

# EXEMPT ORGANIZATIONS 2019 YEAR IN REVIEW AND KEY COMPLIANCE ISSUES FOR THE 2020 ELECTION YEAR

James A. Kahl
Jocelyn Starzak





#### **Political Activity Topics**



- Tax Rules
  - Permissible 501(c)(3), (4) & (6) Activities
- Campaign Finance Rules
  - Political Contributions and Other Political Activities
  - Candidate Advocacy
- Foreign Agents Registration Act
- Lobbying & Gift Overview



#### **Overview**



- The same political activity may involve federal, state & local laws
- Overlapping tax, lobbying, campaign finance & ethics rules apply
- The organization and individuals may have liability for violations
- Prosecutors & media love political law violations
- <u>Key takeaway</u>: Understand the rules to identify opportunities and avoid risks and adverse publicity



# **Special Tax Rules for Nonprofits**





## **IRS Rules for Nonprofits**



#### 501(c)(3) organizations:

- ✓ No political contributions or candidate advocacy
- ✓ Limited lobbying permitted
  - "substantial part" test (facts & circumstances)
  - 501(h) election/\$1M cap (formula)

#### 501(c)(4) /501(c)(6) organizations:

- ✓ Political contributions and political activity permitted but cannot be primary purpose
- ✓ But, may be prohibited by campaign finance laws
- ✓ Can sponsor PAC
- ✓ Unlimited lobbying permitted

# 501(c)(3): Allowed Election Year Activity



- ✓ Certain nonpartisan election year activities are permitted
- ✓ IRS applies a facts and circumstances test to determine if activity is "political"
- √21 factual scenarios analyzed
- ✓ Multiple factors considered in each scenario
- ✓ Rules of general application can be difficult identify

## **Examples of Election Year Activity**



# Nonpartisan voter education, voter registration and get out the vote drives

• Key facts: (1) No references to particular candidates or parties; (2) No encouraging support for one candidate over another

#### Candidate appearances, forums and debates

• Key facts: (1) Equal opportunity for candidates; (2) No support expressed; (3) No fundraising; (4) No favoritism in conduct of the event

## **Examples of Election Year Activity**



#### Non-candidate appearances or speeches

• Key facts: (1) Non-candidate reason for participation; (2) No discussion of candidacy; (3) No campaign activity at the event

#### Individual activity by organization leaders

• Key facts: (1) Endorsements must be made in personal capacity; (2) Organization cannot pay for costs; (3) Activity not at an organization event or in an organization publication

## **Examples of Election Year Activity**



# Take positions on public policy issues, including those that divide candidates

• Key facts: (1) No mention of an election/candidacy; (2) No words of candidate advocacy, such as "support" or "vote;" (3) Not timed specifically to coincide with an election; (4) Only states a position on an issue; (5) Ongoing series of communications

#### **Website Content**

• Key facts: (1) Nonpartisan links to candidates; (2) Links serve an "exempt purpose"

# **Political Contributions & Activities**





## **General Contribution Rules**



#### 501(c)(3) organizations

Remember - cannot make any political contributions!

#### No federal corporate/association contributions

To candidates, parties, or PACs

#### Corporate/association contribution rules vary by state

- •A few states allow unlimited corporate contributions (e.g., AL, VA, UT, NE, OR)
- Prohibited in about 20 states
- Others impose limits

#### Remember...



Conduit or "straw man" contributions are prohibited

•Organization cannot funnel contributions through a legal contributor to circumvent a contribution prohibition – e.g., reimbursing personal political contributions through salary increases, bonuses, or other means

Foreign nationals (individuals and entities) are prohibited from making contributions in connection with any election – **federal**, **state or local!** 

- •Individuals who may contribute to candidates, political parties, and <u>PACs</u> are:
  - U.S. citizens
  - Lawful permanent residents (i.e., green card holders)

#### **Political Action Committees**



- Non-partisan, tax-exempt entity registered with FEC
- Funded with voluntary contributions from eligible employees & others "restricted class"
- Make contributions to officeholders, candidates, other PACs
- Host fundraising events for officeholders and candidates
- Use the organization's name; receive solicitation & administrative financial support from organization
- Well-established "safe" way to contribute
- Registration & reports required
- Separate rules apply to state PACs

#### **Solicitable Individuals**



- Individual (i.e., non-corporate) association members
- Members of the association's "restricted class"
- Members of the "restricted class" of corporate members, if corporate member gives permission referred to as "Prior Approval"
- "Restricted class" individuals who run an organization's business, such as
  officers, executives, managers, directors (usually), and members of the
  recognized professions; corporate stockholders; and immediate family members
  of these persons
- Note: Member corporation can authorize only one assn. PAC per year to solicit its restricted class

## **Federal PAC Contribution Limits**



Multicandidate PAC (>50 donors, 5 candidates and 6 months)	Not Multicandidate PAC	
\$5,000 per candidate per <u>election</u>	\$2800 per candidate per <u>election</u>	
\$15,000 per national party comm. per year	\$35,500 per national party comm. per year*	
\$5,000 per state/local party or PAC per year	\$10,000 per state/local party per year	
\$5000 per PAC <u>per year</u>	\$5000 per PAC <u>per year</u>	

### **Corporate Members Can Help Raise Funds**



- ✓ Officer of member corporation can sign solicitation letters and forward association PAC materials
- ✓ Corporate members can use payroll withholding to collect and forward contributions
- ✓ Assn and corporate members can:
  - (1) donate funds to cover PAC administration and fundraising activities
  - (2) donate raffle items and door prizes for fundraising events



#### Caution!



- Association or its PAC cannot solicit from its members' PACs. May accept voluntary contributions.
- Association PACs cannot solicit contributions from the general public
- Association PAC can encourage the public by web or email – to contribute to specified federal candidates – AO 2011-14 (Utah Bankers)
- Be careful when using federal PAC for state/local contributions – might trigger state registration or reporting



## **Candidate Appearances**



- ✓ Nonprofit can pay the costs of candidate appearance before the "restricted class" and event **not** treated as a "contribution" to candidate
- ✓ Candidate or rep can solicit/collect contributions
- ✓ Nonprofit may suggest that "restricted class" members contribute, but cannot collect funds
- ✓ <u>Note</u>: for corporate members, "restricted class" covers corporate representatives with whom the association normally conducts activities
- ✓ Multiple nonprofits can co-host and split costs pro rata AO 2007-14 (NFIB)
- $\checkmark$  Not for 501(c)(3) organizations due to tax rules

# "Non-Candidate" Related Events



- Narrow FEC exception event <u>not</u> treated as a "contribution" to the candidate
- Communications relating to the event may not expressly advocate for any candidate
- Candidacy cannot be discussed in introduction, except to briefly note the fact of candidacy
- No solicitation, encouraging or collecting contributions
- Similar to IRS rule

#### **Candidate Debates**



- 501(c)(3)/501(c)(4) organizations (and media organizations) can sponsor candidate debates **not** a "contribution"
- Organization cannot endorse candidate
- Must include at least two candidates
- Cannot promote or advance one candidate over another
- Pre-established objective criteria must be used to determine which candidates may participate
- Corporations can donate to nonprofit to defray debate costs

## **Voting Records & Voter Guides**



**Voting Records** – **Not** a "contribution" or an "expenditure" if:

Communication does not contain express advocacy AND it is not coordinated with a candidate

**Voter Guides** – **Not** a "contribution" or an "expenditure" if:

Type 1: based on news articles, voting records and non-campaign sources AND contains no express advocacy

Type 2: all candidates have equal opportunity for input, no prominence to certain candidates, no electioneering message, AND no scoring or rating candidates

## **Voter Registration & GOTV Drives**



- Not a "contribution" or an "expenditure" if:
  - Communications do not contain express advocacy
  - Not directed primarily to individuals intending to register with the party favored by the organization
  - Services provided regardless of the voters political preferences
  - Individuals conducting the drive are not paid on the basis of number
     of persons registered who support one party or candidate

# **Candidate Advocacy**





### **Independent Expenditures**



- ✓ <u>Citizens United</u>: No limits on funds incorporated entities can expend for communications that advocate for/against candidates & parties
- ✓ But, expenditures may not be coordinated with a candidate or political party. Expenditures must be <u>independent!</u>
- ✓ Most corporate IEs through intermediaries e.g., trade associations, 501(c)(4)s, Super PACs

# **Trending: More Disclosure**



- Intermediary must report its expenditures
- Federal & state rules vary on disclosure of persons/groups funding the intermediaries
- FEC: Donors who support organization's political activities must be disclosed in IE reports
- Many states are requiring disclosure of ultimate donors e.g., California, New York, Minnesota
- IRS: Donors not disclosed in IRS Form 990 IRS proposed rules

#### Foreign Agents Registration Act (FARA)



- A person or entity that acts as an "agent" of a "foreign principal" has to:
  - (1) register and file periodic reports with Department of Justice
  - (2) File copies of "informational materials" with DOJ & label them to identify the agent and principal
  - (3) Retain detailed records relating to activities subject to audit
- Focus on influencing US government or public about US public policies or the interests of the foreign principal
- Complicated law many exceptions and alternative filing options, and requires case-by-case analysis
- Caution: if acting in the interests of a foreign organization or accepting funding from a foreign entity must look at potential applicability of FARA

# **Lobbying: Risks & Opportunities**





## **Key Lobbying Issues**



- ✓ All nonprofits can lobby to some extent
- ✓IRC & lobbying laws different definitions
- ✓ Registration/reporting triggers differ by jurisdiction federal, state & local
- ✓ Expansion in definition of "lobbying" in states "goodwill" lobbying
- ✓ More disclosure about lobbying activities
- ✓ More political contribution and gift restrictions imposed on lobbyists
- ✓ More collateral obligations, such as mandatory ethics training and wearing ID badges
- ✓ Stricter penalties at federal and state levels

## **State/Local Pointers**



- √ Confirm state/local lobbying rules in advance
- ✓ Visits by non-lobbyists with public officials may trigger lobbying laws
- ✓ Registration may be required in advance of meetings
- ✓ Some exceptions for certain types of activities, such as providing testimony or comments on the record
- ✓ Some exceptions for persons who are not government relations professionals
- ✓ <u>Note</u>: many states have revoked exceptions for "riding along" with registered lobbyists

# LDA v. IRS Definitions



ACTIVITY	LDA	IRC – 501(c)(6)	IRC - 501(c)(3) & 501(h)
Coverage	Federal Only	Federal and State	Federal, State and Local
Contacts with legislators/staff	Included	Included	Included
Contacts with executive branch	Broadly defined group of officials re legislative & policy issues	Broadly defined group re legislative issues – but only top federal officials re policy issues	Broadly defined group re legislative issues only
Testimony & other communications with legislature	Not included if public or in written response to official inquiry	Included	Not included if requested by committee
Grassroots lobbying	Not included	Included for legislative matters & referenda	Not included unless contains call to action
De minimis lobbying activity	Included	Excluded if <5% time and background work	Included
Political activities	Not included	Included	Forbidden

# **Gifts**





# **Gifts to Government Officials**



- Highly regulated by federal, state and local laws
- Rules cover gifts to <u>elected</u> and <u>appointed</u> legislative & executive branch officials,
   <u>and career employees</u>
- "Gift" may be anything of value review applicable gift/ethics laws carefully
- Gift exceptions highly specific, but often allow wide range of permissible giving
- Great opportunities! Advance planning is essential!



# TOPICS

**Charity Regulation** 

**Tax Law Changes** 

Websites and the ADA

**Employer Law Updates** 

Wayfair

**New State Laws** 



## **CHARITY REGULATION**

#### **Overview**



- Source: National Association of State Charity Officials website
- Common themes
  - Deceptive claims in fundraising
  - For-profit businesses claiming to be charities
  - Misuse of charitable funds by insiders
  - Boards failed to provide proper oversight



#### Multistate Settlement Agreement





#### PayPal Charitable Giving Fund, Inc. (1/17/2020)

- •PPGF sometimes redirected donors' contributions from the charity they selected to other organizations with similar purposes without informing donors
- •PPGF adopted reforms to its <u>disclosures</u> to ensure that donors know:
  - that they are contributing to PPGF
  - the timeframe in which a selected charity may receive funds from PPGF
  - the implication of being an enrolled rather than an unenrolled charity on the PPGF platform
- •PPGF agreed to notify donors when it redirects a donor's charitable contribution
- •PPGF to provide regulators with data to confirm compliance with agreement
- •PPGF to donate \$200,000 to the National Association of Attorneys General NAAG Charities Enforcement and Training Fund

### **MINNESOTA**



#### **Settlement Banned Two Charities** (12/20/2019)

- Permanently bans two related charities from soliciting in MN
  - American Federation of Police and Concerned Citizens, Inc. ("AFPCC")
  - National Association of Chiefs of Police, Inc. ("NACOP")
- •<u>Deceived</u> Minnesotans about supporting families of fallen police officers
- •AFPCC required to pay restitution of nearly \$300K solicited from Minnesotans
- •AFPCC and NACOP's primary officers and directors permanently refrain from doing business in MN

### **WASHINGTON**



#### Value Village (11/25/2019)



- Judge ruled for-profit Value Village violated law
- Deceptive advertising portrayed the company as a charity
  - For-profit business that brings in \$1 billion in annual revenue
  - Knew likelihood of false advertising commissioned marketing studies and testimony from former CEO
- Paid Rypien Foundation flat fee per for use of its name and logo
  - Rypien was not paid for all donations
- Examples of deceptive advertising:
  - "help your neighbors"
  - "Your donations and purchases help us fund [nonprofits'] programs and services. How's that for shopping with a smile?"
- •Penalties to be assessed after hearing in spring 2020

### **NEW YORK**



#### **Trump Foundation** (11/25/2019)

- Admissions of governance failures
  - Board failed to meet, provide oversight, adopt legally required policies and procedures
- Restitution of misused funds
  - Trump admitted to personally misusing Foundation funds
  - Trump ordered to pay \$2 million in damages for illegal activity during 2016 election
- Dissolution of Foundation and distribution of remaining assets
  - Recipients all reputable charities approved by NY Attorney General
  - No connection to Trump or his family members
- Restrictions on charitable activity
  - Donald Trump agreed to restrictions on future charitable service and ongoing reporting to the AG's Office if he creates a new charity
  - Mandatory training requirements for Donald Trump Jr., Ivanka Trump, and Eric Trump

### **MARYLAND**



#### AG Sues Over Misuse of Funds (11/20/2019)

- •AG sued Veterans Independent Enterprises of Washington (VIEW) and its manager
- •Manager charged with <u>misappropriation</u> of over \$200,000
- •VIEW
  - Stopped holding board meetings
  - Operated for years without a board approved budget
  - Failed to pay for repairs to veteran housing as promised
  - Failed to pay wages to its veteran employees
  - Laid off its entire staff and asked them to "volunteer" their labor
- Manager spent money on personal debts, casino gambling, and bail
- •Interim receiver appointed to take over management of the organization

### **MARYLAND**



# Montgomery County - Heroes United PAC D/B/A "Volunteer Firefighters Association" (11/18/2019)

- •Deceptive telemarketing solicitations from a <u>fictitious business</u> seeking donations to benefit local volunteer firefighters
- •Used 3 <u>local mail drops</u> and engaged in <u>caller ID spoofing</u> to mislead consumers into believing that donations would benefit local volunteer firefighters
- Settlement agreement
  - Immediately cease and desist from soliciting consumers in Montgomery County
  - Notify all consumers in Montgomery County who made donations since 2017 to offer full refunds

### VA, MD, PA, WV



#### **Hearts 2 Heroes Inc.** (8/12/2019)

- •For-profit company D/B/A Active Duty Support Services Inc.
- Door-to-door sales of "care packages" for service members overseas
- •Consent judgment violated consumer protection and solicitation laws
  - Mislead donors to believe it was a charity and donations were tax deductible
  - Care packages were either not delivered or were delivered to military bases in US, not overseas
  - Misrepresented that staff were veterans or volunteers
  - Employing staff who would "skim" cash donations for personal use

#### Settlement

- Owners banned from charitable solicitations or working for a charitable organization
- Dissolution of the business
- \$286,959.95 restitution judgment suspended as company folded but will be enforced if settlement terms not met



## **TAX LAW CHANGES**

## Repeal of the "Nonprofit Parking Tax" (12/20/19)



- IRC Section 512(a)(7) repealed in federal spending bill
- Tax Cuts and Jobs Act of 2017 required tax-exempt employers to pay UBIT on amounts paid for qualified transportation fringe benefits provided to employees
- Repeal is retroactive to date of enactment
- Organizations should file an amended Form 990-T to claim a refund for any taxes paid on qualified transportation fringe benefits
  - □ IRS posted refund instructions on website 1/21/2020

## **Other Changes**

WITIP

- Change to <u>private foundation</u> excise tax on investment income
- Special treatment for <u>disaster relief</u> donations to public charities
- <u>Electronic filing of 990s</u> for FY2020 (Taxpayer First Act)
  - Impacts returns filed in 2021
  - Some exceptions available until 2022
- <u>Retirement plans</u> Required Minimum Distributions age increased to 72
  - Implication for Qualified Charitable Contribution planning
- Form 1023 e-filing only after April 30<sup>th</sup>



### FY 2020 TE/GE Program Letter (October 2019)



- Program Letter
- Compliance Strategies
  - IRC 403(b) plans: examine plans for universal availability, excess contributions and proper use of catch up contributions
  - IRC 457 plans: examine plans for excess contributions and proper use of special 3-year catch up contribution rule
  - Hospital organizations with unrelated business income (UBI)
  - Previous for-profit entities that <u>converted</u> to 501(c)(3) organizations
  - Private foundation loans to disqualified persons
  - <u>Tax-exempt bonds</u>: focus on public safety bonds, sinking-fund overfunding, and variable rate bonds



## WEBSITES AND THE ADA

### Website Compliance under the ADA



- Website a "place of public accommodation" under the ADA?
- Split in the circuits
  - ADA can apply without a connection to a physical place
    - First, Second, and Seventh Circuits
    - Reason: Congressional intent and legislative history indicate Congress intended the ADA to adapt to changes in technology
  - ADA requires a public accommodation to be a physical place
    - Third, Sixth, Ninth, and Eleventh Circuits
    - Reason: 12 enumerated categories of public accommodations in the statute are all physical places



### Website Compliance under the ADA



- October 7, 2019- Supreme Court denied cert from the Ninth Circuit
  - Denied Domino's petition for writ of certiorari in Robles v. Domino's Pizza LLC,
     913 F.3d 898 (2019)
  - Left in place the Ninth Circuit's ruling that Title III of the ADA applies to Domino's website and mobile app because each constitutes a "service of a place of public accommodation"





## **EMPLOYMENT LAW UPDATES**

## **DOL Final Rule On Overtime Under FLSA**



#### **Effective January 1, 2020**

- •Fair Labor Standards Act:
  - Non-exempt employees paid time and ½ for over 40 hours in a workweek
  - Contains exceptions (e.g., executive, administrative, professional)
- Department of Labor Regulations:
  - Set the standards for exceptions to the overtime requirement
- •The most common exemptions have two elements:
  - Duties Test
  - Salary Basis Requirement



## **DOL Final Rule On Overtime Under FLSA**



#### **Duties Test**

No change to duties test

#### **Salary Basis Requirement**

•Salary threshold increased from \$455/week to \$684/week

Current rule \$23,660/year

New final rule \$35,568/year

Threshold increased for highly compensated employees

Current rule \$100,000/year

New final rule \$107,432/year

- Additional changes on how payments may be made
  - Up to 10% from payment of nondiscretionary bonuses, incentives and commissions paid annually or more frequently
  - One final payment at year end to get over threshold

## DC Universal Paid Leave Act – Who does it affect?



#### Posting requirement February and effective date 7/1/20

 <u>Covered employers</u> – all employers (except federal and DC governments and employers DC is prohibited from taxing)

#### Covered employees –

- Spends more than 50% of work time in D.C.; and
- Worked for a covered employer at any time during the 12 month period preceding the event for which leave is requested
- Employees who live in MD or VA but work in DC are covered

## DC Universal Paid Leave Act - Paid Leave



- Employees will have the option of taking 3 types of paid leave:
  - Up to 8 weeks of <u>parental paid leave</u> taken within a year of giving birth,
     placing a child in adoption or foster care, or changing child custody
  - Up to 6 weeks of <u>family paid leave</u> to care for or provide companionship to a seriously ill family member
  - Up to 2 weeks of <u>medical paid leave</u> after the employee is diagnosed with or had an occurrence of a serious health condition
- Limitations
  - No more than 8 weeks of any combination in a 52 week period
  - Maximum paid leave is \$1,000/week

## DC Universal Paid Leave Act – More Details



- Employers are required to develop and maintain detailed records related to the UPLA for 3 years
- Notices of UPLA rights
  - Posted at each worksite in a conspicuous place or common area
  - Provided at certain times when an employee provides notice that leave for a qualifying event is needed
- Employer who fails to comply with the UPLA will be subject to certain penalties.

## DOL Final Rule on Joint Employers (1/12/2020)



- Clarifies employers must exercise "direct control" over employees to be a joint employer under the Fair Labor Standards Act (FLSA)
- Joint employers are each liable for wages due to employees
- Four factor balancing test does potential joint employer exercise the power to:
  - Hire or fire an employee
  - Supervise and control an employee's work schedule or employment conditions
  - Determine an employee's rate and method of pay
  - Maintain a worker's employment records
- No one factor is controlling



## WAYFAIR

### Wayfair



## States that modified economic nexus threshold for sales tax collection on remote sellers effective in 2019 or 2020

1.	Juno.	Alaska	
	<u> </u>		

- 2. Arizona
- 3. Arkansas
- 4. California
- 5. Colorado
- 6. Connecticut
- 7. District of Columbia
- 8. Georgia
- 9. Idaho

- 10. lowa
- 11. Louisiana
- 12. Massachusetts
- 13. Minnesota
- 14. Missouri
- 15. Nebraska
- 16. New Mexico
- 17. North Dakota
- 18. Ohio

- 19. Oklahoma
- 20. Pennsylvania
- 21. Tennessee
- 22. Texas
- 23. Utah
- 24. Virginia
- 25. Washington
- 26. West Virginia
- 27. Wyoming



## **NEW STATE LAWS**

## Miscellaneous State Law Changes



#### **COMMON THEMES**

- Pro employee
- •Independent contractors treated as employees
- Increased regulation
- Tax regulation changes



### **Ban the Box**



- Prohibits employers from requesting a potential employee's criminal history on a job application
- May forbid employers from asking about criminal convictions until a specific time in the hiring process (i.e., during interview or after conditional offer of employment)
- May be enacted by state or local government
- In DC metro area: DC, VA and select MD jurisdictions (Baltimore, Montgomery)

## **Employee Right to Copy of Employment File**



#### **Virginia** – **July 1, 2019**

- •Current and former employees have right to copy information from file
  - dates of employment
  - wages or salary
  - job description and job title
  - any injuries sustained at work

#### •Process:

- Written request from a current or former employee or attorney
- Employer had 30 days to comply; One additional 30 day extension possible

•Exception - file includes a written statement from the employee's treating physician or psychologist and the production may endanger the life or safety of the employee or another person

### **Expanded Anti-Discrimination/Sexual Harassment Law**



#### Maryland - October 1, 2019

- •Definition of "employee" now covers independent contractors
- •Only 1 employee required to come under the Act
- •Unlawful harassment defined as harassment based on:
  - "race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or disability"

### MD Anti-Discrimination/Sexual Harassment Law



#### • Employer is liable:

- If its negligence led to the harassment
- For actions of anyone who:
  - Undertakes or recommends tangible employment actions (hiring, firing, promoting, demoting, and reassigning an employee); or
  - Directs, supervises or evaluates the employee

### Statute of limitations expanded

- Claims filed with a local human relations commission went from 6 months to 2 years
- Time to file a lawsuit expanded from 2 years to 3 years

### **Equal Pay Remedies and Enforcement Act**



#### Maryland – October 1, /2019

- •Added civil penalties to existing back-pay remedies against employers who violate Maryland's Equal Pay for Equal Work law.
  - Back pay = difference between the wages paid + liquidated damages
  - New fine of up to \$300
  - New fine of up to 10% of the back pay damages if employer violated the law 2 or more times within a 3 year period

### **Gender Diversity in the Boardroom Act**



#### Maryland - May 13, 2019

- •Goal to promote gender diversity in corporate management and boardrooms.
- •Employers required to file a yearly report on the percentage of female representation on their boards of directors
  - Report publicly available on the MD Comptroller's website



## DC Tax Exemption Renewal Requirement (1/1/19)



- Nonprofit organizations must renew DC tax exemption every 5 years
- Organizations with exemptions granted in 2014 or earlier received notices in 2019
  - Rolling renewals in 2020 and beyond
- Be prepared 30 days to respond online filing



## DC Tax Exemption Renewal Requirement (1/1/19)



- Documents you will need
  - IRS determination letter
    - If older than 4 years, need IRS affirmation letter
      - Request at https://www.irs.gov/charities-non-profits/exempt-organizations-affirmationletters
  - Certificate of incorporation (DC) or registration as a foreign corporation
  - For Sales and Use Tax only
    - Proof of physical location in DC lease, occupancy certificate, etc.
  - For Personal Property Tax only
    - Proof of physical location and estimated cost of tangible property in DC
  - Copies of most recent IRS Form 990-T and Form 1120-POL filed by the organization or related PAC (if filed)
- Additional documentation may be required depending upon type of exemption sought

### California's Independent Contractor Law AB-5



#### **AB-5 – January 1, 2020**

- Designed to cover app-based employers such as Uber and Lyft
- •BUT impacts any business that hires workers in California, even if no office in CA
- •Ignores federal common law focused on degree of control/independence



### California's Independent Contractor Law AB-5



- AB-5 codifies the ABC test established by the CA S.Ct. in *Dynamex Operations* West (2018)
  - Classified all workers as employees unless the hiring entity passes the ABC test
    - Some exceptions certain professionals who hold active licenses in CA
  - ABC Test the person performing the work:
    - (A) Is <u>free from the control and direction</u> of the hiring entity in connection with the performance of the work
    - (B) Performs work that is outside the usual course of the hiring entity's business
    - (C) Is <u>customarily engaged in an independently established</u> trade, occupation, or business of the same nature as that involved in the work performed
- If ABC Test fails independent contractor is entitled to minimum wage and overtime pay, workers' compensation, paid sick leave, paid family leave, and all other benefits afforded employees

## California Consumer Privacy Act (effective 1/1/20)



- Inspired by EU's General Data Protection Regulation
  - Implementation delayed until 1/1/2021 for most parts of the Act
  - Employment portion 1/1/20
- Covered employer for-profit business meeting 1 of these criteria
  - (1) annual gross revenues exceeding \$25 million;
  - (2) annual purchase/sale/ sharing for commercial purposes personal information of 50,000 or more consumers, households, or devices; or
  - (3) 50% or more of annual revenues sale of consumers' personal information
- Nonprofit may be covered if it (1) controls or is controlled by and (2) shares common branding with a company meeting one of the criteria
- Covered employers:
  - Must provide notice regarding data collection
  - May be liable for statutory damages for any security breach





### **QUESTIONS?**

James A. Kahl, Esq.

Whiteford, Taylor & Preston, LLP jkahl@wtplaw.com 202.659.6775

Eileen M. Johnson, Esq.

Whiteford, Taylor & Preston, LLP emjohnson@wtplaw.com 703.280.9271

Jocelyn Starzak, Esq. World Resources Institute Jocelyn.Starzak@wri.org 202.729.7954