



NONPROFIT MATTERS

A Bulletin for Nonprofit Organizations Distributed by
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Legal Disclaimer

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

Greetings!

In this edition of Nonprofit **Matters**, we introduce to you COLAP's newest staff attorney, [Peter Kim](#). Peter's article on fiscal sponsorships provides useful information to both projects seeking a fiscal sponsor as well as exempt organizations considering taking on a project. The article on family leave and disability laws is a must-read for those organizations attempting to navigate recent employment law changes. As in previous issues, we've included important legal developments potentially affecting your clients and new and proposed legislation affecting nonprofits.

One additional change to mention is that I will be going on maternity leave soon and will return in December. If you have questions about any of the information in this newsletter, and for legal assistance during my absence, please feel free to contact [Peter](#) at (714) 541-1010 x 281.

Sincerely,

[Diamond Tran](#)

Staff Attorney

Community Organizations Legal Assistance Project (COLAP)

The Public Law Center, Orange County's pro bono law firm, is committed to providing access to justice for low-income residents.

\$1,000 To Start A Nonprofit? No Thanks.

How Fiscal Sponsorships Can Save Time And Money

By [Peter Kim](#), Staff Attorney

What is a fiscal sponsorship?

A fiscal sponsorship is an arrangement between an organization (a "project") and an existing 501(c)(3) public charity (a "fiscal sponsor") to do charitable work. A project solicits funds payable to its fiscal sponsor, but "for the benefit of" the project. The fiscal sponsor then disburses the funds to the project or pays the project's vendors directly.

Why should a potential project enter into a fiscal sponsorship?

The primary benefit to a project is its ability to attract and receive tax-deductible contributions through its fiscal sponsor. It often looks like this: individuals who want to donate to a project can instead donate to the fiscal sponsor, who will put the contribution on its books as a tax-deductible, tax-exempt donation. The fiscal sponsor can then disburse the funds to the project or pays the project's vendors directly. This allows a project to attract donors and grants, many of which are only given to tax-exempt organizations. If the project is a new tax-exempt organization, it may also better attract donors and grants by associating with an organization with an established track record.



There are many other advantages to a fiscal sponsorship, most of which will benefit an already tax-exempt project as well as a non-exempt project. Leveraging an established 501(c)(3)'s existing infrastructure can lead to benefits that include:

Cost Savings: Incorporating and applying for tax-exemption costs approximately \$1,000 in administrative fees. Attorneys' and other professionals' fees can run into the thousands during start-up. (The Public Law Center, however, provides free legal services to eligible organizations.)

A quick start: Though a very small percentage of applications are approved within 60 days, it is presently taking more than 6 months to assess most applications. A fiscal sponsorship begins as soon as a fiscal sponsorship agreement is signed.

Connections: A well-known fiscal sponsor can help a project build relationships with donors and others in the nonprofit community.

Name recognition and credibility: A fiscal sponsor's good name can help a project with marketing and fundraising.

Experienced management, staff, and board of directors: A fiscal sponsor can be a valuable source of information and advice.

Grant writing expertise: A fiscal sponsor may have experienced grant writers.

Administrative services: A fiscal sponsor can provide help with legal compliance, bookkeeping and

accounting, insurance and general office management.

Why should a nonprofit organization sponsor a project?

There are several reasons why an organization might want to sponsor a project:

Money: Most fiscal sponsors will charge a percentage of funds it receives on behalf of the project, typically from 5% to 15%. These fees can help pay for expenses.

New ideas: A project can bring in fresh ideas to accomplish the fiscal sponsor's purposes.

Attention: A successful project can bring recognition to the fiscal sponsor.

Are there any drawbacks to a fiscal sponsorship?

A project is ultimately accountable to its fiscal sponsor. Though a project can maintain some independence (in varying degrees depending on the terms of the agreement), it does not have complete autonomy. This is because a fiscal sponsor is legally responsible for ensuring that a project's use of funds (1) does not violate the terms of a donation/grant; (2) is used to further the project's and fiscal sponsor's purposes; and (3) is not used for improper purposes, such as lobbying. As a result, a good fiscal sponsor will monitor a project and control funds. Another reason that a good fiscal sponsor will retain control over funds is to avoid the appearance of being what the IRS considers a "conduit": an entity that receives funds for a non-exempt organization solely for the purpose of allowing the donor to take a tax-deduction. Finally, a project may be limited by the fiscal sponsor's policies and procedures.

Another potential drawback is the project's loss of visibility. Though a fiscal sponsor can create greater visibility for a project, in some ways, not being a full-fledged tax-exempt organization can reduce visibility. For example, Guidestar.com, a widely-used online database of nonprofit organizations, does not have information on projects.

Projects may also face difficulty attracting talented people to serve on its "board," because its governing body is really just an advisory committee. The project's true board of directors is the board of the fiscal sponsor (but since legal liability falls on the fiscal sponsor's board, not on a project's advisory committee, some may actually find advisory committee membership more appealing).

In addition, some foundations do not make grants to projects. Other foundations may not make grants to both a fiscal sponsor and its project, resulting in a head-to-head competition for funding if a fiscal sponsor and one of its projects apply for a grant from the same foundation.

Conclusion

Fiscal sponsorships can be an attractive option. [The Fiscal Sponsor Directory](#) and the [Tides Center](#) both maintain lists of active fiscal sponsors. Local nonprofits in the project's field may also be willing to act as fiscal sponsor. By engaging a fiscal sponsor, start-ups, temporary ventures, organizations that plan never to apply for exemption, organizations applying for exemption, and exempt organizations can all save money and focus on service delivery, rather than paperwork. Nevertheless, a particularized assessment of fiscal sponsor and project should be made before entering into such an arrangement.

The [Public Law Center](#) may be able to provide legal assistance through pro bono counsel.

Recent Developments in Family Leave and Disability Laws

By [Anne Brafford](#)

Partner, Labor and Employment Practice Group
Morgan, Lewis & Bockius, LLP

It's hardly surprising that, with the economy tanking, employment litigation is on the rise. For example, both the Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH) saw a 15% increase in charges in 2008. The DFEH's greatest number of complaints was for disability discrimination. This upward trend will get a boost in 2009 from a number of important changes in family leave and disability laws that include new regulations under the Family and Medical Leave Act (FMLA) and amendments to the Americans with Disabilities Act (ADA).



New Family and Medical Leave Regulations

On January 16, 2009, new FMLA regulations took effect relating to military leave, notice requirements, and a variety of other topics. Some of the most significant changes are below:

Military Leave

Under a law passed last year, employers must provide up to 12 weeks of leave for qualifying exigencies when an employee's family member is on active military duty. The regulations define qualifying "exigencies" to include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending counseling sessions, and attending post-deployment reintegration briefings. The regulations also clarify when an employer must permit up to 26 weeks of leave to care for a service member. This provision is triggered when current members of the military incur a serious injury or illness in the line of duty that may render them medically unfit to perform for duty; or is in outpatient status; or is on the temporary disability retired list.

Notice Requirements

The new FMLA regulations also revise the time-frame for employers to notify employees of their FMLA rights and responsibilities when they request leave. The changes will require employers to retool their processing of leave requests.

Accounting For Leave Time

In accounting for FMLA leave, employers must use the smallest increment of time used to account for other forms of leave, provided that increment is no more than one hour. For example, if an employer uses 30-minute intervals to account for sick leave and 1-hour increments to account for vacation time, the employer must use the smaller of those increments (i.e., 30 minutes) for FMLA purposes. But employers are not required to account for FMLA leave in the smallest increment of time allowed by their payroll systems.

Also, the terms of employers' paid leave policies apply to FMLA leave and must be followed by the employee to substitute any form of accrued paid leave, including paid vacation, personal leave, family leave, sick leave, and paid time off. Accordingly, if an employer's policy requires vacation leave to be taken in full-day increments, an employee substituting vacation for FMLA leave would have no right to use less than a full day of vacation leave.

Disability Law: The ADAA

A 2006 study found that employees had lost more than 97% of all ADA discrimination claims-- the highest failure rate in the federal system. Most cases failed because the plaintiff could not prove a "disability" within the meaning of the ADA. Concerned that the federal courts were too narrowly interpreting the term "disability," Congress passed the Americans with Disabilities Amendments Act (ADAA). While some of the changes are significant, they will have less of an impact on employers' practices in California, where disability law under the California Fair Employment and Housing Act (FEHA) already has been construed more favorably to employees.

The major provisions of the ADAA include the following:

Broader coverage. The amendments make clear that the term "disability" should be more broadly defined than courts' past interpretations. Although proof of a disability still requires a showing of an impairment that "substantially limits" a "major life activity," the inquiry should no longer "demand an extensive analysis." The new Act includes a non-exhaustive list of "major life activities" and "major bodily functions" that illustrate the new broader scope of the Act.

Elimination of the disability mitigation defense. Courts previously had excluded from the ADA's coverage many impairments that could be managed through medication, prosthetics, or other "mitigating measures." Such measures now cannot be considered in determining whether an employee has a "disability." This amendment expands the impairments covered by the ADA to more clearly include epilepsy, diabetes, depression, bipolar disorder, cancer, and many other conditions that can be managed through medication or other treatment.

ADA now covers episodic impairments and those in remission. When evaluating a person who suffers from an episodic impairment or one that is in remission, the question now is whether the condition would substantially limit a major life activity when active. This amendment is intended to extend coverage to certain conditions like epilepsy or posttraumatic stress disorder, which sometimes were excluded from the ADA's protection on the ground that the plaintiff was not presently experiencing symptoms.

Expansion of "regarded as" prong. Employees may prove a disability under the ADA by showing that they are "regarded as" having an impairment by their employers. Pre-amendment, employees were required to prove that their employers perceived them to be incapable of performing, not just the job they had been denied, but also a range of jobs. Post-amendment, plaintiffs must prove only that they were subjected to an adverse action because of an actual or perceived impairment-whether or not the impairment limits or is perceived to limit a major life activity. This extension is limited, however, to exclude transitory and minor impairments with an actual or expected duration of six months or less (such as the common cold or broken leg, etc.).

What's Next?

More developments may ensue in the coming months. As for the ADA, on June 17, 2009, the Equal Employment Opportunity Commission voted to approve a proposed Notice of Proposed Rulemaking to conform its ADA regulations to the Amendments Act. The agency's formal comment period process should begin soon.

As for the FMLA, the new FMLA regulations did not alter one important facet of the FMLA-that employers must provide only unpaid leave. That soon may change. On June 11, 2009, the House of Representatives held a hearing on the [Healthy Families Act](#) (H.R. 2460) and the [Family Income to Respond to Significant Transitions Act](#) (FIRST Act, H.R. 2339). Both focus on providing employees with at least some paid medical leave.

IRS Updates

The CA Attorney General's office issued a [statement](#) on its Charities webpage describing how the new [Form 990](#) relates to CA law governing charities. In addition to setting forth state law requirements that relate to the information requested in the new 990, the statement also summarizes the differences between federal and state requirements for financial reporting.

Most tax-exempt organizations that end their operations are required to inform the IRS about the details of the action. The IRS recently released [Publication 4779](#) explaining the reporting guidelines for organizations that terminate operations or merge with another organization.

The IRS is warning tax-exempt organizations about emails that falsely tell the recipient it is eligible for a tax refund for a specific amount. The emails instruct the recipient to click on a link in the email to access a refund claim form. The IRS does not send unsolicited email about tax account matters to tax-exempt organizations or other taxpayers.

In May, the IRS released "[Form 990, Part VI - Governance, Management and Disclosure, Frequently Asked Questions and Tips.](#)" The FAQs offer guidance on how to properly complete the Form 990 with regard to the titled matters.

Under current law, employers seeking to deduct employer-issued cell phones as an expense must track employees' personal use of minutes. Employees are required to pay tax on personal cell phone use as a fringe benefit. Recognizing that the record-keeping requirements can be burdensome, the IRS recently issued [Notice 2009-46](#) seeking public comment on ways to simplify the current rules. The IRS is considering allowing employers to deduct the entire sum of an employee's cell phone use if an employee can establish s/he uses a personal cell phone. The IRS has also proposed the option that employers assign a set rate for business use, for example 75%, with the remaining 25% treated as personal use. A third option is to allow employers to use statistical sampling to generalize about usage.



Legal Developments Affecting Your Clients

Children & Youth:

The [Children's Health Insurance Program Reauthorization Act of 2009 \(CHIPRA\)](#) was signed into law in February. CHIPRA strengthens and extends health and dental insurance over a 4 ½ year period, covering 4.1 million children whose families earn too much to qualify for Medicaid, but not enough to afford private insurance. It allows states to cover citizens as well as certain legal immigrants-- children under 21 and pregnant women.

The US Supreme Court recently ruled in [Safford Unified School District v. Redding, No. 08-479 \(June 25, 2009\)](#), that school officials violated the constitutional rights of a 13-year-old girl when they strip searched her based on a classmate's uncorroborated accusation that she previously possessed ibuprofen.



If enacted, [SB 383](#) would require the Department of Developmental Services to implement a 2-year Autism Spectrum Disorders (ASD) Early Screening, Intervention, and Treatment Pilot Program to establish best practices for children with ASD between the ages of birth and 5 years old.

Consumer Protection: [The Credit Card Accountability Responsibility and Disclosure \(CARD\) Act of 2009](#) was enacted to protect consumers from certain predatory practices by credit card companies. Unfortunately, however, many companies are raising interest rates and fees before the new rules go into effect in February 2010. Click [here](#) for Consumers Union's summary of the Act.

Disability Rights/ Special Education: Children with disabilities who require special education and related services found support in the recent US Supreme Court decision, [Forest Grove School District v. T.A., No. 08-305 \(June 22, 2009\)](#). The Court ruled that when schools do not appropriately identify and provide services to these students, the student may attend a private school to meet their educational needs, and the school district may be responsible for reimbursing parents and legal guardians for the tuition to these schools.



Early care and education: If Mia's Law ([AB 1368](#)) is enacted, it would require small family child care programs to have at least one person trained in CPR on site at all times. This rule currently applies to large family child care and center-based programs.

If enacted, [SB 244](#) would give priority for child care subsidies to children in relative care or foster care; and children who were recently adopted from foster care, are homeless, or have a parent in foster care or prison.

Gay Rights: [The Domestic Partnership Benefits and Obligations Act \(DPBO\)](#) would give the domestic partners of federal employees the same benefits - and require of them the same obligations - as the spouses of federal employees. Under this bill, same-sex domestic partners of federal employees living together in a committed relationship would be eligible for health benefits, long-term care, Family and Medical Leave, and federal retirement benefits, among others. The domestic partners would also be subject to the same responsibilities that apply to the spouses of federal employees, such as anti-nepotism rules and financial disclosure requirements. The President has signed an [executive order](#) granting some benefits to same-sex partners of federal employees. It does not grant full health-care coverage, which would require an act of Congress such as the DPBO.

Health Insurance: In an effort to combat rescissions of health insurance policies, the state insurance chief unveiled rules that would deter insurers from dropping policyholders who develop costly illnesses. Implementation of the [regulations](#) is expected by the end of 2009, following a public hearing, public comment and regulation finalization period.

HIV/AIDS: The Centers for Disease Control and Prevention (CDC) is proposing [regulatory changes](#) to remove HIV infection from the definition of "communicable disease of public health significance." Those infected are inadmissible into the US under the Immigration and Nationality Act (INA).

Housing & Homelessness: The Mortgage Forgiveness Debt Relief Law allows up to \$2,000,000 in qualified debt to be forgiven on a principal residence from 2007 through 2012. The state version only forgives up to \$800,000 in qualified debt from 2007 and 2008. Debtors can file for this relief on their original 2007 or 2008 Form 540, CA Resident Income Tax Return, or Form 540NR, CA Nonresident or Part-Year Resident Income Tax Return. For additional information, visit the [Franchise Tax Board](#) and [IRS](#) websites.

[The Helping Families Save Their Homes Act](#) was recently signed into law. It reauthorizes and improves HUD's McKinney-Vento Homeless Assistance programs. It expands the definition of homelessness; allows nonprofits to provide a broader range of services; and includes a measure to protect the rights of renters in foreclosure. Click [here](#) for a summary of the legislation.



Immigration: The Department of Homeland Security (DHS) announced that they will grant temporary protection to widows and widowers of US citizens who died before their spouses' green card applications were approved. DHS will suspend deportation proceedings for 2 years, giving applicants a chance to stay while status is resolved. DHS will also consider requests to reinstate petitions that had been revoked. For additional information, click [here](#).

Minimum Wage: On July 24, 2009, the current Federal Minimum Wage rate of \$6.55 per hour will increase to \$7.25 per hour.

Paid Sick Leave: [The Healthy Families Act](#) (HR 2460) would require certain employers who employ 15 or more employees for each workday during 20 or more workweeks a year to permit each employee to earn at least 1 hour of paid sick time for every 30 hours worked, enabling them to earn up to 7 paid sick days a year. Those employees would be able to use their days when they or a child, a parent, a spouse or someone else close to them became ill. A similar state measure (AB 1000) was defeated last year.

SSI Benefits: Effective July 1, 2009, the benefit for an individual senior (age 65 or older) or person with a disability will be cut an additional amount from \$870 per month to \$850 per month. The benefit for a married couple will be cut from \$1,524 per month to \$1,489 per month. SSA sent notices regarding the cuts to recipients in June.

Tobacco Legislation: [The Family Smoking Prevention and Tobacco Control Act](#) gives the Federal Drug Administration (FDA) unprecedented authority to regulate the ingredients in cigarettes and other tobacco products. The FDA will now be able to lower the amount of nicotine in tobacco products; make public the ingredients; ban flavors that appeal to children; and prohibit marketing campaigns geared toward children.

Wage Discrimination: [The Lilly Ledbetter Fair Pay Act](#) makes it easier for employees to file pay discrimination cases by extending the deadline or "statute of limitations" for claims brought under Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1967, the Americans with Disabilities Act of 1990, and the Rehabilitation Act of 1973. The Act reverses the US Supreme Court ruling in *Ledbetter v. Goodyear Tire & Rubber Company, Inc.*, 550 U.S. 618 (2007) which said a person must file a claim of discrimination within 180 days of an employer's initial decision to pay a worker less than it pays another worker doing the same job. Under the new law, every new discriminatory paycheck would extend the statute of limitations for another 180 days. The law is retroactive to May 28, 2007.

Legal Developments Affecting Nonprofits

[Child Care Facilities Financing Act of 2009](#): HR 1685 would provide millions of dollars to create quality child care facilities nationally. These funds would allow community development financial institutions (CDFIs) and other nonprofit lenders to provide low-cost loans and grants to child care providers.

[Child Care Public-Private Partnership Act of 2009](#): HR 2041 would establish a business-incentive grant program to provide child care through public-private partnerships. The program would make grants to businesses for providing child care services to their employees and grants to nonprofit organizations to provide technical assistance to enable businesses to provide such services.



COBRA: [The American Recovery and Reinvestment Act of 2009](#) offers relief for laid-off workers by offering a 65% federal subsidy on COBRA premiums for a period of 9 months. Workers laid off after August 31, 2008, and before January 1, 2010, are responsible for only 35% of their COBRA payments. This subsidy went into effect March 1, 2009. Those who declined COBRA coverage when they were laid off may still accept it now since it is available up to 18 months after the last day of work. Employers cover the remaining 65% but get reimbursed through payroll tax form 941.

[The Edward M. Kennedy Serve America Act](#): HR 1388 increases opportunities to serve, focusing on such targeted areas as veterans services, the environment, disaster relief, and arts education. It dramatically increases the size of the AmeriCorps service program over the next 8 years and expands ways for students to earn money for college. Click [here](#) to read highlights of the legislation and see the Corporation for National & Community Service [website](#) for more information.

Visit [Serve.gov](#), a new online portal to help people find ways in which they can serve their communities based on their interests and abilities.

Raffles: [SB 200](#) would allow nonprofit organizations to announce and advertise raffles on the internet and strengthen the prohibition regarding actual sales of raffle tickets over the internet. Current state law prohibits a raffle from being advertised over the internet.

For text and status updates of state law, visit the [Official California Legislative Information website](#).

Upcoming Workshops

Starting a New Nonprofit? The Reality Checklist

[July 14, 2009](#)

[September 10, 2009](#)

[November 3, 2009](#)

Legal Topics in Starting a Small Business in California

[July 15, 2009](#)

Free Legal Clinic for Southern California Nonprofit Organizations

[July 17, 2009](#)

Volunteers and the Law

[August 12, 2009](#)

Starting Off Right: New and Emerging Nonprofits

[August 22, 2009](#)

The Roles, Responsibilities, Liabilities and Protections of Board Members

[September 16, 2009](#)

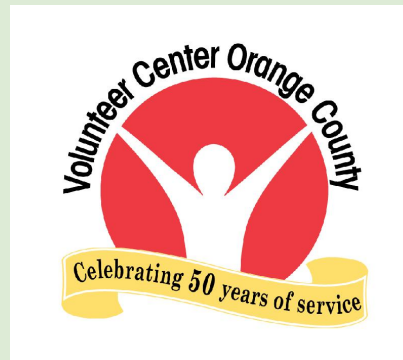
Nonprofits & Enterprise

presented by the Insight Center for Community Economic Development

[November 17, 2009](#)

These workshops are made possible through a partnership with the [Volunteer Center of Orange County](#).

To register, please visit their [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 that benefit Orange County's low-income population. In addition to providing direct 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 [Peter Kim](#).

About Public Law Center

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 27th 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, please refer them to one of PLC's clinics at various homeless shelters and community organizations throughout the county.

Information about the days and locations of our clinics can be received by calling our front desk at (714) 541-1010.

Public Law Center Needs Your Help

If you haven't contributed already, please consider helping us continue our work in providing access to justice for those who have been denied justice. Please make a contribution to the Public Law Center today.

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