



NONPROFIT NEWS

News and Legal Developments for California's Nonprofit Organizations

Do Good Mission; Do Good Employees

Many employees who work at nonprofits are energized and proud to support their organization's "do good mission." A nonprofit's employees can impede the organization's mission, however, if they violate harassment and discrimination laws.

In California, the Fair Employment and Housing Act ("FEHA"), prohibits harassment, discrimination, and retaliation on the basis of certain protected classes in the workplace. The FEHA's anti-discrimination and harassment provisions apply to all employers with five or more employees – including nonprofit organizations that are not religious associations or corporations. In addition, the FEHA requires all employers with five or more employees to have a written harassment prevention policy and provide their employees with harassment prevention training every two years, and within six months of hiring.

Discrimination and harassment are illegal when they are based on an individual's protected class. The FEHA protected classes include: sex (including pregnancy, breastfeeding), gender (including gender identity and gender expression), sexual orientation, race/national origin/color (including natural hairstyles and other traits associated with race), disability/medical condition, genetic information/characteristics, religion, marital status, military and veteran status, and age over 40.

Discrimination is an adverse employment action (such as denial of a promotion or firing) an employer takes against an employee based on that employee's protected category status. Only the employer – not individual employees – can be liable for discrimination.

Harassment, on the other hand, consists of actions individual employees may take. Harassment is defined as verbal, visual, or physical actions that are unwelcome and directed to or related to an employee's protected classification. Because harassment is not within the course and scope of employment (i.e., no one's job duties require the telling offensive jokes), all employees can be individually liable for harassment. In addition, harassment includes actions by/towards employees, independent contractors, vendors, and other non-employees with whom employees interact. The nonprofit must therefore protect both - these third parties from harassment by employees - and its employees from harassment by third parties.

There are two types of work place harassment. One is quid pro quo sexual harassment, which requires a promise of some job benefit in exchange for sexual favors. The other is hostile work environment harassment, which can be based upon any protected class—not just sex. Hostile work environment harassment is far more prevalent in the workplace. Hostile work

environment harassment occurs when verbal, visual or physical conduct is based on an individual's protected classification and is severe or pervasive. Examples of harassment include protected status jokes, physical touching, repeatedly asking someone out, leering, teasing, slurs, or mocking accents.

Hostile work environment harassment creates an unproductive environment for not only the target. Others who witness or even hear of the harassment may feel uncomfortable in the workplace. Like quid pro quo harassment, hostile work environment harassment weakens morale and productivity, and prevents the nonprofit from focusing on its mission.

Moreover, hostile work environment harassment can create significant liability for both the employee committing the harassment and the nonprofit organization. Under FEHA, any employee – from the newest employee to the CEO – can be personally liable (i.e. obligated to pay money damages) for hostile work environment harassment. Furthermore, the nonprofit employer will automatically be liable for hostile work environment harassment that a supervisor commits. The nonprofit employer can also be liable for a non-supervisor's hostile work environment harassment if the nonprofit knew or should have known about it and failed to take appropriate action. This liability can be significant. In addition to the potential expense, harassment complaints that lead to litigation take a lot of time and can be quite stressful for the employees involved, interfering with employees' abilities to focus on their do good mission.

Ensure the employees in your nonprofit organization “do good” – not just by fulfilling your mission, but also by complying with your nonprofit's written policies against discrimination and harassment. This will create a safe and comfortable workplace for all employees and allow them to focus in their “do good” mission.

Here are five steps to help keep your nonprofit on track:

1. Provide all employees with discrimination and harassment prevention training.
2. Have clear written policies prohibiting discrimination and harassment and explaining how employees can bring complaints.
3. Encourage the immediate reporting of all complaints and take all complaints seriously. It is in the nonprofit's best interest to make employees feel comfortable coming forward so inappropriate conduct can be stopped before it gets worse.
4. Monitor the workplace – be aware of interactions among employees (which may be harder in a virtual environment).
5. Be a good role model – especially for supervisors – and don't engage in risky behavior (if you are not sure if it's OK to tell that joke, just don't do it at work!)

Following these steps will help ensure your employees continue to “do good” and can keep your nonprofit organization on its “do good mission”!

This article was written by Associate [Alison Kalinski](#) from the Los Angeles office of Liebert Cassidy Whitmore. Alison is a member of the firm's Nonprofit Practice Group, which assists California nonprofits in a wide array of matters, including employment law, business, construction and facilities, audit services, investigations, and litigation matters. Alison can be reached at (310) 981-2099 or at akalinski@lcwlegal.com. For more information regarding the update above or about our firm please visit our website at <http://www.lcwlegal.com>, or contact one of our offices below.

To subscribe to this e-newsletter please visit: <https://www.lcwlegal.com/news>

Liebert Cassidy Whitmore publishes Nonprofit News as a service to our clients and other friends for informational purposes only. It is not intended to be used as a substitute for specific legal advice or opinions and the transmission of this information is not intended to create an attorney-client relationship between sender and receiver. You should not act upon this information without seeking professional counsel.

6033 W. Century Blvd.
5th Floor
Los Angeles, CA 90045
(310) 981-2000

135 Main Street
7th Floor
San Francisco, CA 94105
(415) 512-3000

5250 North Palm Ave.
Suite 310
Fresno, CA 93704
(559) 256-7800

401 West "A" Street,
Suite 1675
San Diego, CA 92101
(619) 481-5900

400 Capitol Mall
Suite 1260
Sacramento, CA 95814
(916) 584-7000