

# NONPROFIT MATTERS

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**Message from PLC's Executive Director**

Every year in California there are many new laws from Sacramento that affect Orange County nonprofits and the clients they serve. As we have for the past two years, we bring you this edition of *Nonprofit Matters* to highlight some of those laws for you. Also, with this edition we welcome Diamond Tran, our new Staff Attorney responsible for our Community Organizations Legal Assistance Project (COLAP). In her four months on our staff, she has begun strengthening existing relationships and building new ones as we continue our efforts to serve Orange County's nonprofit community.

- Ken Babcock

Nothing in this newsletter should be construed as legal advice. For more information about complying with the various laws mentioned in this newsletter, please consult a legal or tax professional.

## Heightened Immigration Enforcement

Recent developments make it clear that 2008 will be another eventful year for employers on the immigration front. In an effort to deter employers from hiring undocumented workers, the [Department of Homeland Security](#) (DHS) and [U.S. Immigration and Customs Enforcement](#) ("ICE") have been tackling immigration enforcement with unprecedented determination. They will no doubt continue to aggressively investigate and prosecute employers suspected of employing undocumented workers in violation of the [Immigration Reform and Control Act](#) (IRCA) of 1986.

IRCA requires employers

to verify the identity and employment authorization of each new employee hired after November 6, 1986 with the Employment Eligibility Verification Form I-9, but IRCA did not require employers to actively investigate a worker beyond examining documents establishing identity and/or employment eligibility. IRCA imposes stiff penalties for failure to comply, but due to lax enforcement, em-

ployers were largely immune. With new regulations and heightened enforcement, the landscape has changed and the likelihood of penalties against employers has dramatically risen. The criminal charges carry a penalty of up to 10 years in prison, as well as a fine of up to \$250,000 per violation. ICE's efforts have resulted in the collection of more than \$30 million from the workforce investigation program in 2007, compared to merely \$6,500 in 2005. In addition, they made 863 criminal arrests in 2007, compared to 176 just two years ago.



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## An Uncertain Future for IRA Charitable Rollovers

By Nathan R. Scott

The [Pension Protection Act](#) (PPA) of 2006 created an easy process for nonprofit supporters to use their retirement savings to make tax-free charitable contributions. Nonprofits reaped tens of millions of dollars through the Act. But with the Act's recent expiration, nonprofits are looking to Congress to renew this source of support.

The PPA encouraged

nonprofit contributions through its "IRA charitable rollover" provision. This allowed persons over the age of 70 ½ to make distributions directly from their traditional and Roth IRA accounts to nonprofits, without including the distributions as Adjusted Gross Income (AGI) on their tax returns. Nor did these distributions count against the 50 percent AGI limitation on cash gifts to charity. Each year, donors

could "roll over" up to \$100,000 to their chosen nonprofits, tax free.

The IRA charitable rollover was a breakthrough for nonprofit support. Before the PPA, donors hesitated to use their IRA accounts for charitable contributions, due to onerous tax consequences. The IRA charitable rollover changed this, making IRA accounts a tax-favored source of

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## Insurance for Volunteers

Fear of incurring personal liability for volunteer service isn't uncommon among the estimated 90 million Americans who perform volunteer service each year.

Volunteer board members may be targeted in suits alleging wrongful employment practices, breach of fiduciary duty, fraud and other causes of action. Suits against volunteer service providers may allege negligence or gross negligence in caring for a client. Despite the relative infrequency of these actions, it's important to understand the legal and insurance protections available to your volunteers. There are two major categories of protection that a volunteer can turn to if he or she faces a suit: volunteer protection laws at the state and federal levels, and insurance.

**Homeowners' or Renters' Policies** — Volunteers who are homeowners may enjoy some protection under their existing homeowners' policies. In some cases coverage is provided for volunteer

activities without the need for any action on the part of the homeowner. In other instances the volunteer must request a broadening endorsement. Whether it's provided at no additional cost or minimal cost, this coverage is potentially valuable protection in the event the volunteer is named in a suit. Volunteers who have a renters' policy may enjoy similar protection.

### Volunteer Liability Policies

Another option is Volunteer Liability coverage. This coverage is typically packaged with a Volunteer Accident policy that is purchased by a nonprofit. For example, one provider offers up to \$1 million in personal liability insurance and up to \$500,000 in excess automobile liability insurance above the volunteer's own insurance as part of its volunteer insurance package. The personal liability coverage provides protection for a personal injury or property damage liability claim arising out of the volunteer's duties on behalf of the nonprofit.

Exclusions include alleged errors or omissions in connection with the volunteer's professional services and property damage to property in the care, custody or control of the volunteer.



### Personal Auto Liability Policies

A volunteer who will be driving his or her auto while providing service for a nonprofit should review his or her personal auto coverage. The volunteer's personal auto policy will extend protection to the nonprofit while the volunteer is driving for the nonprofit. Volunteers should review their policy limits and consider the need to increase these limits depending on the nature of the services they provide to a nonprofit.

This article is excerpted from Chapter 9 of *No Surprises: Harmonizing Risk & Reward in Volunteer Management, 3rd Edition*. Additional information is available at [www.nonprofitrisk.org](http://www.nonprofitrisk.org).

## Updates from the IRS

The IRS recently unveiled a [new Form 990](#), which most public charities are required to file annually starting in 2009 for the 2008 tax year. Redesigned to address the increased demand for transparency and accountability in the nonprofit sector, the form requests information concerning the organization's board and governance policies. The 11-section core form is supplemented with 16 schedules, and a new checklist helps filers determine which schedules they must complete. Please check the [IRS Charities and Nonprofits website](#) and [GuideStar](#) for additional information about the changes and transition relief for smaller organizations.

Beginning this year, the [Pension Protection Act of 2006](#) (PPA) requires

many tax-exempt organizations whose gross receipts are normally \$25,000 or less to file electronically Form 990-N, also known as the e-Postcard. This requirement applies to tax periods beginning after December 31, 2006. For organizations whose tax period ends December 31, 2007, Form 990-N is due May 15, 2008. Organizations that fail to file for three consecutive years risk revocation of their tax-exempt status. For more information, please visit the [IRS website](#).

The IRS will begin closely examining exempt organizations that operate business franchises and engage in business ventures with for-profit organizations. Issues of concern include: 1) whether the business aspect relates to the organization's

overall mission or whether it is an unrelated trade or business, the income from which should be reported on [Form 990-T](#) (this form must be made available for public inspection); 2) if the scope of the franchise has an impact on the organization's exempt status; and 3) if the franchise pays reasonable compensation and properly reports and withholds employment taxes.

During the 2008 election cycle, the [Political Activity Compliance Initiative](#) (PACI) continues to prioritize investigations of political campaign activities by 501(c)(3) organizations. Please review [Revenue Ruling 2007-41](#) for prohibited election-related activities for 501(c)(3) organizations.

# New Laws Affecting Your Clients

## CalWORKS

[AB 314](#) expands welfare-to-work activities to include structured monitored study time related to approved hours spent in the classroom, lab, or other activities related to vocational education and training.



## Children & Youth

[AB 81](#) now allows parents up to 7 days to safely surrender a child at a designated facility. AB 81 also establishes a toll-free hotline to educate and assist the public.

[AB 1331](#) requires counties to apply for federal Social Security or Supplemental Security Income/State Supplemental Payment (SSI/SSP) benefits on behalf of foster youth who are eligible.

## Disability Law

[AB 910](#) requires health insurance plans to continue coverage for a member's dependent, regardless of age, if the dependent cannot work due to a mental or physical disability.

[AB 463](#) allows a vehicle equipped with a lift, ramp, or assistive equipment used to load a disabled person to park across two stalls on a street or in a private off-street parking facility when no suitable sized parking space is available.

## Domestic Violence

[AB 289](#) allows a court to issue a protective order in domestic violence cases for up to 10 years if the defendant is sentenced to prison, jail, or if the sentence is suspended and the defendant is placed on probation. It also allows a criminal restraining order to remain in force if probation is revoked.

In establishing eligibility for CalWORKS homeless assistance program, [AB 335](#) allows domestic violence to be verified by a sworn

statement of the victim (rather than requiring verification by a third party) where homelessness is a direct result of domestic violence.

## Education

The federal College Cost Reduction and Access Act ([HR 2669](#)) makes college accessible to many more students by providing billions of dollars a year in additional Pell Grant aid to low-income students; lowering student loan interest rates; and directing subsidies to millions of working students and families. The legislation also expands loan forgiveness programs and creates new grants for undergraduates who commit to teaching in public schools in high-poverty communities or high-need subject areas.

The Head Start reauthorization bill ([HR 1429](#)) creates new flexibility to allow the program to serve more low-income children and families that are just above the poverty line; rejects inappropriate testing of four-year-olds; and expands the Early Head Start program, allowing it to serve 8,000 more low-income infants and toddlers. However, Head Start's ability to maintain enrollment and serve more children depends on what Congress does on Head Start funding.



## Employment Law

In 2008, California phased in the second minimum wage increase required by [AB 1835](#). Employers must pay the new minimum wage rate of \$8.00 per hour for work performed on and after January 1, 2008.

Two new laws expand state Family Leave provisions. [AB 537](#) allows job-protected leave for eligible workers to care for a seriously ill adult child, sibling, grandparent, grandchild, parent-in-law, or domestic partner.



[SB 727](#) allows eligible workers to receive partial pay when they miss work to care for a seriously ill sibling, grandparent, grandchild, or parent-in-law.



## Housing & Homelessness

[AB 976](#) prohibits local governments from requiring landlords to ask and/or report information about tenants' immigration status. Landlords are also prohibited from voluntarily conducting such an inquiry or from requiring that tenants make any statements about their status.

[SB 2](#) requires cities and counties to address housing and services for the homeless in their general planning process and to identify adequate sites in their housing element where emergency shelters are allowed as a permitted use without a conditional or discretionary use permit.

## Immigration Law

On a case-by-case basis, the [U.S. Citizenship and Immigration Services](#) (USCIS) is giving special consideration to fee waiver requests from applicants who lost their residence and/or employment as a result of the October wildfires and are seeking to replace certain documents. This consideration applies to applications to replace Permanent Resident Cards; Naturalization Citizenship Documents; and Employment Authorizations.

## Privacy Protections

[New federal court rules](#) for civil, criminal, and bankruptcy cases require that online case files show only the last four digits of a person's financial account or Social Security number; only the year of someone's birth; and only the initials of persons known to be minors. Taxpayer ID numbers and home addresses (in criminal cases) are also to be redacted.

*"Immigration Enforcement" cont. from pg. 1*

The upsurge in immigration raids and other enforcement efforts may have a significant impact locally, particularly on employers and workers in the agricultural, construction, hospitality, and food processing industries. Those industries may suffer labor shortages, and undocumented workers may be driven into an ever-growing underground employment market. Employers now find themselves in the unenviable position of having to scrutinize new employees more thoroughly while being mindful of potentially discriminatory practices against those who are perceived to be immigrants. Employers are forced to reexamine their hiring process as well as assess their level of compliance with current law.

### **The No-Match Rule**

For years, employers have been notified of discrepancies between data reported by a worker and information from [Social Security Administration](#) (SSA) records through the use of ["no-match" letters](#). Employers who received those letters were not required to take any action. Under the new DHS regulations, however, if after receiving a letter an employer cannot verify that a worker is properly documented, the employer is required to fire the employee within 90 days or face serious consequences, including criminal sanctions. Opponents of what has been called the ["no-match rule"](#) argue that there are many innocent reasons for discrepancies, such as clerical mistakes, name changes due to marriage and divorce, and the common practice of using multiple surnames in certain cultures. Due to concerns that lawfully-employed workers would be terminated and irreparably harmed by the rule's potentially wide reach, organizations including the [American Federation of Labor and Congress of Industrial Organizations](#) (AFL-CIO) and the [National Immigration Law Center](#)

(NILC) filed a lawsuit in [AFL-CIO v. Chertoff](#). They succeeded and the District Court in Northern California issued a preliminary injunction to prevent DHS and SSA from implementing the rule. The injunction is effective until there is a final decision in the case, but DHS filed an appeal and is revising the rule. Though the "no-match rule" is not currently in effect and immigration law is in a state of flux, it is clear that DHS will continue to pursue a policy of vigorous enforcement.

Employers should not terminate an employee simply because they received a "no-match" letter. In fact, the "no-match" letter clearly says that employers should not take any adverse action against an employee, such as suspending, firing, or discriminating against that individual, just because his/her Social Security number appears on the list, and that doing so could violate State or Federal law and subject the employer to legal consequences. For more guidance on the letters, review the National Employment Law Project's ["Top Ten Tips For Employers Who Receive a No-Match Letter."](#)

### **Revised I-9 Form**

As of December 26, 2007 all employers are required to use the [revised I-9 Form](#) for all new hires and to transition old versions of the form to the new one. Review the [handbook](#) for instructions on how to complete the form.

To ensure compliance, employers should conduct periodic self-audits. In reviewing their I-9 procedures, employers should at a minimum consider the following:

**Confirm there is an I-9 Form for each employee.** Retain completed forms for all employees for 3 years after the person is hired or for 1 year after date of termination, whichever is later.

**Properly complete I-9 Forms.** A properly completed form is a "good faith" defense. Obtain missing in-

formation from the employee/former employee, or if you have photocopies of documents the employee presented, use them to obtain the missing data. Review his/her I-9 Form before the employee leaves the payroll.

**Keep I-9 Forms separate from other personnel records.** This makes it easier to conduct periodic self-audits. Also, since the forms may be reviewed by investigators, provide only information that is required rather than the entire personnel file.



**Be careful of document abuse discrimination.** The law prohibits employers from: (1) requiring employees to present any specific document; (2) requiring employees to present more documents than are minimally necessary to establish identity and employment eligibility; and (3) refusing to accept a document that reasonably appears to be genuine on its face.

Improperly completed I-9 Forms can result in a fine of \$110 to \$1,100 per form, and fines for late completion are \$300 to \$400 per form, depending on the size of the employer's business, the employer's good faith, the seriousness of the violation, whether the employer should have known that the employment was unauthorized, and the history of violations.

ICE and the Department of Labor have the right to inspect I-9 Forms as long as the employer is given at least 3 days' notice. If, however, an investigator produces a search warrant, no notice is required. Employers who are investigated should seek legal advice to protect themselves and their employees against potential civil and criminal penalties. The [Public Law Center](#) may be able to provide legal assistance to eligible employers through *pro bono* counsel.

## New State Laws Affecting Nonprofits

### Disaster Response Reimbursement

[AB 903](#) authorizes reimbursement of select expenses of nonprofit organizations that respond to disasters and other emergencies. Organizations that are eligible for specified disaster assistance under federal law would be eligible for state assistance, distribution of supplies, and other disaster or emergency assistance.



### Domestic Violence Counseling

[SB 407](#) strengthens confidentiality protections by clearly defining the type of organization for which a domestic violence counselor must work to be subject to the victim-counselor privilege and clearly defining the type of communications that are privileged. The new law mandates that a domestic violence counselor be an employee or volunteer of a nongovernmental



“domestic violence victim service organization.” It also requires that a person complete the 40-hour domestic violence training in order to qualify as a domestic violence counselor, and that the training on the privilege be included as part of the mandated 40-hour training for domestic violence counselors.

### Earned Income Tax Credit

Effective January 1, 2008, [AB 650](#) requires employers who are required to provide unemployment insurance to give all employees written notice of their possible right to take an Earned Income Tax Credit (EITC) on their federal tax returns. The [notice](#) must be provided within one week before or after, or at the same time, W-2 or 1099 forms are delivered.

### HIV Prevention and Education

[AB 110](#) allows public entities that receive General Fund money from the state Department of Health Services for HIV prevention and

education to use that money to support clean needle and syringe exchange projects.



### Homeless Youth

[SB 198](#) expands the definition of “homeless youth” to include youth less than 18 years old who meet certain criteria. The new law allows service providers and developers who serve these youth to access state funding.

### State Tax-Exemption

[AB 897](#) simplifies the state tax-exemption process for 501 (c)(3) organizations by no longer requiring them to submit an additional application to the Franchise Tax Board (FTB). Instead, organizations merely have to send the FTB a copy of their IRS determination letter and an affirmation form ([Form 3500A](#)).

For text and status updates of state law, visit the [Official California Legislative Information website at http://leginfo.ca.gov/bilinfo.html](http://leginfo.ca.gov/bilinfo.html).

“IRA Charitable Rollovers” cont. from pg. 1  
donations.

Unfortunately, the PPA had a limited lifespan. It applied only to charitable contributions made between January 1, 2006 and December 31, 2007. Thus, the New Year brought with it the end of IRA charitable rollovers.

Nonprofits and their supporters, however, have valiantly lobbied Congress to restore the IRA charitable rollover. Representative Charles Rangel (D-NY) sponsored the Temporary Tax Relief Act of 2007 ([HR 3997](#)), which would have extended the rollover for one year. Sadly, the Senate dropped the rollover extension when it considered the legislation. Senator Pat Roberts (R-KS) sponsored [SB 2264](#), which would extend the rollover for two years. The bill has

been read twice and placed on the legislative calendar. And Representative Nick Lampson (D-TX) introduced the Charitable Tax Relief Act of 2007 ([HR 3596](#)), which would extend the rollover permanently. This bill has been referred to the House Committee on Ways and Means.

The most promising proposal is a bipartisan measure, the Public Good IRA Rollover Act ([HR 1419](#)). This legislation would permanently extend the IRA charitable rollover and expand it in scope. It would eliminate the \$100,000 annual cap on distributions; allow distributions to donor-advised funds, nonprofit supporting organizations, and private foundations; and permit planned gifts to nonprofits when donors reached the age of 59 ½.

The Public Good IRA Rollover Act

has gathered significant congressional support. More than 120 legislators from both parties have co-sponsored it. It awaits Senate and House committee votes.

Local nonprofits can urge Congress to extend and expand the charitable IRA rollover by enacting the Public Good IRA Rollover Act. They may contact Senators [Barbara Boxer](#) and [Dianne Feinstein](#) and ask them to support the Senate version, [SB 819](#). They may contact Orange County representatives [Ed Royce](#), [Gary Miller](#), [Ken Calvert](#), [Dana Rohrabacher](#), [Loretta Sanchez](#), or [John Campbell](#), and ask them to support the House version, HR 1419. Nonprofits can also encourage their supporters to do the same.

*Nathan R. Scott is a senior attorney at the California Court of Appeal. The views expressed herein are his own.*



# PUBLIC LAW CENTER

PROVIDING ACCESS TO JUSTICE  
FOR ORANGE COUNTY'S LOW INCOME RESIDENTS

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The Public Law Center, Orange County's pro bono law firm, is committed to providing access to justice for low-income residents. Through volunteers and staff, the Public Law Center provides free civil legal services, including counseling, individual representation, community education, and strategic litigation and advocacy to challenge societal injustices. Now in its 26th year, PLC is sponsored by the Orange County Bar Association and is supported by lawyers throughout the county.

PLC may be able to assist your clients who are low-income Orange County residents and have certain types of immigration, family law and civil legal problems, including: landlord-tenant, homeownership, collection, bankruptcies, consumer, estate-planning, discrimination, employment, adoptions, guardianships, custody matters, divorces involving children or domestic violence, and immigration work for survivors of crime or domestic violence. To determine whether your clients are eligible for services, they may contact the Legal Aid Society of Orange County, which regularly refers cases to PLC, or attend one of PLC's clinics at various homeless shelters and community organizations around Orange County. Information about our clinics can be received by calling our front desk at 714-541-1010 or by visiting our [website](#).

## About COLAP

PLC's Community Organizations Legal Assistance Project (COLAP), through staff and pro bono volunteer attorneys, provides free transactional legal assistance to local non-profit organizations that face a variety of business law issues in areas such as contract law, employment law, fundraising law, corporate governance law, and real estate law. For instance, COLAP can match organizations with attorneys to review and draft bylaws, employment handbooks, service provider contracts, and commercial leases. COLAP also provides free legal assistance to those interested in starting new nonprofit organizations designed to benefit Orange County's low-income population.



representation on a number of business law related issues, COLAP assists organizations through a legal check-up program. Through this program, volunteer attorneys and law students conduct legal checkups of organizations to make sure they are complying with various state and federal laws. The service allows organizations to address legal issues before they become a problem. If nonprofits do not comply with legal requirements, they may be subject to administrative fines or they can even lose their tax-exempt status. This project helps organizations avoid these consequences.

For more information on COLAP services, please visit our [webpage](#), or contact [Diamond Tran](#).

In addition to providing direct

### Upcoming Workshops

“Traps for the Unwary”  
(Wage and Hour Law Clinic and Seminar)  
March 26, 2008, 8:30am-12pm

~  
“How to Start a 501(c)(3)  
Nonprofit Corporation”  
March 27, 2008, 9am-12pm

For more information about these events, contact [Diamond Tran](#). These workshops are made possible through a partnership with the Volunteer Center of Orange County. To register, please visit <http://www.volunteercenter.org>

