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Governance Policies and Procedures: Keeping Up with Good Governance for New York Nonprofits

Once a nonprofit organization has successfully incorporated in New York and received tax-exempt status, the next step is to consider what policies should be adopted by the organization. Establishing and maintaining good governance practices is vital to operating a healthy and successful organization.

In addition to an organization's bylaws and conflict of interest policy, there are a number of other policies that nonprofits should consider including in their governance regime. *Keep in mind there is no one-size-fits-all checklist of governance documents for all New York nonprofits.* Each organization should consider its operations and working environment to establish which policies are needed or most helpful for the organization. Below, you'll find descriptions of various policies that are either required or may benefit your nonprofit organization.¹

Whistleblower Policy

A whistleblower policy details how an organization receives, investigates, and takes appropriate action regarding fraud or non-compliance with law or an organizational policy and provides protection for individuals who have and report insider knowledge of suspected illegal or illegal activities occurring in an organization (i.e., whistleblowers) against retaliation.

Under the Not-for-Profit Corporation Law ("N-PCL"), a whistleblower policy is required for all New York nonprofits with at least twenty employees and an annual revenue of more than \$1 million². Smaller organizations might consider adopting one or updating the employee handbook in order to ensure compliance with the new anti-retaliation obligations on New York employers discussed in this [Legal Alert](#). Smaller nonprofits may also need a whistleblower policy to comply with licensure or contractual obligations or may adopt a policy for risk management purposes. Nonprofit organizations that are required to file IRS Form 990 must disclose whether they have adopted whistleblowing procedures that meet certain requirements.³ Nonprofits who do not meet the thresholds in the N-PCL or are not otherwise required to adopt a whistleblower policy may nonetheless wish to adopt one as a measure of good governance.

Investment Policy

¹ Note that this is not an exhaustive list, and does not cover, for example, policies that might normally be included in an employee handbook. In addition, certain kinds of nonprofits may require specialized policies that are not covered in this legal alert.

² Not-for-Profit Corporation Law (N-PCL) § 715-B.

³ For example, please see Part VI, Section B, Line 13 of this sample [Form 990](#). For more detailed information regarding annual filings and ongoing compliance obligations, please review this [Legal Alert](#).

An investment policy governs the management and investment of institutional funds (not program-related assets) held by not-for-profit corporations and other institutions in order to ensure compliance with the New York Prudent Management of Institutional Funds Act (NYPMIFA). An investment policy should set forth guidelines on investments and provide for delegation of management and investment functions.

Institutions⁴ that have an endowment under the terms of a gift instrument are required to adopt a written investment policy that complies with NYPMIFA and that establishes standards of conduct for managing and investing such funds. NYPMIFA requires managers to make decisions about how to manage a specific asset in the context of the institution's overall investment strategy.⁵ Nonprofit boards have a fiduciary duty to protect the finances and assets of the nonprofit. Even if it is not required, nonprofits that are considering investing any of its funds may nonetheless want to adopt an investment policy to ensure that it is investing funds in an ethical and responsible manner. An investment policy can help ensure that the funds are invested with the best interests of the corporation in mind, as well as in compliance with relevant law.

For more detailed information on NYPMIFA, please review this [Legal Alert](#).

Document Retention and Destruction Policy

A document retention/destruction policy outlines the responsibilities of staff, volunteers, and board members for maintaining and documenting the storage and destruction of the nonprofit's documents and records.

Although not required, many organizations find a document retention and destruction policy to be helpful in educating stakeholders and reducing the risk that documents will be inappropriately destroyed or not properly retained. Nonprofits that are required to file Form 990 are required to disclose whether they have adopted a document retention and destruction policy.⁶ As many organizations are operating in a fully remote or hybrid working environment, such a policy may be particularly important and should also address electronic storage of documents.

For more detailed information regarding the adoption of a document retention policy, please review this [Legal Alert](#).

Gift Acceptance Policy

A gift acceptance policy is a set of guidelines that concern the acceptance of charitable gifts by a nonprofit organization and might limit the nature of the gifts an organization is willing to accept.

⁴ NYPMIFA covers institutions. "Institution means: (1) a person, other than an individual, organized and operated exclusively for charitable purposes; (2) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated; and (3) any corporation described in subparagraph five of paragraph (a) of section 102 (Definitions)." NPCL §551(d).

⁵ NPCL Section 552(f) & Section 552(e)(2).

⁶ For example, please see Part VI, Section B, Line 14 of this sample [Form 990](#).

Although not required, a well-drafted gift acceptance policy can be a valuable tool to assist with meeting development and fundraising goals. Internally, such a policy educates employees on potential legal issues that may arise from accepting gifts and externally, such a policy can help cultivate better relationships with donors.

For more information regarding gift acceptance, please review this [Legal Alert](#).

Compensation Policy

A compensation policy is one that outlines an organization's process for determining the reasonable compensation of certain executives, key employees, and/or independent contractors.

[Form 990](#), Line 15 of Part VI requires an organization to confirm whether the process for determining compensation of the Chief Executive Officer, Executive Director, or top management official and of the organization's other officers or key employees included a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision. In the event that these factors were present in the determination, the organization must detail its process for determining such compensation.

Though a formal policy is not required, all 501(c)(3) organizations must also report on Form 990 the compensation paid to certain current and former officers, directors, trustees, key employees, highly compensated employees and independent contractors. A comprehensive compensation policy may help an organization protect itself from allegations of excessive compensation.

For detailed information regarding IRS requirements for tracking compensation information, including how to determine whether compensation is "reasonable", please review this [IRS page](#).

Code of Conduct and Ethics Policy

A code of conduct and ethics policy requires the board, management and employees to fulfill their responsibilities in connection with the nonprofit in a manner that furthers the mission of the organization and complies with law, regulations, ethical standards and policies adopted by the organization.

Although not required, this policy is encouraged. Many organizations find such a policy helpful to guide the organization's decision making and activities, as well as the behavior of its employees, volunteers, and board members.

Expense Reimbursement Policy

An expense reimbursement policy details how an organization may provide reimbursement for certain business expenses incurred by employees or volunteers. The policy should outline qualifying business-related expenses that are not subject to payroll taxes.⁷

⁷ For detailed information regarding IRS requirements for tracking business-related expenses, please review [IRS Publication 463 \(2020\), Travel, Gift, and Car Expenses](#).

Although the IRS does not require expense reimbursement plans to be written or submitted, it is highly recommended that the plan be written and made available to all employees and volunteers of the nonprofit.

Privacy Policy

A policy that outlines what information the organization is collecting from website or in-person visitors, the methods the organization is using to collect this information, and how the collected information is used by the organization.

Although not required, this policy is encouraged, as transparency about data that is being collected builds trust among clients and other constituents. In addition, having a policy in place helps the nonprofit comply with relevant privacy laws. For example, under New York's Stop Hacks and Improve Electronic Data Security Act ("SHIELD Act"), the organization may be subject to notification requirements in the event of a data breach. For more information on the SHIELD Act, please see this [Legal Alert](#).

Confidentiality Policy

Employees, volunteers and board members of an organization may have access to or may be exposed to information which is confidential and/or privileged and proprietary in nature. This policy clarifies that such information must be kept confidential during and after employment or volunteer service.

Nonprofits may find it helpful to outline what information needs to be kept confidential and procedures to protect that information.

Committee Charters

A committee charter serves to guide committee members as to how the committee should operate. Having a charter in place also helps in recruiting new members. Charters help committee members carry out the purpose and obligations of the committee by outlining their specific responsibilities, roles and procedures.

Committee charters are not required by the N-PCL, but they can be especially useful for large nonprofits that might have many active committees. If committees are tasked with administering policies or carrying out certain tasks such as the requirements under the N-PCL for an audit committee, having a committee charter may be useful in order to lay out what is expected of the committee members.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert or would like assistance in creating or reviewing any of these policies or documents, please contact Ciarra Chavarria at cchavarria@lawyersalliance.org or visit our website at www.lawyersalliance.org for further information. To become a client, visit www.lawyersalliance.org/becoming-a-client.

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