PLUS: Upcoming Seminars on Employment Law and Nonprofit Formation

New Employment Laws for 2015

California has recently adopted a number of new laws that will significantly impact nonprofit employers. In our December 2014 issue, we discussed the Healthy Workplaces, Healthy Families Act of 2014, which requires mandatory paid sick leave for all California employees. The law does not contain any provision limiting its applicability to employers of a particular size, and makes no distinction between for-profit and nonprofit employers, or between tax-exempt and taxpaying organizations. Therefore, it will apply to even small nonprofit organization with relatively few employees.

Below is an overview of a few more new employment laws that could apply to your agency:

Discrimination, Harassment and Retaliation Protections

- **Assembly Bill 1443** adds unpaid interns and volunteers to the list of individuals protected from harassment under the Fair Employment and Housing Act (FEHA); prohibits employers from discriminating against individuals in an unpaid internship or other limited duration program to provide unpaid work experience; and extends religious belief protections and religious accommodation requirements to anyone in an apprenticeship training program, an unpaid internship or any other program to provide unpaid experience for a person in the workplace or industry.

- **Assembly Bill 1660** makes it a violation of FEHA for an employer to discriminate against an individual because he/she holds or presents a driver's license.

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Have you recently joined our mailing list and feel like you’ve been missing out on great information? If so, we have good news! Previous issues of the CDP eNewsletter are available on our website.

Legal Services for Nonprofits

The Community Development Project builds strong foundations for healthy, vibrant...
issued to undocumented persons who can submit satisfactory proof of identity and California residency. Such discriminatory actions constitute national origin discrimination under FEHA. AB 1660 also clarifies that actions taken by an employer to comply with federal I-9 verification requirements do not violate California law. AB 1660 also provides that it is a violation of FEHA for an employer to require a person to present a driver's license, unless possession a driver's license is 1) required by law; or 2) required by the employer and the employer's requirement is otherwise permitted by law. Any driver's license information obtained by an employer must be treated as private and confidential.

- **Assembly Bill 2751** expands the definition of unfair immigration-related practice to include threatening to file or filing a false report or complaint with any state or federal agency (current law extended the protection only to reports filed with the police). AB 2751 also clarifies that an employer cannot discriminate against or retaliate against employees who update their personal information based on lawful change of name, social security number, or federal employment authorization document.

- **Assembly Bill 1792** prohibits discrimination and retaliation against employees receiving public assistance, here meaning the Medi-Cal program. Employer is defined by this law as an individual or organization that has more than 100 employees who are beneficiaries of the Medi-Cal program. AB 1792 also requires state agencies to prepare an annual list of the top 500 employers with the most number of employees enrolled in a public assistance program, and these reports will be made public and prepared starting January 2016.

- **Assembly Bill 2053** requires employers that are subject to the mandatory sexual harassment prevention training requirement for supervisors to include a component in the training on the prevention of "abusive conduct" beginning January 1, 2015. Abusive conduct is defined by this new law.

**Wage and Hour**

- **Several new laws** increase employer’s wage and hour obligations in 2015 by either increasing penalties or expanding their liability. Assembly Bill 1898 imposes liability on employers who contract for labor, meaning if an employer uses a labor contractor to supply workers, and the labor contractor fails to pay the employees properly or fails to provide workers' compensation coverage for those employees, the "client employer" can now be held legally responsible and liable. This law contains specific definitions and exclusions.

- **The Labor Commission** may cite an employer who pays less than the minimum wage; the citation can include a civil penalty, restitution, and liquidated damages (Labor Code Section 1197.1). Assembly Bill 1723 authorizes the Labor Commissioner to also include in this citation process any applicable penalties for the employer’s willful failure to pay timely wages to a resigned or discharged employee, also called and economically stable communities by providing comprehensive legal and capacity building services to organizations serving people with lower-incomes in the Los Angeles area. CDP provides assistance on a wide range of matters to community organizations, including:

  **Contract & Lease Negotiation**

  Does your nonprofit need to terminate or renegotiate contractual or lease obligations? Do you know whether your nonprofit is legally permitted to sublet unused space?

  **Employment Advice**

  Is your nonprofit exploring reduction of employee benefits, salaries or hours? Do you know the criteria to use when downsizing staff? Are you attempting to reclassify employees as independent contractors? Are you aware of the legal implications of all of these actions?

  **Corporate Governance**

  Is your board aware of its duties during a period of financial difficulty? Do your board members know how to conduct financial and programmatic oversight? Has your organization adopted a conflict of interest policy? Are your directors aware of the situations where they could incur personal liability for the acts of the corporation, and do you have appropriate controls and procedures in place to protect them?

  **Debt Reorganization & Cash Flow**

  Does your nonprofit need to renegotiate debt repayment terms? Do you know what agreement terms you should pay special attention to if applying for or increasing a line
"waiting time" penalties. No new penalties are created by this law, but it gives the Labor Commissioner a new way to enforce existing penalties.

- **Assembly Bill 2288**, the Child Labor Protection Act of 2014, provides additional penalties for violations of California laws regarding employment of minors, including a penalty of $25,000 to $50,000 for "Class A" violations involving minors 12 years of age or younger. Also, the statute of limitations for claims that arise from violations of employment law is tolled until the minor is 18 years old.
- **Employers** who provide services or construction work on public works projects for the government or public entities must pay the prevailing wage, which is usually significantly higher than the minimum wage.
- **Senate Bill 477** requires, in part, that foreign labor contractors meet registration, licensing and bonding requirements by July 1, 2016. Employers are prohibited from using non-registered foreign labor contractors to supply workers in California. SB 477 also imposes disclosure requirements and other obligations on foreign labor contractors.

**Background Checks**

- **Assembly Bill 1852** requires a business that provides specified services to minors to provide written notice to the parent or guardian of the minor receiving those services, and this notice should also state the business’s policies relating to employee criminal background checks.
- **Assembly Bill 1650** requires contractors who bid on state contracts involving on-site construction related services to certify that they will not ask applicants for on-site construction related jobs to disclose information concerning criminal history at the time of an initial employment application.

**Workplace Safety**

- **Cal/OSHA** can require an employer to fix serious workplace safety violations and issue civil penalties. Assembly Bill 1634 prohibits the state Occupational Safety and Health Appeals Board from modifying civil penalties for abatement or credit for abatement unless the employer has fixed the violation.
- **Senate Bill 1299** requires Cal/OSHA to adopt standards by January 1, 2016 requiring specific types of hospitals, such as general acute care hospitals or acute psychiatric hospitals, to adopt workplace violence prevention plans as part of the hospitals’ injury and illness prevention plans.

**Healthcare**

- **Senate Bill 1034** deletes certain provisions of California law related to waiting period limitations for health care coverage and clarifies that employer imposed waiting periods are governed by the 90 day period authorized under the federal Patient Protection of credit? Have any of your key vendors filed for bankruptcy?

**Fundraising & Social Enterprise**

Is your nonprofit considering alternative fundraising methods (e.g., loans from directors, starting a for-profit business, joint-ventures, etc.)? Do you know how to structure these activities to protect your tax-exempt status? Are you aware of the legal ramifications of using restricted or endowment funds to pay ongoing expenses?

**Mergers & Strategic Alliances**

Is your nonprofit considering a merger or consolidation to save or expand programs? Do you know the difference between a formal merger and other types of strategic alliances?

**Organizational Documents**

Did you know that the Articles of Incorporation and Bylaws determine the legal scope of your organization's activities? Has the economy forced your nonprofit to consider changing its activities or operations? Do you know the procedure for amending your nonprofit’s organizational documents and notifying the proper government agencies?

**Lobbying & Advocacy**

Is your nonprofit advocating for certain government budget allocations or ballot measures on behalf of its constituents or key programs? If so, do you know how much lobbying your nonprofit can engage in and what registration and reporting rules apply?
To learn more about these new laws, and a general overview of employment law issues relevant to nonprofits, please attend our February 19, 2015 training held in conjunction with Boston Private Bank from 8:30 to 10:30 am at Public Counsel’s office located at 610 S. Ardmore Avenue, Los Angeles, CA 90005. The training will be provided by employment law attorneys Jacqueline Cookerly Aguilera and Mae Kieng Hau of Morgan, Lewis & Bockius LLP and will cover issues such as: hiring practices; classification of workers; leaves of absences; personnel records; mandatory sexual harassment training; investigating claims of harassment/discrimination; and termination practices. For more information on how to register for this training, please [click here](https://ui.constantcontact.com/visualeditor/visual_editor_preview.jsp?agent.uid=1119978124287&format=html&printFrame=true).

### New Government Contract Overhead Regulations

Nonprofits must receive 10% or more in overhead costs from government contracts that involve federal money, according to new regulations from the Office of Management and Budget. This regulatory change does not increase the overall funding pool, but has the potential to make existing grant dollars more flexible for use by nonprofit grantees and sub-grantees, if those agencies learn the rules and become proactive advocates for better rates. Here are some of the things you can do:

- Find out if the source of some or all of your government funding is federal (rather than purely state or local). In many cases federal funds are passed through state, county, and city departments.
- Review your existing government contract overhead rate. If less than 10%, you will want to learn more about how the new regulations could improve your overhead recovery.
- Under the new regulations, some items you may have assumed to be part of your overhead rate will actually be treated as direct costs. Review your current overhead assumptions.
- Check the expiration dates of your federal contracts. The regulations apply to new contracts signed after December 26, 2014. (Unfortunately, they do not apply to renewals of pre-December 26, 2014 contracts if nothing substantial has been changed.)

Two good resources for learning more about proactive overhead advocacy are the California Association of Nonprofits and the National Council of Nonprofits. Both agencies have active "better overhead rate" campaigns. The

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"Employment Law Must-Knows" - February 19, 2015

Join us on Thursday, February 19, 2015 from 8:30 AM to 10:30 AM for a seminar on "Employment Law Must-Knows," sponsored by Boston Private Bank & Trust Company.

Employment law attorneys Jacqueline Cookerly Aguilera and Mae Kieng Hau of Morgan, Lewis & Bockius LLP and will cover issues such as: hiring practices; classification of workers; leaves of absences; personnel records; mandatory sexual harassment training; investigating claims of harassment/discrimination; and termination practices.

Advance registration is required. For more information and to register for the seminar, please visit our [website](https://ui.constantcontact.com/visualeditor/visual_editor_preview.jsp?agent.uid=1119978124287&format=html&printFrame=true).

"Launching and Sustaining a New Nonprofit" - February 25, 2015

Join us on Wednesday, February 25, 2015 from 5:30 PM to 8:00 PM for an affordable seminar for new
National Council has also published a very useful summary of action steps for nonprofits about the new regulations called "Know Your Rights and How to Protect Them." Don't miss out on this important opportunity to be more appropriately reimbursed for the cost of the critical missions you serve.

Too Good to be True?

The South Bay Workforce Investment Board would like to match your nonprofit organization's workforce need with one of its candidates for employment. It has funding to underwrite the cost of up to 8 months of full time, 40 hour per week salary and workers compensation per candidate placed. Candidates range from persons seeking entry level positions with very little experience to individuals with Bachelors and Masters Degrees and abundant work experience. A few examples of the types of positions recently filled include:

- Clerical
- Office Assistant
- Data Entry
- Court Clerk
- Retail
- Cashier
- Maintenance Aide
- Landscape
- Customer Service
- Food Prep
- Graphic Arts
- Human Resources
- Telemarketing
- Food Bank Assistants
- Homeless Shelter Assistants

To learn more, contact Mario Rodriguez, South Bay Workforce Investment Board One-Stop Business & Career Center, at 323-836-9061 or email: mrodriguez@sbwib.org.

Startups and new nonprofits face a number of planning, financial, and legal challenges from the outset. This introductory course will cover both legal and programmatic fundamentals, including best practices for designing successful programs, recruiting an effective board, developing a sustainable fundraising plan, forming a California nonprofit corporation and applying for tax exemption, and complying with ongoing tax and legal requirements.

Seminar attendees are eligible to participate in a FREE "Ask A Lawyer" Nonprofit Formation Clinic (date TBA at the seminar), where they will be able to meet one-on-one with an attorney to discuss specific questions relating to forming a nonprofit and obtaining tax exemption.

Advance registration is required. For more information and to register for the seminar, please visit our website.