



WE HELP INSPIRED ENTREPRENEURS, NONPROFIT LEADERS & PHILANTHROPISTS TO CHANGE OUR WORLD.

NONPROFIT LEGAL COMPLIANCE

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FPLG FOR PURPOSE LAW GROUP

OBJECTIVES/OUTCOMES

- ACHIEVING LEGAL COMPLIANCE
- CURING COMPLIANCE DEFICIENCIES
- BYLAWS – REQUIRED PROVISIONS
- OPERATIONAL COMPLIANCE

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ACHIEVING LEGAL COMPLIANCE

ACHIEVING LEGAL COMPLIANCE GOVERNMENTAL AGENCIES & CA CORPORATIONS CODE

- Federal
 - Internal Revenue Service
- State
 - California Franchise Tax Board
 - California Secretary of State
 - California Attorney General, Registry of Charitable Trusts
- Local
 - County Assessor
 - City Agencies
- California Corporations Code - Governance

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ACHIEVING LEGAL COMPLIANCE GOVERNMENTAL AGENCIES & CA CORPORATIONS CODE

- Membership Structure (Cal. Corp. C. §5056)
 - Statutory Member v. Non-Statutory Member
- Required Officers (Cal. Corp. C. § 5213)
 - President
 - Secretary
 - Treasurer
- Annual Meeting Requirement
 - Electronic Transmission of Notice
 - Email Voting Prohibited in California
- Independent and Disinterested Board
 - At least 51% of the Directors must be *Disinterested*
 - Material Financial Interest

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ACHIEVING LEGAL COMPLIANCE

INTERNAL POLICIES & PROCEDURES

- Form 990 - Part VI, Section B.
 1. Chapter Affiliation Agreements
 2. Conflict of Interest Policy
 3. Whistleblower Policy
 4. Document Retention and Destruction Policy
 5. Joint Venture Agreements

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ACHIEVING LEGAL COMPLIANCE

INTERNAL POLICIES & PROCEDURES

- Form 990N
 - Gross Receipts *normally* less than or equal to \$50,000
- Form 990EZ
 - Gross Receipts < \$200,000
 - Total Assets < \$500,000
- Form 990
 - Gross Receipts > \$200,000
 - Total Assets > \$500,000
- Form 990PF
 - Private Foundations - regardless of financial status

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ACHIEVING LEGAL COMPLIANCE

CALIFORNIA SECRETARY OF STATE

- Biannual Statement of Information (Form SI-100)
 - Registered Agent
 - Business Address / Mailing Address
 - Executive Officers
 - Online Filing Fee: \$20.00
- Amended Statement of Information
 - No Fee
 - Must amend when any information changes
 - Not available online (print/mail)

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CALIFORNIA FRANCHISE TAX BOARD

- Imposition of Minimum Franchise Tax
 - \$800 per year
- Full Form 3500 vs. Form 3500a
 - IRS Determination Letter
 - No Prior Revocation or Suspension History
 - Filing Fee
- No Deadline Preventing Retroactive Application
 - Self Serve Entity Status Letter- Entity Search
https://www.ftb.ca.gov/online/self_serve_entity_status_letter/?WT.mc_id=Business_Online_EntityStatusLetter
- Annual Informational Return
 - Form 199N
 - Form 199
\$10 Filing Fee

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ACHIEVING LEGAL COMPLIANCE

CA ATTORNEY GENERAL REGISTRY OF CHARITABLE TRUSTS

- **Initial Registration: Form CT-1**
 - Within 30 days of Acquiring Charitable Assets
 - \$25 Filing Fee
 - Must Include Governing Documents
 - Determination Letter (When Received)
- **Registration Renewal Form: Form RRF-1**
 - Due annually on 15th day of 4th Month Following the Close of Accounting Period (Extension Honored)
 - Form 990- If over \$50,000 in Gross Receipts
 - Filing Fee Based on Gross Receipts

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ACHIEVING LEGAL COMPLIANCE

LOCAL COMPLIANCE

- **Board of Equalization / County Assessors Office**
 - Sellers Permit / Payment of Sales Tax
 - Property Tax / Welfare Exemption
- **Department of Health**
 - Food Handlers Card
 - Food Certificates, Licenses and Registrations
- **City Business Permits**

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CURING COMPLIANCE DEFICIENCIES

CURING COMPLIANCE DEFICIENCIES SECRETARY OF STATE & FTB

- California Secretary of State
 - SOS Suspended
 - Failure to File Statement of Information
 - FTB Suspended
 - Failure to File Form 199
- Franchise Tax Board
 - Suspended
 - Domestic: Failure to File Statement of Information or 199 or failure to pay
 - Forfeited
 - Foreign: Failure to File Statement of Information or 199 or failure to pay
 - Revoked
 - Failure to Cure Suspension or Delinquency with AG
 - Not Exempt
 - Failure to File Form 3500 or Form 3500A

CURING COMPLIANCE DEFICIENCIES CA ATTORNEY GENERAL & IRS

- California Attorney General
 - Incomplete
 - Failure to File Attachments
 - Delinquency
 - Failure to Register
 - Failure to File Annual Report
 - Penalties of \$25 per month
 - Suspended
 - Failure to Resolve Delinquency
 - Penalties of \$25 per month

- Internal Revenue Service
 - Streamlined Retroactive Reinstatement
 - Retroactive Reinstatement (within 15 months)
 - Retroactive Reinstatement (after 15 months)
 - Post-Marked Date Reinstatement

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CURING COMPLIANCE DEFICIENCIES RETROACTIVE REINSTATEMENT

Reinstatement Process	Eligibility	Filings
Streamlined Retroactive Reinstatement	<ul style="list-style-type: none"> • Eligible to file Form 990N or 990EZ for past 3 Tax Periods • No prior history of revocation • Reinstatement within 15 months of revocation or posting date 	<ul style="list-style-type: none"> • Form 1023 / Form 1023EZ / Form 1024 • Exempt from filing past 3 years of annual returns • Exempt from Section 6652(c) penalty for failure to file
Retroactive Reinstatement (within 15 months)	<ul style="list-style-type: none"> • Eligible to file Form 990 for past 3 Tax Periods • Reinstatement within 15 months of revocation or posting date 	<ul style="list-style-type: none"> • Form 1023 / Form 1024 • Reasonable Cause Statement for <i>at least one of three</i> consecutive periods of failure to file • File any outstanding annual returns • Exempt from Section 6652(c) penalty for failure to file
Retroactive Reinstatement (after 15 months)	<ul style="list-style-type: none"> • Reinstatement is more than 15 months after revocation date or posting date 	<ul style="list-style-type: none"> • Form 1023 / Form 1024 • Reasonable Cause Statement for <i>all three</i> consecutive periods of failure to file • File any outstanding annual returns • Exempt from Section 6652(c) penalty for failure to file
Post-Marked Date Reinstatement	<ul style="list-style-type: none"> • Do not qualify above • No reasonable cause for failure to file 	<ul style="list-style-type: none"> • Form 1023 / Form 1024 • May be Subject to Section 6652(c) penalty for failure to file

CURING COMPLIANCE DEFICIENCIES REASONABLE CAUSE STATEMENT

A reasonable cause statement establishes that an organization exercised ordinary business care and prudence in determining and attempting to comply with its annual reporting requirement.

- Detailed Description of:
 - All facts and circumstances about why the organization failed to file;
 - How it discovered the failure; and
 - Steps taken or will take to avoid or mitigate future failures.

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CURING COMPLIANCE DEFICIENCIES SECTION 6652(C) PENALTY

- \$20 per day, up to the lesser of \$10,000 or 5% of gross receipts per return

Or

- \$100 per day, up to \$50,000 for organizations with gross receipts in excess of \$1 million.

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CURING COMPLIANCE DEFICIENCIES COMPLIANCE SELF-CHECK

- California Secretary of State
 - Business Entity Search
<http://kepler.sos.ca.gov/>
- Franchise Tax Board
 - Self Serve Entity Status Letter- Entity Search
https://www.ftb.ca.gov/online/self_serve_entity_status_letter/?WT.mc_id=BusinessOnline_EntityStatusLetter
- California Attorney General
 - Registry Search
<http://rct.doj.ca.gov/Verification/Web/Search.aspx?facility=Y>
- Internal Revenue Service
 - EO Select Check
<https://apps.irs.gov/app/eos/>
 - Eligibility to Receive Tax Deductible Contributions
 - Have Filed Form 990-N
 - Automatically Revoked

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BYLAWS - REQUIRED PROVISIONS

BYLAWS – REQUIRED PROVISIONS PURPOSE STATEMENT

Purpose

General Purpose

- Charitable
- Public
- Charitable and Public

Specific Purpose

- Required if General Purpose is “Public”
- Can be no broader than Specific Purpose Statement in Articles of Incorporation

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BYLAWS – REQUIRED PROVISIONS LIMITATIONS ON ACTIVITIES

- Political Activities
 - Form 5768 (Election to Make Expenditures for Legislative Activities)
- Prohibited Activities
 - Activities not in furtherance of exempt purpose
 - Activities for the profit of Officers, Directors, or other Persons
 - Not distribution of profits, gains, or dividends

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BYLAWS – REQUIRED PROVISIONS DEDICATION & DISTRIBUTION CLAUSES

- Identify dedication of assets to *specific exempt purpose*
- Language must be identical to Articles of Incorporation
- Intended recipient
 - Must provide for contingent beneficiary if intended recipient fails
- General recipient

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BYLAWS – REQUIRED PROVISIONS MEMBERSHIP

- Statutory Members
 - California Corporations Code Section 5056
 - Inspection Rights
 - Voting Rights
 - Significant Corporate Changes
 - Standing to Bring Suit
- Non-Statutory Members
 - Non-voting members
 - Honorary titles

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BYLAWS – REQUIRED PROVISIONS DIRECTOR PROVISIONS

- Authorized and Appointed
- Qualifications
- Terms
- Vacancy
- Removal
- Resignations
- Meetings of the Board of Directors
 - Call
 - Notice
 - Quorum
 - Minimum Voting Requirements
- Fees and Compensation

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BYLAWS – REQUIRED PROVISIONS AUTHORIZED & APPOINTED

- Number of Directors
 - Must have at least 1 director (not advised)
- Range of Authorized Directors
 - Flexibility
 - Eliminates need to amend Bylaws
- Appointed Number of Directors
 - Number of appointed directors are fixed by board resolution

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BYLAWS – REQUIRED PROVISIONS QUALIFICATIONS

- Statutory Qualifications
- Elective Qualifications for Appointment
 - Nominee has been a member for at least 3 years
 - Nominee has specialized professional background
 - Nominee is a representative of the community (Hospitals)
- Statutory Removal
- Qualifications for Removal
 - May not miss more than three consecutive board meetings

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BYLAWS – REQUIRED PROVISIONS TERMS

- Fixed Terms
 - Unlimited consecutive terms v. No consecutive terms
 - No more than 4 years (membership organization)
 - No more than 6 years (non-membership organization)
- Staggered Terms
 - Concerns of too many vacancies at one time
 - Concerns of too little continuity

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BYLAWS – REQUIRED PROVISIONS REMOVAL

- Removal For Cause
 - Any qualification stated in the bylaws prior to term start
 - Declared of unsound mind by court order
 - Convicted of a felony
 - Found by court order or judgment of any court to have breached a duty under California Nonprofit Corporation Law
- Removal Without Cause
 - Must be specifically permitted in Bylaws
- No Removal on Reduction of Number Directors

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BYLAWS – REQUIRED PROVISIONS MEETING PROVISIONS

- Types of Meetings
 - Annual Meeting
 - Regular Meeting
 - Special Meeting
- Calling for Meeting
- Notice
 - Consent to Electronic Transmission
- Quorum
- Minimum Voting Requirements
 - Majority of Authorized Directors v. Majority of Quorum
 - 2/3 Majority Vote
 - Unanimous Consent

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BYLAWS – REQUIRED PROVISIONS REIMBURSEMENTS & COMPENSATION

- Directors may be reimbursed for expenses related to their service
- Directors may be compensated “Reasonable Amounts” for their service (not advised)
 - Fact Specific
 - Must maintain independent and disinterested
 - Material financial interest
 - Extends to familial relationships

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BYLAWS – REQUIRED PROVISIONS BOARD COMMITTEES

- Standing Committees
- Advisory Committees
 - May, but not need to, be comprised of directors
- Typical Committees
 - Finance, Nominating, Audit, Executive

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BYLAWS – REQUIRED PROVISIONS OFFICERS

- Required Officer Positions in California
 - President
 - Secretary
 - Treasurer
- Election and Appointment
- Terms
- Removal
- Resignations
- Compensation of Officers
 - Compensation Surveys

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BYLAWS – REQUIRED PROVISIONS INDEMNIFICATION & INSURANCE

- Indemnification
 - Mandatory v. Permissive
- Insurance
 - Mandatory v. Permissive

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BYLAWS - REQUIRED PROVISIONS MISCELLANEOUS PROVISIONS

- Execution of Documents
- Signatory Authority
- Amendments of Governing Documents
- Nonprofit Integrity Act
 - Gross Receipts of 2M or more - Audit

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OPERATIONAL COMPLIANCE

OPERATIONAL COMPLIANCE

EMPLOYMENT RELATED MATTERS

- EMPLOYEES
- INDEPENDENT CONTRACTORS
- VOLUNTEERS
- INTERNS

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OPERATIONAL COMPLIANCE

EMPLOYEES V. INDEPENDENT CONTRACTORS

- Common Law Rule (Federal Rule)
 - Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?
 - Financial: Are the business aspects of the worker's job controlled by the payer?
 - Type of Relationship: Are there written contracts or employee type benefits? Will the relationship continue and is the work performed a key aspect of the business?
- Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018)
To be appropriately categorized as an Independent Contractor:
 - (A) The worker is *free from* the type and degree of *control and direction* the hiring entity typically exercises over its employees; *and*
 - (B) The worker performs work *outside the scope of the hiring entity's business*, and whose work therefore would not ordinarily be viewed by others as working in the hiring entity's business; *and*
 - (C) The worker is *customarily engaged in an independently established trade, occupation, or business*, taking such steps as incorporating his business, getting a business or trade license or advertising.

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OPERATIONAL COMPLIANCE IMPACT OF MISCLASSIFICATION

- Wage Law Violations
- Tax Trouble
- I-9 Violations
- Unemployment Insurance Shortfalls
- Workers Compensation Violations
- Anti-Discrimination Violations
- FMLA Act Violations
- Improper Exclusions from Benefit Plans

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OPERATIONAL COMPLIANCE MISCLASSIFICATION RELIEF PROVISIONS

- Relief from payment of past employment taxes, if:
 - You had a reasonable basis for misclassification;
 - You filed all required federal returns on a basis consistent with treatment of worker;
 - You (or your predecessor) must not have treated any worker holding a substantially similar position as an employee for any periods beginning after 1977.

*** See Publication 1976, Section 530 Employment Tax Relief Requirements*

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OPERATIONAL COMPLIANCE

VOLUNTARY CLASSIFICATION SETTLEMENT PROGRAM (VCSP)

- VCSP is a voluntary reclassification program for future tax periods with partial relief from federal employment taxes.
 - Eligibility Requirements
 - Form 8952, Application for Voluntary Classification Settlement Program
 - Enter into Closing Agreement with the IRS

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VCSP ELIGIBILITY REQUIREMENTS

- Taxpayers who want to voluntarily change the prospective classification of their workers from Independent Contractor to Employee;
- Taxpayer must have consistently treated the workers to be reclassified as Independent Contractor, including having filed all Form 1099 for the previous three years;
- Taxpayer cannot currently be under employment tax audit by IRS, Department of Labor, or state government agency;
- If Taxpayer has previously been audited, it must have complied with the results of that audit and not currently contesting the results in court.

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OPERATIONAL COMPLIANCE VCSP CLOSING AGREEMENT

- A taxpayer participating in the VCSP will agree to prospectively treat the class or classes of workers as employees for future tax periods. In exchange, the taxpayer will:
 - Pay 10 percent of the employment tax liability that would have been due on compensation paid to the workers for the most recent tax year, determined under the reduced rates of section 3509(a) of the Internal Revenue Code.
 - Not be liable for any interest and penalties on the amount; and
 - Not be subject to an employment tax audit with respect to the worker classification of the workers being reclassified under the VCSP for prior years.

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OPERATIONAL COMPLIANCE VOLUNTEERS

- Services must be volunteered to legally recognized *nonprofit exempt organization*
- Individual must “volunteer their time and efforts *without expectation* of compensation in cash or in-kind benefits and freely without coercion”
- Volunteer can be reimbursed for expenses
- “Stipends,” “gift cards,” etc. are considered compensation, and therefore are TAXABLE

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OPERATIONAL COMPLIANCE INTERNS

- 6 Factor Test

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If all factors are met, an employment relationship DOES NOT exist and thus minimum wage and overtime provisions will not apply to the intern.

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OPERATIONAL COMPLIANCE INSURANCE CONSIDERATIONS

- Directors and Officers Insurance (“D&O”)
- Commercial General Liability Insurance
 1. Bodily Injury and Property Damage
 2. Personal Injury and Advertising Injury
 3. Medical Payments
- Workers’ Compensation Insurance
- Employment Practices Insurance
- Volunteer Liability Insurance

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QUESTIONS?

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QUESTIONS?

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