

## Federal and State Protections for Nonprofits

### COVID-19 Response Resource Center: Timely Counsel for your Business

By Robert Saunders on 04.27.2020

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The COVID-19 pandemic creates a unique set of circumstances for nonprofits. Many of them are facing similar challenges to for-profit businesses – how to manage employees working remotely, dealing with declining revenue – but without clarity about how the federal stimulus measures will benefit them. In addition, these times have created challenges for nonprofits with respect to governance issues, such as how directors and members of nonprofits can take action while remaining in compliance with the State of North Carolina's "stay at home" orders.

The good news is, based on initial guidance, nonprofits and their employees will be eligible for many of the same benefits and protections provided to businesses. A few of the protections that have been put in place are summarized below.

1. Unemployment benefits – Unemployment insurance has always been a bit trickier for nonprofit organizations than for-profit businesses. Nonprofits with four or more employees are required to pay unemployment insurance taxes, either to the state directly or by being self-insured and reimbursing the state when a claim is filed. Many smaller nonprofits are now faced with layoffs. Typically, these employees would not be eligible for unemployment benefits. However, based on the initial guidance around the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which expanded unemployment benefits, most people feel that nonprofit workers who have not normally been eligible for unemployment benefits will be able to qualify.

2. SBA lending programs – There has also been some confusion on if nonprofits qualify for the relief loans from the Small Business Administration. The answer is a resounding Yes! Nonprofits with fewer than 500 employees can apply for the Paycheck Protection Program (PPP), which provides funding to cover up to 2.5 months of payroll as well as rent, utilities and related costs. Additional guidance on how to calculate the maximum amount of the PPP loan has recently been issued in time for the second round of funding at this link.

Nonprofits are also eligible to apply for the SBA Economic Injury Disaster Loan Program (EIDL). Loans are available up to \$2 million at an interest rate of 2.75% for nonprofits and can be used for paying fixed debts, accounts payable, payroll and other bills that cannot be repaid because of the impact of COVID-19. The SBA is strongly urging all businesses and nonprofits to apply for one or both of these programs. However, due to high demand, having a good existing banking relationship

will be key as many banks are only processing loan applications for existing customers.

3. Payroll tax relief – The CARES Act introduced a new tax credit for employers impacted by COVID-19 who retain employees and the ability to defer certain payroll taxes. Nonprofits may be able to claim the credit if they are forced to fully or partially shut down as a result of a governmental order related to COVID-19. The credit is not available for entities that also receive a PPP loan. Nonprofits may also defer payment of employer side social security taxes for 2020. Half of any such deferred taxes are due Dec. 31, 2021, and the remainder is due Dec. 31, 2022. This deferral is not available to any nonprofit who receives full or partial forgiveness of any PPP loan, however recent guidance from the IRS states that amounts may be deferred prior to receiving notice from a lender that a PPP loan will be forgiven in whole or in part.

4. Federal leave programs – The Families First Coronavirus Response Act (FFCRA), which took effect April 1, had two key provisions that potentially impact nonprofits with fewer than 500 employees. It expanded the provisions of the Family Medical Leave Act, allowing employees to take up to 12 weeks of protected leave to care for a family member who may present a risk to others or to care for a child during a school closure. The FFCRA also expanded paid sick leave, making it mandatory for anyone who was taking time off of work related to COVID-19; this sick leave is in addition to any already offered by employers. Nonprofits should consult with their labor and employment counsel to ensure they are in compliance with these required leave programs. Leave paid as a requirement of the FFCRA generally generates fully refundable payroll tax credits. See our client alert on employer tax relief under COVID-19 legislation.

5. IRS Filing and Payment Extension – The IRS has delayed the filing and payment date for most returns, forms, and taxes to July 15<sup>th</sup>. In order to qualify, the relevant item must have been due on or after April 1. This extension applies to, but is not limited to, Form 990 and all forms in that series as well as the payment of unrelated business income tax. The delayed deadline is automatic and takes no action by a nonprofit, although nonprofits should note this delay does not prevent the filing of an extension if one is normally available. The IRS action does not change any required state returns, forms, or taxes.

6. Board and Membership Meetings during the COVID-19 Pandemic – On April 24, 2020, the North Carolina Governor's Office issued an Executive Order 136 ("Authorizing and Encouraging Remote Nonprofit Corporation Member and Board Meetings during the COVID-19 State of Emergency"). Absent this Order, member meetings involving more than 10 members could not be held because annual and special meetings must be held at a "place" stated in or fixed in accordance with its bylaws. Pursuant to the Order, members shall have the right to participate in any annual, regular or special members' meeting by means of remote communication, including with respect to the conduct of business of such meeting. Moreover, members shall be given the opportunity to

Federal and State Protections for Nonprofits Navigating the COVID-19 Pandemic

vote on any matters considered during the meeting by ballot submitted by electronic transmission in accordance with the Nonprofit Corporation Act. Finally, the Executive Order encourages those boards of directors who permit director meetings to be conducted remotely to do so in light of the COVID emergency.

Every nonprofit is different, and the guidance on many of these programs continues to change. We strongly urge you to consult with the North Carolina Center for Nonprofits, who is providing a number of updates and resources for nonprofits seeking to better navigate the pandemic at this [link](#).

If you have questions regarding the Federal and State protections for nonprofits during the COVID-19 pandemic, please contact Bob Saunders, Alex Auriti and Josh Lingerfelt, linked below.

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Brooks Pierce is dedicated to keeping our clients fully informed during the COVID-19 crisis. For more information, please visit our [COVID-19 Response Resources](#) page.

**Tags:** CARES Act, Economic Injury Disaster Loan Program, Families First Coronavirus Response Act, Small Business Administration