

ANTICIPATING CHANGE

A Nonprofit Leader's Guide to Managing Regulatory, Fiduciary and Governance Risk



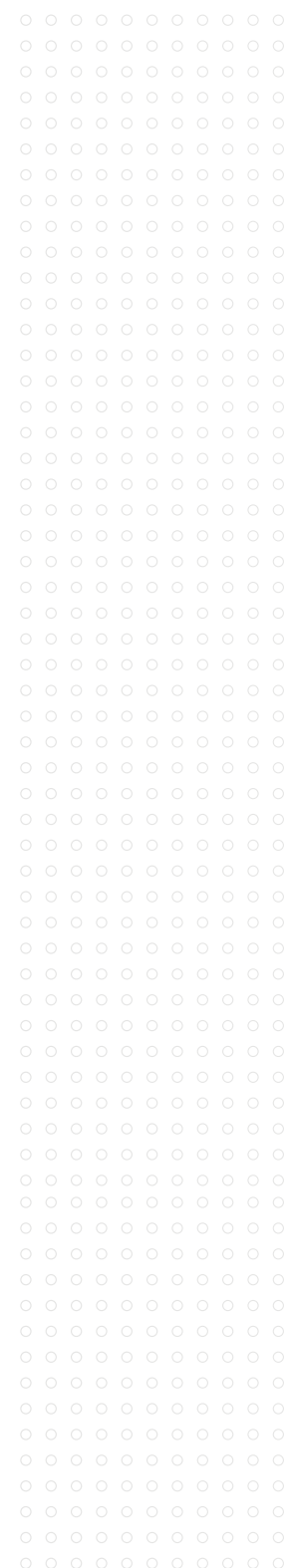
Nonprofit organizations face an increasingly complex and evolving risk landscape. Navigating changing regulations and heightened scrutiny while ensuring they remain true to their mission and in compliance — often with limited resources and expertise — is a significant challenge.

Nonprofit leaders must ensure they meet their obligations both as charitable organizations and as employers. From evolving retirement plan requirements to increased oversight of executive compensation and expanding liability exposures, these interconnected risks demand careful attention and strategic action.

There are five critical areas that demand proactive risk management from nonprofit leaders:

- Professional and management liability exposures
- Oversight of people and culture
- Employee benefits responsibilities and compliance
- Retirement and asset management governance
- Proactive insurance protection and risk mitigation strategies

By taking an integrated approach across these areas, nonprofits can strengthen their risk posture and protect their organizations, boards and missions while weathering uncertainty and continuing their vital work.



Managing Professional Liability and Governance Risk: Safeguarding Leadership and Program Integrity

Whether your organization provides healthcare or social services, operates educational programs, offers transportation or distributes food, increasing regulatory scrutiny is expanding liability exposures that could potentially compromise the ability to do your work. Complying with sector-specific requirements has never been more critical.

The four pillars of professional liability negligence risk

Professional liability claims against nonprofits can be significant in terms of reputational damage and cost. They most commonly arise from four types of negligence:

- **Negligent hiring:** Failure to properly vet employees, contractors or volunteers.
- **Negligent retention:** Keeping individuals in positions despite known performance or conduct issues.
- **Negligent supervision:** Inadequate oversight of staff and volunteer activities.
- **Negligent entrustment:** Allowing unqualified individuals to perform sensitive duties, operate equipment or act on your behalf, including contractors and vendors engaged without adequate vetting or oversight.

Some of the most common professional liability risks nonprofits face today include:

- **The scope challenge: When mission meets liability**
One of the most significant risks facing nonprofits stems from mission creep, where organizations begin offering services beyond their core expertise, such as a disaster relief organization that begins offering counseling services, or a food pantry that expands into basic healthcare. While these service offerings are well-intentioned, they can inadvertently create substantial liability exposures for nonprofits without proper credentialing, training, oversight and risk controls in place. Before venturing outside their areas of competency, organizations need to ensure they have the necessary skill sets and safeguards.
- **Extended liability from sexual abuse and molestation claims**
Many states have eliminated or dramatically extended statutes of limitation for sexual abuse and molestation claims, with some allowing cases as far back as 30 years or more.¹ This creates long-tail exposure requiring nonprofits to retain employment records, background check documentation and training records far beyond the standard required for tax purposes if not indefinitely. Organizations working with vulnerable populations, including children, individuals with intellectual disabilities or elderly adults, must implement comprehensive prevention protocols to minimize these risks. Such protocols should include the rule of three (ensuring another person is present during sensitive interactions) and maintaining detailed documentation of all screening and training activities.

¹ FBI Law Enforcement Bulletin, "[Statutes of Limitation in Sexual Assault Cases](#)," August 11, 2025.

○ Strong cybersecurity practices are no longer optional

For nonprofits handling personal identifiable information (PII) or protected health information (PHI), cybersecurity has evolved from a technology issue to a fundamental compliance requirement. A breach as simple as a lost laptop containing client information can trigger mandatory notification protocols and potentially significant response costs. Under federal and most state guidelines, employers remain ultimately responsible for protecting employee data. Employers can still be held liable if a breach occurs at a third-party vendor like retirement plan or benefits administrators. Nonprofits should review their coverage to ensure they are protected from cyber breaches, including proper breach response services, and that they have coverage for third-party vendor breaches.

Addressing these risks requires rigorous processes for credential verification, background checks and documented oversight — not just for employees, but for independent contractors and volunteers as well.

A shifting regulatory landscape

Beyond these traditional liability exposures, nonprofit organizations are navigating an evolving federal regulatory environment. Programs and initiatives focused on diversity, equity and inclusion (DEI), immigration services and international development assistance are receiving increased government scrutiny. These inquiries can be resource-intensive and may carry significant consequences for organizations. In this environment, management liability insurance serves as a critical safeguard alongside access to skilled legal counsel.

People and Culture: Managing Workforce Complexity

The foundation of nonprofit risk management rests on an organization's people and culture.

Today's nonprofit workforce looks dramatically different than it did a decade ago. Organizations now manage a complex mix of grant-funded positions with specific compliance requirements, independent contractors, volunteers and remote or hybrid workers. Each of these positions bring their own regulatory considerations around classification, wage and hour rules and oversight.

Often, nonprofit HR departments are resource-constrained, with individuals wearing multiple hats across finance, HR and operations. This can blur accountability and increase exposure if it is unclear who's doing what or if people are not properly trained for their position.

The volatility of the current environment creates another opportunity for risk as some organizations have experienced sudden, dramatic changes in operations or personnel, such as staffing shortages that lead to burnout and turnover, resulting in the loss of institutional knowledge. When policies and procedures aren't properly documented, critical compliance knowledge walks out the door with departing staff.

Proper compensation alignment and compliance

Executive compensation represents one of the most scrutinized areas of nonprofit governance. IRS rules require that nonprofits provide "reasonable compensation" to executives with the potential for significant penalties for noncompliance.²

² IRS.gov, "[Exempt organization annual reporting requirements: Meaning of "reasonable" compensation](#)," accessed January 29, 2026.

Organizations that are seen to be providing excessive compensation can face a 25% excise tax on the excess amount, which can escalate to 200% if not corrected.³ Board members and others in decision-making positions who approve excessive compensation can also face a 10% tax up to \$20,000 per transaction. In extreme cases, organizations risk losing their tax-exempt status entirely.

The standard for “reasonable compensation” is not as clear as a specific number or target relative to the market, but depends on multiple factors, including executive compensation philosophy, job duties, organization size, performance expectations, geographic location and cost of labor. The assessment requires competitive market analysis using benchmarking data from comparable organizations, factoring in both compensation and benefits.

To demonstrate compliance, organizations should establish a legally defensible methodology that includes:

- Independent third-party compensation assessment on a defined schedule
- Market benchmarking from credible data sources
- Total compensation analysis
- Board review and approval documented in meeting minutes

Even when compensation is entirely reasonable and properly approved, perception management matters. Having a documented, defensible process in place protects against both regulatory penalties and reputational damage.

Culture, governance and leadership to stay true to the mission

Strong nonprofit culture requires leadership to stay aligned with the mission and avoid becoming too business focused. This balance is critical because it affects every aspect of operations, from hiring decisions to resource allocation.

To ensure nonprofits align their day-to-day work with their mission, leaders should:

- Maintain clear accountabilities and reporting structures
- Perform annual to biennial policy reviews (more frequent than for-profit organizations given higher regulatory scrutiny)
- Document and consistently update policies, procedures and job descriptions
- Provide ethical leadership development and ongoing training

Prepare for organizational changes

Organizations contemplating mergers, acquisitions or significant restructuring should invest heavily in upfront due diligence rather than trying to fix problems after the fact. This includes thorough compliance reviews, compensation equity analysis (including careful attention to gender pay equity) and cultural integration planning.

³ National Law Review, “[A Trap for the Unwary – Nonprofit Organization Compensation Arrangement Considerations for High Caliber Executives](#),” April 8, 2025.

Meeting Employee Benefits Obligations with Limited Resources

Employee benefits compliance represents one of the most complex and rapidly evolving risk areas for nonprofits. Understanding the regulatory environment, demographic pressures and available solutions is essential for HR leaders and executive teams.

Nonprofits must currently navigate multiple compliance obligations:

- **Mental Health Parity and Addiction Equity Act:** Ensuring mental health benefits match medical/surgical benefits
- **ACA affordability requirements:** For 2026, the [affordability threshold is 9.96%](#)
- **Prescription drug data collection:** Self-funded plans must report to the Centers for Medicare & Medicaid Services
- **State-specific benefit taxes:** New requirements emerging at the state level
- **Transparency requirements:** Cost comparison tools and self-service capabilities

Recent legislation have introduced additional considerations as well, including changes to charitable giving that will affect operational budgets,⁴ as well as a 21% executive compensation excise tax on amounts exceeding \$1 million, now expanded to apply to all employees and former employees⁵ rather than just the top five highest-paid individuals.

Aligning benefits offerings with workplace needs

Nonprofit workforce demographics create unique benefits pressures. More than half of nonprofit employees are over age 45⁶ and the average age of executive directors is 52 years old.⁷

Many employees work beyond their planned retirement years due to financial necessity, which in turn drives higher benefits utilization and increased costs for organizations.

Understanding the challenges of nonprofit work and ensuring benefits are responding to those challenges should be another focus area for organizations. A 2025 study found that more than 90% of nonprofit leaders express concern about staff burnout.⁸ The sector also experiences higher long-term disability incidence and chronic illness rates compared to for-profit organizations, driven by the inherent stress of mission-driven work with limited resources.

Mental health benefits utilization has increased significantly, partly due to telehealth making services more accessible. Organizations are responding with multiple approaches:

- **Employee assistance programs (EAPs):** Though historically underutilized, virtual access has improved engagement
- **Digital platforms:** Solutions like Lyra Health and Calm are often provided by medical carriers at no or reduced charge

⁴ FidelityCharitable.org, “[One Big Beautiful Bill: Impact on Charitable Giving](#),” accessed January 29, 2026.

⁵ KPMG, “[KPMG report: Compensation and benefits tax provisions in “One Big Beautiful Bill Act”](#),” July 28, 2026.

⁶ Social Impact Architects, “[2025 Nonprofit Trends: Uniting Generations in the Workplace](#),” January 29, 2025.

⁷ Nonprofit Leadership Alliance, “[Who Is at the Top in the Social Sector? Examining Career Paths of Nonprofit Executive Leaders](#),” accessed January 29, 2026.

⁸ The Center for Effective Philanthropy, “[State of Nonprofits 2025: What Funders Need to Know](#),” accessed January 29, 2026.

- **24/7 virtual counseling:** Expanding access beyond traditional business hours
- **Wellness stipends:** Supporting physical activity, yoga and gym memberships
- **Flexible work arrangements:** Many nonprofits now offer hybrid or remote options

Organizations can also explore offering Individual Coverage Health Reimbursement Arrangements (ICHRAs), which allow employers to reimburse employees for individual health insurance policies. These arrangements use age-rated pricing that can attract younger workers with lower premiums while providing Medicare transition support for older employees. Some organizations are also pursuing direct provider contracting strategies to control costs.

Knowing Your Organization's Fiduciary Duties of Retirement and Asset Management

Retirement plan governance represents one of the most regulated and litigated areas of nonprofit operations. Understanding fiduciary duties remains a critical compliance requirement.

One fundamental principle of an organization's fiduciary duty that is often misunderstood is that it cannot be "hired away." In other words, even when organizations engage investment advisors and other experts, board members and plan administrators must understand investment decisions, fee structures and the rationale behind recommendations.

This includes ongoing monitoring of:

- Investment performance and fee benchmarking
- Plan document compliance
- Service provider oversight
- Legal disclosure notice requirements
- Transaction monitoring and controls

Nonprofits must also be aware of and ready to respond to recent legislative changes to retirement accounts, such as the SECURE Act 2.0,⁹ that can create integration challenges between payroll systems and retirement plan record-keepers. Mandatory retirement plan changes can also affect employees' take-home pay, which is why it is essential they are properly communicated by organizations.

⁹ IRS.gov, [SECURE 2.0 Act changes affect how businesses complete Forms W-2](#)," May 18, 2024.

The Two Most Common Compliance Failures

Analysis of Department of Labor (DOL) enforcement actions reveals two persistent issues:

1. **Timing of employee deferral deposits:** Contributions withheld from paychecks must be deposited to the plan promptly, typically within 7 business days for small plans.
2. **Definition of compensation mismatches:** Plan documents define what constitutes "compensation" for purposes of calculating contributions — W-2 wages, bonuses, overtime, commissions, fringe benefits, etc. Payroll systems must apply the exact same definition. Common mistakes involve gift cards (often taxable but not actual cash), bonuses and commission treatment.

Retirement plan litigation risk is growing

The DOL and plaintiff attorneys monitor retirement filings by organizations for disclosure of late contributions or other red flags, and over 50% of billion-dollar-plus retirement plans have faced class action lawsuits.¹⁰ Even when claims lack merit, the cost of defense is substantial.

While smaller nonprofit plans are less likely to be targeted, they should learn from these cases and implement best practices around documentation, fee monitoring and fiduciary processes.

Deploying a Strong Insurance and Risk Management Strategy to Reduce Nonprofit Risk

Protecting your organization, your board, and your mission during uncertain times requires properly structured insurance coverage combined with strong operational risk management practices.

Management liability coverage: The essential foundation

- **Directors and officers (D&O) insurance:** Your D&O policy's claim definition is critical and should include criminal proceedings and regulatory investigations, extradition proceedings, and non-monetary relief including injunctive relief.
- **Employment practices liability insurance (EPLI):** EPLI claims represent the largest single source of litigation against nonprofits. Coverage is essential even for organizations with minimal employees because claims can arise from contractor relationships, volunteer interactions and third-party situations.
- **Professional liability/errors & omissions:** Coverage should address negligence in service delivery, failure to adhere to your stated mission and vicarious liability for unqualified contractors.

¹⁰ 401KSpecialist.com, "[Litigation Trends in Employee Benefits Plans for 2023](#)," January 16, 2024.

- **Cyber and crime insurance:** A minimum of \$3 million in coverage is recommended.
- **Definition of loss:** The policy's definition of loss should include punitive damages (where insurable by law), exemplary damages, multiplied damages, civil penalties and regulatory fines.

Strategic risk management beyond insurance

While insurance provides essential financial protection, it works best when paired with proactive governance, clear communication, thorough documentation and robust operational controls.

- **Enterprise risk management:** Effective risk management extends beyond insurance to scenario planning, board oversight and essential financial controls.
- **Communication and messaging:** Review website content to avoid claims that could attract regulatory attention or concern underwriters and consult with labor counsel on communications around sensitive topics.
- **Documentation best practices:** Maintain comprehensive financial records and keep training records with policy acknowledgments, document volunteer screening and oversight and vendor contract reviews.
- **Operational controls:** Conduct organizational gap analysis every one to two years and prioritize technology oversight including data security.

Nonprofit leaders face increasing risks and limited resources. To succeed, they need a clear, integrated risk management strategy that combines insurance, governance, compliance and operational controls.

Coordinating risk management across all teams is essential. Experienced nonprofit advisors help review your coverage and programs to build resilience and advance your mission. Check out this nonprofit insurance checklist to ensure your organization has the right coverage for evolving exposures.

To learn more about protecting your nonprofit in this evolving landscape,
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