



Nonprofit *Alert*®

Alerting nonprofit leaders to key legal developments and responsive risk management steps.

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Move Over Dot Com!

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Ergonomic Tidal Wave Rises From OSHA

decade-long rulemaking process by the Occupational Safety and Health Administration (OSHA) has concluded with the issuance of a highly controversial, 608-page “Ergonomics Standard.”

The standard, which sets forth new requirements for workplace injuries such as carpal-tunnel syndrome, will take effect on Jan. 16, 2001. It will apply to all employers covered by OSHA and most employers engaged in interstate commerce—a very broad category that includes many nonprofits.

As reported in the **April 2000 Nonprofit Alert®**, OSHA estimates that these requirements could cost employers a total of \$4.2 billion annually. The standard requires employers to provide employees with (1) basic information about musculoskeletal disorders (“MSDs”) that are caused by workplace exposure to “risk factors,” (2) a summary of the standard’s requirements, and (3) the process for reporting MSDs. If an employee may be experiencing an MSD, the employer must determine whether an “MSD incident”

has occurred and whether the employee’s job routinely involves exposure to OSHA-identified risk factors

If so, the employer may qualify for a “quick fix” option involving hazard reduction efforts for that employee’s job.

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But in most cases, the quick fix option will not be available, meaning the employer must implement an ergonomics program for the entire workplace.

An employer can manage MSDs through workplace accommodations and give employees time-off, but the employer would also need to provide a job hazard analysis, hazard reduction and control measures, plus employee training.

Any employer who implements the program must keep detailed records and conduct an extensive ergonomics evaluation every three years.

Industry critics contend that OSHA’s requirements are over broad and may threaten the survival of some businesses. Congress has attempted to block the Ergonomics Standard through the appropriation process, hoping for a shift in the Executive Branch.

OSHA is confident, however, that the standard will take effect before Inauguration Day 2001. But several national business coalitions have already announced they will challenge the new requirements in court.

➤ **These new rules could foreshadow large-scale, costly changes for nonprofits, particularly for their administrative offices. For more information on OSHA’s general requirements, extended by the Ergonomics Standard, see *Nonprofit Alert®* Memo, *OSHA: What It Means For Nonprofit Employers*. To order, see instructions on the back page to order.**

~~~ You’ve Got Mail—Now at a Discount ~~~

Most mailings sent by nonprofits will soon cost about 40% less than comparable commercial mailings, thanks to a new law that guarantees a fixed-percentage discount on nonprofit mailing rates. The discount for nonprofit periodicals will also be discounted approximately 5%. The new law replaces a complex formula previously used to determine nonprofit mail rates. According to many nonprofit groups, that formula did not produce accurate calculations. The practice had raised so many objections in recent years that Congress unanimously passed the new discount law. The Postal Service’s Board of Governors is expected to determine the final mailing rate for nonprofits sometime this month. The new rates will then take effect in January.

Liability & Risk Management

IRS Doles Out Political Campaign Punishment

While the rest of the world awaited the outcome of this year's presidential election, the IRS was busy ruling on activity that took place during the election of 1996. The IRS found that the Heritage Foundation improperly intervened in a political campaign when it distributed fundraising letters promoting the presidential campaign of Bob Dole. The charity mailed the letters, signed by Bob Dole on Heritage Foundation letterhead, to approximately 2.7 million addresses between June, 1995 and October, 1996. The letters included language such as, "I will use the results—and your support—to keep the political heat turned up in Washington," and "with [Bill Clinton] in the White House, true reform will not come easily." Although the letters did not directly advocate Bob Dole's election as President, the IRS determined that the content and timing of the letters implicitly advocated Dole's election and called for his opponent's defeat. The IRS imposed a 10% tax on the charity's political expenditures related to the mailings. Because the Heritage Foundation's officers relied on a legal opinion stating that the letters did not violate tax law, the IRS did not impose penalty taxes on them individually. TAM 200044038.

 **To learn more about the lobbying and political activity restrictions that apply to nonprofit organizations, see Nonprofit Alert® Memo, *Nonprofit Lobbying & Political Activity—Know Your Limits*. See back page to order.**

Indians Sue Canadian Churches for Alleged Abuse

Thousands of former Indian boarding school students in Canada have filed four class-action suits against Canada's Anglican Church, Presbyterian Church, Roman Catholic Church, and the United Church of Canada. The students claim the churches are responsible for the sexual, physical, and "cultural" abuse they suffered in the boarding schools. Beginning in the late 19th Century, the Canadian government recruited churches to assimilate young Indians into English-speaking culture. The students were taken from their homes by government order and forced to attend church schools, where they allegedly were forbidden to speak their native languages or practice their native religions. One plaintiff's attorney estimates that one-third of the plaintiffs in these suits suffered sexual abuse in the schools. The Canadian government estimates that by next year, up to 16,000 former boarding school students will have filed abuse lawsuits against churches. In the last two years, Indian plaintiffs have won all five boarding school abuse trials held in Canada. Church leaders warn that the billions of dollars they will be forced to pay in legal fees and settlements will plunge their churches into bankruptcy and force them to sell their properties. They are seeking assistance from the Canadian government to negotiate a solution.

Charity Investigation Continues After CEO Departs

The California Attorney General's office is auditing the

finances of Catholic Charities of San Francisco and studying the adequacy of its fiscal controls in the wake of its CEO's recent resignation. As reported in the Sept. 2000 **Nonprofit Alert®**, the charity's former CEO, Frank Hudson, resigned after spending more than \$73,000 of the charity's funds on laser hair removal, plastic surgery, and expensive dinners. According to one board member, the board was not aware of Hudson's lavish and extravagant expenditures. In the wake of his resignation, all six members of Hudson's executive leadership team resigned or were terminated, and the charity has instituted a "no perks" policy. The San Francisco Archbishop has appointed a new executive director who will be subject to greater board scrutiny. But Catholic Charities is not yet in the clear. The Attorney General has the power to revoke its charitable registration with the state and turn over any evidence of tax violations to the IRS.



This debacle could likely have been avoided if adequate accounting controls and board oversight procedures had been in place. For guidance on how to implement proper accounting controls and Board oversight in your organization, see Nonprofit Alert® Memos, *Directors' Nonprofit Legal Duties and Accounting and Fiduciary Guidelines for Nonprofits*.

Employees & Volunteers

Missionary Lawsuit Thwarted By First Amendment

A Texas appellate court has dismissed a lawsuit against the Mormon Church that sought damages for the church's alleged negligence in conducting a missions program in Guatemala. Jon Turner, a church minister who participated in the program, suffered malaria-like symptoms including headaches, rash, and fever. According to a companion, Turner became delirious and jumped off a bus because he was afraid someone was chasing him. At that point, the church arranged Turner's return to Utah. Another church member drove him to a hospital, where he was admitted to the mental ward. In his lawsuit, Turner alleged that the church did not adequately disclose the health risks involved in the mission program (e.g., risk of contracting malaria), improperly terminated his health insurance and his temple privileges, and falsely imprisoned him in the hospital. The court dismissed all of Turner's health, medical, membership-related, and mission-related claims. It held that the First Amendment prohibits the state from reviewing the church's internal policies, employment decisions relating to ministers, and missionary training activities. The court held that the First Amendment did not bar Turner's false imprisonment claim, but it dismissed this claim for lack of evidence. *Turner v. Church of Jesus Christ of Latter-Day Saints (TX. Ct. App. 5th Dist.), No. 05-99-00366-CV.*

Church Resists Expulsion by Federal Marshals

Prolonging their stand against the IRS, Indianapolis Baptist Temple (IBT) members continue a round-the-clock prayer and worship vigil in their church that began on Nov. 14. As reported **in last month's Nonprofit Alert®**, a district court judge

authorized Federal Marshals to seize the church's property to satisfy the church's alleged debt to the IRS of over \$5 million (including penalties and interest) in payroll taxes for years 1987–1993. IBT claims that paying those taxes would violate its religious principles. It asked U.S. Supreme Court Chief Justice William Rehnquist to stay the district court judge's order, but Rehnquist declined. Until Federal worship vigil in their church that began on Nov. 14. As reported in last month's **Nonprofit Alert®**, a district court judge authorized Federal Marshals to seize the church's property to satisfy the church's alleged debt to the IRS of over \$5 million (including penalties and interest) in payroll taxes for years 1987–1993. IBT claims that paying those taxes would violate its religious principles. It asked U.S. Supreme Court Chief Justice William Rehnquist to stay the district court judge's order, but Rehnquist declined. Until Federal Marshals expel them, church members say they plan to continue meeting, praying, worshipping, and sleeping in the church. Church leaders and Federal Marshals are attempting to negotiate a peaceful transition. The Church's senior pastor, Gregory Dixon, has instructed church members not to violently resist the marshals when they arrive.

 **Read more regarding the standoff at the church's web site: www.indianapolisbaptisttemple.com.**

Tax-Exempt Issues

IRS Web Cops on Patrol: New Regulatory Territory?

The IRS is sending out an all-call to the public for comments on how the IRS should regulate charities' use of the Internet. It is requesting comments on four issues:

- *Affiliation with groups that are politically active.* 501(c)(3) organizations may not intervene in political campaigns in any

way and may only attempt to influence legislation as an insubstantial part of their activities. The IRS is questioning whether a charity's hyperlink to a political campaign or advocacy/lobbying group violates this law and to what extent issue advocacy on a charity's web site should be considered lobbying.

➤ *Unrelated business income tax ("UBIT") on e-commerce.*

The IRS is considering whether it should assess UBIT on a charity's sales over the Internet or on payments that the charity receives from companies that advertise on the charity's web site.

➤ *Internet charitable solicitations.* As charitable solicitations on the Internet increase, the IRS is questioning whether a charity would comply with the charitable receipting law if it were to send an email receipt to a donor or post a confirmation on its web site.

➤ *Maintenance of a charity's prior web site content.* The IRS is considering whether charities should be required to maintain past content that they have removed from their web sites. Opponents of IRS Internet regulations include House Majority Leader Dick Armey (R-TX), who declares, "The idea of turning the tax man into a Net cop would have a chilling effect on free speech on the Internet."

 **Comments on the issues must be submitted by Feb. 13 to the IRS at 1111 Constitution Ave., NW, Washington, DC 20224, Attn: Judith Kindell.**

"Pro-Majority" Organization Denied Tax Exemption

The United States Tax Court has upheld the IRS denial of tax exemption for The Nationalist Foundation ("NF"), an advocate group for "rightist and pro-majority Americans." In its tax exemption application, NF stated that its activities include conducting litigation as a "private attorney general" to protect and

NPA Highlight of the Month

Move Over Dot Com . . . Dot Biz Is Here!

Currently, the only domain name suffixes available for Internet sites are **.org**, **.com**, **.net**, **.edu** and **.gov**. The Internet's governing body, the Internet Corporation for Assigned Names and Numbers ("ICANN"), has approved seven new domain name suffixes:

- **biz** – a suffix for businesses, to relieve pressure on **.com**;
- **info** – a global suffix, as most **.com** registrations are in the United States;
- **name** – a suffix for individuals (e.g., john.smith.name);
- **pro** – a suffix for professionals (e.g., johndoe.law.pro or johndoe.med.pro for a lawyer or doctor, respectively);
- **museum** – a suffix for accredited museums worldwide;
- **aero** – a suffix presumably for aviation companies;
- **coop** – a suffix for business cooperatives such as credit unions and rural electric coops.

These new domain names are expected to become available to businesses and consumers in the spring or summer of 2001. They will provide alternatives to companies victimized by cybersquatters who buy up valuable names, then resell them for a profit. Also, creation of these new domain names is expected to lead to a price reduction in domain names, which typically cost \$35 a year. ICANN Chair Esther Dyson proclaimed, "This is a first step for domain kind."

advance American freedom and nationality. For instance, NF seeks to sue “terrorists” who “attack pro-majority demonstrators” and to “save” neighborhoods by suing incoming minorities. NF would also conduct forums on Constitutional rights and Nationalist ideology and maintain a web site to promote its views. NF contended that its activities are “educational” under Section 501(c)(3), but the Tax Court disagreed. *TCM 2000-318*.

 **The Tax Court emphasized that an organization may be educational even though it advocates a particular viewpoint. However, the term “educational” is defined as the instruction or training of the individual for the purpose of improving or developing his capabilities, or the instruction of the public on subjects useful to the individual and beneficial to the community. Treasury Reg. Sec. 1.501(c)(3)-1(d)(3)(I).**

Treasury Says Self-Dealing Rules Apply To DAFs

In response to the growth of Donor Advised Funds (“DAFs”) maintained by commercial financial institutions, the Treasury Department is now developing guidance for charities that create and operate DAFs. A Treasury representative recently discussed three potential DAF requirements under consideration: (1) a charity would need to exercise full control over its DAF funds; (2) the charity’s distributions from its DAFs could be made only to public charities or private operating foundations; and (3) the charity would need to distribute a minimum of 5% of its net assets each year. Also, the self-dealing restrictions that apply to private foundations would be extended to public charities that operate DAFs.

 **Any charity that currently operates a DAF must retain full discretion and control over any DAF assets before following donor recommendations for distributions. These proposed rules could substantially limit the current DAF practices of some nonprofits. For more information on the legal risks and risk management steps involved in DAFs and donor designated giving, see Nonprofit Alert® Memo, *Donor Designated Gifts: Pitfalls & Provisos*.**

Ordering Information: Memos referenced in the *Nonprofit Alert* are \$20 per memo *prepaid* (\$10 for firm clients). Five or more copies of the same memo are bulk priced at \$5 each.

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State Rules & Regs

Massachusetts Approves Charitable Tax Deduction

Last month, voters in Massachusetts approved a law creating a state income tax deduction for charitable contributions effective January 1, 2001. The deduction will be available regardless of whether a taxpayer elects to itemize deductions on his or her federal income tax return. After this initiative was placed on the ballot earlier this year, the Massachusetts legislature enacted charitable deduction legislation. The question remained on the ballot, however, giving voters an opportunity to approve the legislature’s action or encourage repeal of the law. Massachusetts had been one of only eight states that did not allow residents to deduct charitable gifts from state income tax. According to the Committee to Encourage Charitable Giving, this deduction is expected to generate an additional \$220 million annually in charitable contributions, but will cost the state approximately \$175 million in annual revenues.

Florida Revenue Department Resists Wiccan Spell

This past Halloween, the Wiccan Religious Cooperative of Florida filed a lawsuit against Florida’s Department of Revenue. The Wiccans claim that the Department improperly denied their Cooperative a religious exemption from state sales tax. The state’s tax agency previously denied the group tax exempt status because it did not meet all of Florida’s qualification criteria for a religious organization sales tax exemption. For instance, the Wiccans lack a permanent address and a building where worshipers gather regularly. The Wiccans contend that the agency’s interpretation of the statute denies their rights and freedoms as a “religious” organization, especially since they are recognized as a tax exempt organization by the IRS. A Florida Department of Revenue official refused to discuss specifics of the case, and explained that under Florida law, “We’re not able to say boo about the Wiccan case.” Allegations that the Wiccans sought vengeance by casting a spell on the Florida electoral process are unsubstantiated.



Enjoy a Blessed Holiday Season!

from the

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