th>Hours Worked</th>
<th>Regulation</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-4</td>
<td>10 minute off-duty rest period</td>
<td>• One hour penalty for each meal period violation</td>
</tr>
<tr>
<td>5-8</td>
<td>30 minute meal period</td>
<td></td>
</tr>
<tr>
<td>6 Hour Workday</td>
<td>Meal Period may be waived</td>
<td>• One hour penalty for each rest period violation</td>
</tr>
<tr>
<td>5-10</td>
<td>2nd 10 minute off-duty rest period</td>
<td></td>
</tr>
<tr>
<td>10-12 hours</td>
<td>2nd 30 minute meal period</td>
<td></td>
</tr>
<tr>
<td>12 Hour Workday</td>
<td>2nd Meal Period may be waived, if 1st was taken</td>
<td></td>
</tr>
</tbody>
</table>
Brinker Decision Impact on Meal Periods

Three scenarios of how the meal period may be impeded and the resulting pay owed:

• Employer authorizes and both employer and employee mutually agree to waive the meal period. All time worked is paid at straight time and no meal period premium is owed.

• The employee voluntarily works through their meal period without authorization or knowledge of employer. All time worked is paid at straight time. The employee may be subject to disciplinary action for working unauthorized.

• The employee works through meal period, upon the employer’s request and with employer’s knowledge. All time worked is paid at straight time plus a one hour meal period premium is owed.
## Local Laws/Ordinances

<table>
<thead>
<tr>
<th>City</th>
<th>Ordinance</th>
</tr>
</thead>
<tbody>
<tr>
<td>LA</td>
<td>City of Los Angeles – Ban the Box Ordinance</td>
</tr>
<tr>
<td>LA</td>
<td>Paid Sick Leve</td>
</tr>
<tr>
<td>LA*</td>
<td>Minimum Wage Ordinance</td>
</tr>
<tr>
<td>San Jose</td>
<td>San Jose Initiative</td>
</tr>
<tr>
<td>San Fran</td>
<td>San Fran Paid Parental Leave Ordinance</td>
</tr>
</tbody>
</table>

* Also Cities of Long Beach, Pasadena, Santa Monica, San Diego
CA Paid Sick Leave

### Entitlement

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td><strong>Front Loading</strong></td>
<td>At least 24 hours provided either at the beginning of each year of employment, calendar year, or 12-month period OR</td>
</tr>
<tr>
<td><strong>Accrual</strong></td>
<td>One hour of paid sick leave for every 30 hours worked.</td>
</tr>
<tr>
<td><strong>Cap</strong></td>
<td>Accrued unused paid sick leave shall carry over to the following year of employment and must be capped at a minimum of 48 hours, however, an Employer may choose no cap or a higher cap.</td>
</tr>
<tr>
<td><strong>Separation from employment</strong></td>
<td>An Employer is not required to provide compensation to an Employee for accrued or unused sick days at separation from employment.</td>
</tr>
<tr>
<td><strong>Reinstatement</strong></td>
<td>If an Employee is re-hired within a year of separation from employment, previously accrued and unused paid sick leave shall be reinstated.</td>
</tr>
</tbody>
</table>

### Usage

<table>
<thead>
<tr>
<th><strong>When</strong></th>
<th><strong>Usage must be allowed by the 90th day of employment</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>How</strong></td>
<td>An Employer shall provide paid sick leave upon the oral or written request of an Employee for themselves or a family member, or for any individual related by blood or affinity.</td>
</tr>
<tr>
<td><strong>Limits</strong></td>
<td>The use of paid sick leave may be limited to 24 hours annually.</td>
</tr>
</tbody>
</table>
Interns: US DOL - Intern/Trainee Classification Factors

1. The training, even though it includes actual operation of the facilities of the employer, is similar to what would be given in a vocational school or academic educational instruction;

2. The training is for the benefit of the trainees;

3. The trainees do not displace regular employees, but work under their close observation;

4. The employer that provides the training derives no immediate advantage from the activities of the trainees, and on occasion the employer's operations may actually be impeded;

5. The trainees are not necessarily entitled to a job at the conclusion of the training period; and

6. The employer and the trainees understand that the trainees are not entitled to wages for the time spent in training.
Interns: California Labor Dept. Revises Guidelines on When Interns Must Be Paid

- The DLSE *emphatic* - for internships to be unpaid, they must be educational and predominantly for the benefit of the intern, *not the employer*.
- Requires that interns receive college credit as a condition of being unpaid.
- California has embraced the DOL's established six criteria to determine when internships can be unpaid.

**Red Flag Tips**

- Follow the DOL's Six Intern/Trainee Classification Factors
- If you have an intern answering phones or any “grunt work”, you risk an off-the-clock claim
- Best option: Pay interns at least minimum wage to avoid the potential time and expense of defending a potential off-the-clock claims
What is an Independent Contractor?

• People **who contract to perform services** for others

• May be called **freelancers, consultants, self-employed, entrepreneurs or business owners**
Who Qualifies as an Independent Contractors

Most people who are in business for themselves

- No single, test for classification
- Different legal tests used by various government agencies, including:
  - IRS / EDD / DWC / Franchise Tax Board / US DOL / NLRB
How Six Agencies Regulate Contractors

See Handout

• Employment Development Dept. (EDD)
• Workers’ Compensation (DWC)
• US Dept. of Labor (DOL)
• CA Labor Commission (DLSE)
• IRS
• U.S. Immigration and Customs Enforcement (ICE, formally INS)
DOL – Misclassification of Workers as Independent Contractors

Per the DOL – Use **Economic Realities** test under FLSA *(not use IRS 20-factor test common law control test)*

1) Extent which work performed is integral part of the business.
2) Whether worker’s managerial skills affect opportunity for profit and loss.
3) Relative investments in facilities and equipment by the worker **and** the employer.
4) The worker’s skill and initiative.
5) The permanency of the worker’s relationship with the employer.
6) Nature and degree of control by the employer.
IRS 20 Points

Most important factor:

WHO DIRECTS AND CONTROLS THE WORK

- both as to the final results and as to the details of when, where and how to work.
SB 459 – Willful Misclassification

• For willful misclassification “the person or employer shall be subject to a civil penalty of not less than five thousand dollars ($5,000) and not more than fifteen thousand dollars ($15,000) for each violation”

• For pattern of willful misclassification, fines increase to $10,000 - $25,000 per violation

• Licensed contractor violations must be reported to Contractor’s State License Board (“disbarment” required within 30 days)

• Violation findings must be posted on website
11 Ways to Preserve Contractor Status *(1 of 2)*

1. Do not control the work
2. Do not provide training
3. Allow worker to establish own working hours when possible
4. Do not dictate where worker should perform the work.
5. Do not include in regular employee meetings or functions
11 Ways to Preserve Contractor Status (2 of 2)

6. Do not provide employee handbook or other rules for employees
7. Do not reimburse business expenses
8. Do not provide employee benefits
9. Pay by the project where feasible, instead of by the hour
10. Do not provide tools or other supplies
11. Always use a written IC agreement
Risks of Misclassifying Independent Contractors

- IRS Audits
- State agency audit
- Injured on the Job
  - IC’s can sue you for negligence
  - DWC audit
  - W/C insurance audit
Volunteer Classification

- Legal Definition: Volunteer
- Ordinary Volunteerism
  1. Nature of entity?
  2. Compensation or expectation of compensation?
  3. Part-time or Full-time?
  4. Displacing regular employees?
Volunteer Classification

Legal Definition: Volunteer

• *Ordinary Volunteerism*

5. Offered freely, without pressure or coercion?
6. Typically associated with volunteer work?
Volunteer Classification

Legal Definition: Volunteer

• May not volunteer in “commercial” nonprofit operations that serve the public

• *Tony and Susan Alamo Foundation v. Secretary of Labor*
Volunteer Classification

Legal Definition: Intern

• Unpaid vs. Paid Intern

• Trainee = Unpaid (volunteer)
Volunteer Classification

Legal Test: Unpaid Intern

1. Similar to vocational or academic instruction?
2. Benefit trainee or nonprofit?
3. Do not replace regular employees, and work under close observation
Volunteer Classification

Legal Test: Unpaid Intern

Key: If even one of the six is missing, treat intern as an employee.
Volunteer Classification

Volunteers and Interns

• Volunteers and unpaid interns ≠ employees

• Misclassification = liability
Can we pay our volunteers?

- Remember: no expectation of compensation!
- But stipends are permissible
- Stipend is meant to cover out-of-pocket costs
Volunteer Classification

Can we pay our volunteers?

• Stipend/Nominal Fee cannot:
  • Exceed 20% of standard pay to a worker performing the same service, and
  • Be tied to productivity or hours worked
Volunteer Classification

Can we pay our volunteers?

• Effect of Excessive Stipend:
  1. Volunteer may be deemed to be an employee
  2. Potential liability for payroll taxes, and wage and hour law
  3. Eliminates protection under Volunteer Protection Act
Volunteer Classification

Can we pay our volunteers?

• Effect of Excessive Stipend:
  1. Volunteer may be deemed to be an employee
  2. Potential liability for payroll taxes, and wage and hour law
  3. Eliminates protection under Volunteer Protection Act
Volunteer Classification

Can we pay our volunteers?

- If stipend exceeds $600 in a calendar year, must report on a 1099
Volunteer Classification

Can we pay our volunteers?

• Gift Cards:

  1. If in excess of $25 may be a taxable event
  2. If reimbursing, do so under an accountable reimbursement policy
Liability: *For Injury to a Volunteer*

**Discrimination and Harassment**

- California law: limited protections focused on harassment and discrimination
- Key: Proper Classification and Proper Stipends!
Liability: *For Injury to a Volunteer*

**Personal Injury**

- Organization may be liable for negligence
- Key: Waiver of liability, including medical liability, assumption of the risk, and proper insurance policies
Federal – Volunteer Protection Act

1. Volunteering for a nonprofit, school, or government agency
2. Acting within scope of duties
3. Negligence or accused of negligence
4. Compensation/Benefits ≤ $500
Liability: *Volunteer’s Personal Liability*

**Federal – Volunteer Protection Act**

**Exceptions:**
- Gross negligence, recklessness, or criminal misconduct
- Acting without required license or certification
- Operating a vehicle
Liability: Volunteer’s Personal Liability

Federal – Volunteer Protection Act

Exclusions:

• Crimes of violence
• Terrorism
• Hate crimes
• Sexual offenses
• Civil rights violations
• Alcohol or drugs
Liability: *Volunteer’s Personal Liability*

**California – Officer/Director Immunity**

CCC § 5047.5 - Volunteer officers and directors cannot be sued for any negligent act/omission taking place:

1. Within the scope of duties acting in their official capacity;
2. In good faith;
Liability: Volunteer’s Personal Liability

California – Officer/Director Immunity

3. Best interests of the corporation, and

4. In the exercise of policymaking judgment
Liability: Volunteer’s Personal Liability

California – Officer/Director Immunity

• As long as the claim can also be made directly against the corp and a liability policy applicable to the claim is in place of:
  • At least $500k, if annual budget is < $50k, or
  • At least $1m, if annual budget is ≥ $50,000
Liability: Volunteer’s Personal Liability

California – Officer/Director Immunity

• Exceptions:
  • Self-dealing
  • Actions involving loans and distributions
  • Action by the Attorney General
  • Intentional/reckless, gross negligence, fraud, malice
Top Risk #1
Cyber Liability

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Risk Management – Cyber Risk

Risk Management deals with uncertainty and risk. It is preparing your organization for the unexpected.
Data Breach and Nonprofits..

A non-profit that..

- Obtains social security numbers, drivers license numbers, bank account numbers of employees, clients or donors
- Has access to patient medical records
- Is in the process of going “paperless”
- Provides online access to sensitive data
- Allows laptops or access to their network
  - from a remote location
- Relies on computer network on a daily basis
- Allows use of cell phone or other mobile device

..carries a significant cyber risk exposure.
Cyber Risk: Perils to Computer Network

- Virus Transmission
- Fraud
- Hacker Attack
- Natural Disaster
- Employee Sabotage
- Power Failure
- Human Error
- System Malfunction
Website: Database for Breaches

History of All Data Breaches in U.S.
www.privacyrights.org/data-breach

Verizon Annual Data Breach Study
(this is the annual report most insurance underwriters review.)
www.verizonenterprise.com/DBIR/2017

61% of the data breach victims are businesses were under 1000 employees
80% of hacking-related breaches used stolen passwords and/or weak or guessable passwords.
Cyber Risk Management Tips

1. What security measures does your organization have in place to protect your data from a breach? How often are security measures reviewed?

2. Do you have a Crisis Management Plan? Do you have a Crisis Management Team? Who is going to deal with the Regulatory Requirements?

3. Do you thoroughly investigate your tech providers work history and experience? Do you always obtain certificates of insurance?

4. Are employees properly trained on how to update virus protection software and how to create hard-to-guess passwords?

5. Does your organization have HR and social media policies to reduce your risk and make sure all employees are trained?

6. If your data is outsourced, note that most cloud providers do not accept liability in their service agreement. Consult with your attorney.
1. There are over 60 insurance companies in the marketplace offering stand lone cyber liability coverage.

2. There is no “standard” Cyber Risk policy. Every insurance carrier has their own terms, conditions and deductibles. Industry is moving toward standard policy forms:
   - Security and Privacy Liability
   - Privacy Breach Response Costs, Notification Expenses, and Breach Support and Credit Monitoring
   - Privacy Regulatory Defense and Penalties
   - Multimedia Liability
   - Network Asset Protection
   - Cyber Extortion
   - Cyber Terrorism
Cyber Insurance Marketplace

• Minimum annual premium for a standalone policy is $1,000. in CA (nonprofits only).

• Premium is usually based on the following:
  • Total Revenues / Number of Records / Level of cyber risk controls / Staff Training / Cyber Claim History

• Cyber Liability is written
  • on a claims-made policy
  • form. (Check Retro Date)
Cyber Risk Insurance Options

NOTE:

• Before you purchase a cyber policy, make sure you understand what your other insurance policies cover (General Liability, Directors & Officers Liability, Property, etc.)

• Other Cyber Insurance Protection:
  1. USLI – Director & Officers Liability – $50,000 expense Data Breach, identity theft, workplace violence & kidnap
  2. NIAC – General Liability – Data breach included in liability limits, $50,000 unauthorized access to computer, $50,000 cyber extortion, $10,000 Crisis Management
Cyber Liability – Not *if* but *when*!
Cyber Liability – Not if but when!

1. Protect/segregate critical information
2. Review insurance policies
3. Get the Board on board
4. Get outside help including specialized legal counsel
5. Educate and train your staff
6. Delegate responsibility
Cyber Liability – Not if but when!

- Perfection is not required
- Implement reasonable and appropriate measures
- Focus on process
Incident Response Plan

✓ Prepare in advance
✓ Assign cyber security roles and responsibilities to specific staff and/or board committee
✓ Outside legal counsel on speed dial (First Call!)
✓ Crisis communication team + messaging
✓ Outside IT forensics firm (pre-selected and working under direction of counsel)
✓ Who must be notified (law enforcement, donors, gov’t agencies, vendors, etc)
Thank you for attending!

For more information from any of today’s presenters as well as this presentation and other resources, please visit our website at:

NPCollaborative.org

or email us at:

NPCollaborative@gmail.com

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