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NY Nonprofit Organizations Must Amend Governance Documents to Comply With New Changes to the NY Not-for-Profit Corporation Law

In late November, Governor Cuomo signed a law amending the New York Not-for-Profit Corporation Law.¹ New York nonprofits may need to amend their governance documents and take other actions to come into compliance.

By May 27, 2017, New York nonprofit organizations must review and revise the Bylaws, Conflict of Interest Policy, and Whistleblower Policy (if any) to: 1) expand the definition of related party to include three new categories of key employees (now called “key person”), and 2) require the board (not the corporation) to adopt and oversee implementation of the Conflict of Interest Policy and Whistleblower Policy, if any.

Additional requirements apply to certain nonprofit organizations:

Is your board chair an employee?

Yes: Two-thirds of the entire board must vote to approve a resolution authorizing the employee to continue serving in that role. Record the approval in the resolution or in the minutes. *This must happen by January 1, 2017.*

No: No action is required.

Has the board officially voted to adopt the Conflict of Interest Policy and Whistleblower Policy (if any)?

Yes: No action is required.

No: The board should do so *before May 27, 2017.*

Does the corporation have annual revenue over \$1 million and 20 or more employees?

Yes: *By May 27, 2017, amend the Whistleblower Policy to require that: 1) employees may not participate in any board or committee deliberations or voting relating to the policy’s administration of the whistleblower policy, and 2) the person who is the subject of a whistleblower complaint may not be present at or participate in board or committee deliberations or vote on the matter relating to the complaint (although she can provide information as background or answer questions before the deliberations and voting).*

No: No action is required on this issue.

¹ Ch. 466 of 2016, amending the Not-for-Profit Corporation Law and Estates, Powers and Trusts Law.

Starting May 27, 2017, all New York nonprofit organizations may, but are not required to, amend governance documents to make it easier and more efficient to:

- Approve related party transactions – Disinterested staff, rather than the board, may now oversee related party transactions that are very small or in the ordinary course of business, or that constitute a benefit to a related party solely as a member of a class of charitable beneficiaries and the benefit is available to all similarly situated members of that charitable class on the same terms.
- Form and populate board committees – A majority of board members present at a meeting (rather than a majority of the entire board) may now form and appoint people to committees of the board.
- Oversee the Conflict of Interest and Whistleblower Policies – Oversight may be conducted by a duly authorized committee, and it is no longer necessary for non-independent directors to be recused. *This means that organizations that are not required to file an independent audit report with the Charities Bureau do not have to have independent directors.*

Lawyers Alliance staff are available to help qualified nonprofits review their policies and procedures to ensure compliance with their obligations under the NY Not-for-Profit Corporation Law. Please contact Senior Policy Counsel Laura Abel at label@lawyersalliance.org, (212) 219-1800 x283, or visit www.lawyersalliance.org for further information.

This alert is meant to provide general information only, not legal advice.

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