

perspectives

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MY BENESCH MY TEAM

Trends and topics in not-for-profit management

Not-for-Profit Spotlight

Health Policy Institute of Ohio



Founded in 2003, the Health Policy Institute of Ohio (HPIO) is a not-for-profit organization that serves as

Ohio's nonpartisan, independent source for forecasting health trends, analyzing key health issues and communicating current research to policymakers, state agencies and other decision makers.

In recent years, it has become increasingly clear that state policymakers—and all Ohioans with an interest in good health—need a trusted, respected source of information and leadership on health policy issues. HPIO concentrates on nonpartisan, unbiased research, analysis and communication that enables policymakers to make the most informed decisions possible on matters that affect the health of all Ohioans.

HPIO uses many approaches to inform policymakers on health policy issues, including:

- **Analyzing and Educating:** Analyzing a range of health policy topics and educating state policymakers and the people who influence them by providing concise, comprehensive and easy-to-understand information.
- **Convening:** Convening public and private stakeholders in order to enrich the depth of HPIO's analytical and educational products and to advise policymakers through policy recommendations related to key elements of health policy.
- **Fostering:** Fostering the spread of practices and programs producing promising results in terms of improving health outcomes and quality, reducing cost and increasing access

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Not-for-Profit Organizations and Social Media: Best Practices

By Nicole Galli and Priscila Rocha



Nicole Galli



Priscila Rocha

Not-for-profit organizations are increasingly taking advantage of social media platforms such as Facebook, Twitter and LinkedIn to spread awareness and communicate information about the organization to a broader audience, as well as fundraise and connect with donors and potential donors. According to the Pew Research Center's Internet & American Life Project, as of December 2012, 67% of online adults use social networking sites.¹ For this reason, not-for-profit organizations view social media as a

key resource for mobilizing supporters, increasing fundraising efforts, creating online advocacy movements, and attracting potential employees. A recent survey indicates that 98% of not-for-profit organizations have a strong presence on Facebook.²

Increased social media use inevitably poses legal risks for not-for-profit organizations, but with proper planning and policies, organizations can effectively minimize those risks. In this regard, like all businesses, not-for-profit organizations should take the time to craft and adopt policies for social media by their employees, monitor social media for posts related to the organization and train employees on smart social media use and monitoring. It is also wise to plan for crises or negative events in advance, as a swift response is often best in such circumstances. In taking these steps, however, not-for-profit organizations should be aware of a few important points in the following areas.

Employment

Not-for-profit organizations use numerous social media sites to recruit and screen applicants. While the use of social media as a recruiting and screening tool can yield useful results, not-for-profit organizations should familiarize themselves with the demographics of social media sites and exercise caution before relying on information revealed on social media during the hiring process.

For recruiting and screening purposes, not-for-profit organizations should be aware that social media users do not represent the U.S. population as a whole, and there is a great deal of variation in the gender, race, age and education level among social media users and platforms. For example, nearly twice as many men (63%) as women (37%) used LinkedIn.³ Overlooking these demographical differences during the recruitment process could result in a "disparate impact" claim of discrimination. Not-for-profit organizations are also prohibited from considering, as part of the hiring process, information that falls into a "protected category" such as race, gender, disability or religion. Accordingly, not-for-profit organizations should consider posting job openings on multiple social media sites, avoid limiting recruitment solely to social media sites and ensure that hiring decisions are not based on prohibited information gathered from an applicant's social media use. Importantly, if social media is going to be reviewed during the hiring process, it must be used uniformly—e.g., all candidates' social media activities should be reviewed, not just some candidates'.

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Not-for-Profit Organizations and Social Media: Best Practices

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In addition to hiring and screening, not-for-profit organizations can also benefit from monitoring employees' use of social media to protect the organization's public image. While organizations cannot place outright restrictions on employees' personal use of social media, they can curtail such personal use on work time and equipment and establish certain other guidelines, such as requiring employees to include disclaimers in their posts that their views are their own and not the views of the organization.

An organization should tread carefully before taking disciplinary action, however, if it determines that an employee has posted commentary the organization believes is inappropriate. Whether disciplinary action is legally permissible largely depends on the content and context of the employee's post. Recent National Labor Relations Board (NLRB) decisions and guidance addressing employee social media have found that it is an unfair labor practice to terminate or discipline employees for engaging in "protected" and "concerted" activity, i.e., activity by employees intended to improve the terms or conditions of their employment. For example, commentary regarding wages, benefits, sick leave and working conditions is protected. Activity is concerted if an employee acts with or on the authority of other employees, and not solely by and on behalf of the employee himself. If other employees "like" the post, or if the post seeks support or input of coworkers, the post is more than likely concerted activity.

Thus, while organizations should use social media policies for their employees, they should enlist the assistance of counsel to ensure such policies are and remain legal. Many of the samples on the Internet, for example, may no longer be in compliance with the most recent legal authority and thus caution should be exercised before simply adopting a sample from a source other than an attorney with experience in this field.

Intellectual Property

The use of social media presents intellectual property risks even for not-for-profits. For example, not-for-profit organizations can be exposed to liability for infringement if an employee of the organization acting on its behalf posts content that infringes the copyright of others. Content that includes information protected by copyright or which does not otherwise belong to the poster should not be posted without written consent by the owner.

This can include photographs, video clips or content posted in comment sections. Not-for-profit organizations should abide by any license agreements when posting licensed materials and should not rely on the limited doctrine of "fair use" or, worse, assume that if the content is available on the Internet it can be used freely. Not-for-profits posting photographs or video of others should also be sure to have written consent of the persons depicted in the photo or video prior to posting.

Not-for-profit organizations should also protect their own intellectual property. Monitoring and controlling the use of the organization's name and trademarks by other organizations or users can help safeguard the organization's trademark enforcement rights. Where applicable, include a registered trademark symbol and proper notices and conditions when using the organization's logo on social media sites.

Online Fundraising

Social media has become a very popular and effective means of fundraising for not-for-profit organizations. Fundraising activities are regulated by state law, and 40 states and the District of Columbia require not-for-profit organizations to register with the state before accepting online charitable donations from donors in that state. Unregistered solicitation may result in monetary penalties. In 2001, the National Association of State Charity Officials (NASCO) issued the Charleston Principles: Guidelines on Charitable Solicitations Using the Internet (Principles). The Principles are not binding on states; instead they are meant to act as a guide to state regulators for developing state-specific registration requirements for Internet solicitation.

The basic premise of the Principles is that state regulators should require registration of not-for-profit organizations over whom their state could constitutionally assert personal jurisdiction to enforce a registration requirement. In other words, not-for-profit organizations may be required to register if: the organization's non-Internet activities alone are sufficient to require registration, or an out-of-state organization specifically targets individuals in a state or receives contributions from the state on an ongoing or substantial basis through an active or noninteractive website.

Not-for-profit organizations that are only registered in their home state, but accept online donations from donors in other states, must

carefully monitor the origin of online donations. Bear in mind that online fundraising can occur across state lines when a user simply clicks "share" and directs other users to make a donation. If an organization receives repeated and ongoing donations or even an isolated yet substantial contribution from a state, the organization needs to determine if state registration is required. As a best practice, not-for-profit organizations should review the varied state registration requirements with the help of counsel before accepting out-of-state donations.

Not-for-profit organizations should also be mindful of links they may make on their web or social media sites to sponsor's pages, in case the linked content can be deemed an advertisement. If the linked content is an advertisement (or the organization places a sponsor's banner ad on the organizations' page) any revenues obtained as a result of advertising are deemed UBIT (not donations) and must be reported as such.

Conclusion

With proactive planning and implementation of a well-designed social media strategy, not-for-profit organizations can effectively manage risk and reap significant benefits from social media use. For more information or assistance with your social media strategy, please contact **Nicole Galli** at ngalli@beneschlaw.com or 267.207.2948. For fundraising or tax questions, please contact **Marty Sweterlitsch** at msweterlitsch@beneschlaw.com or 614.223.9367 or **Jessica Angney** at jangney@beneschlaw.com or 216.363.4620. For labor and employment questions, please contact **Maynard "Mike" Buck** at mbuck@beneschlaw.com or 216.363.4694. Law clerk **Priscila Rocha** was a contributing author of this article and can be reached at procha@beneschlaw.com or 216.363.4407.

¹ Maeve Duggan & Joanna Brenner, *The Demographics of Social Media Users—2012*, Pew Research Center's Internet & American Life Project, at 2 (Feb. 14, 2013), available at http://pewinternet.org/~media/Files/Reports/2013/PIP_SocialMediaUsers.pdf.

² Sam Laird, *How Non-Profits Relied on Social Media in 2012*, MASHABLE.COM (Dec. 12, 2012), available at <http://mashable.com/2012/12/12/non-profits-social-media-infographic/>.

³ Keith N. Hampton et al., *Social Networking Sites and Our Lives: How People's Trust, Personal Relationships, and Civic and Political Involvement are Connected to Their Use of Social Networking Sites and Other Technologies*, Pew Research Center's Internet & American Life Project, at 10 (June 16, 2011), available at <http://www.pewinternet.org/~media/Files/Reports/2011/PIP%20Social%20networking%20sites%20and%20our%20lives.pdf>.

Charitable Giving: The Impact of New Tax Law Changes



Jessica Angney

Recently released statistics of income data from the Internal Revenue Service showed that taxpayers made charitable gifts of approximately \$51 billion in 2011. This evidences the generosity of the American taxpayers. Although it is generally understood that charitable giving is most often based on a donor's desired support of a not-for-profit organization's mission and not due to tax reasons, it is definitely helpful to have tax incentives in place to encourage charitable giving. Not-for-profit organizations need to be aware of recent tax law changes contained in the American Relief Act of 2012 (the Act) that may impact donors, especially high-income earners. The more significant of such tax law changes are set forth below:

Increased Tax Rates

The highest Federal income tax rate increased from 35% to 39.6% for individuals earning more than \$400,000 (\$450,000 for married filing jointly). Long-term capital gains tax rates for such high income earners increased to 20%.

Reinstatement of the Pease Limitation

For individuals with an adjusted gross income of \$250,000 (\$300,00 for married filing jointly), a limit on itemized deductions (the Pease limitation) was reinstated under the Act. In general, the Pease limitation reduces itemized deductions (including charitable deductions) by 3% of the amount of adjusted gross income that exceeds the \$250,000 (\$300,000 for married filing jointly) threshold but not more than 80% of the total itemized deductions.

Charitable IRA Provisions

The Act extended through December 31, 2013, the tax provision that allows individuals who are at least 70½ years old to make tax-free distributions up to \$100,000 from their IRAs to certain public charities.

Implications

So what are the practical implications of these changes? Theoretically, the increased income tax rate means a lower cost of giving (i.e., for every \$1 of charitable contributions, the tax liability is reduced by 39.6 cents). Increased long-term capital gains rates may result in donors making more gifts of appreciated property. Although the Pease limitation on its face looks like it could potentially negatively affect charitable giving, scholars and other commentators have stated that it should not materially affect charitable contributions as it did not have such effect during its earlier existence. Not-for-profit organizations should keep in mind the charitable IRA provisions that will expire at the end of this year when discussing tax planning with donors.

Although tax changes in the Act may affect some donors, the good news is that charitable giving is not anticipated to change dramatically as a result of such tax law changes. The bad news is that the future of the deductibility of charitable contributions is unclear. As Congress looks for ways to raise revenue, even charitable contribution deductions could be on the chopping block.

For more information, please contact [Jessica Angney](mailto:jangney@beneschlaw.com) at jangney@beneschlaw.com or 216.363.4620.

How America Gives

This Chronicle of Philanthropy study and interactive map shows how neighborhoods, cities and states rank in generosity. [How does your community compare?](#)

Beyond Strategic Planning

Everyone can use a chance to recharge their batteries every now and then. In today's not-for-profit sector, the need to "recharge" organizations has never been greater. Though it has a powerful mission and does great work, the entire organization is often exhausted from all that needs to get accomplished with fewer and fewer resources. [This article in The Nonprofit Times](#) discusses how a strategic plan can revitalize a not-for-profit organization and help bring new energy to accomplish goals.

Sweterlitsch Named Recipient of 2013 Alvis House Founders Award



Marty Sweterlitsch

Benesch is excited to share that Marty Sweterlitsch has been named the recipient of the 2013 Alvis House Founders Award. She will be presented the award at Alvis House's 46th Annual Meeting on April 17 in Columbus. The Alvis House Founders Award, given by the organization's

Board of Trustees, recognizes individuals who, in a manner of action or deed, have made a significant and lasting contribution to Alvis House. Ms. Sweterlitsch was selected for this award because of her ongoing, excellent work on behalf of Alvis House.

"We have relied on Marty's expertise on everything from Medicaid issues to zoning to resolving employment issues," says Denise M. Robinson, President & CEO of Alvis House. "I can't imagine where we'd be without her work on our behalf." Associate Vice President of Alvis House, Gloria Iannucci, adds, "We so appreciate everything Marty's done for us. She deserves to be recognized and honored as much as possible."

Ms. Sweterlitsch is a partner with the firm's Health Care Practice Group and chair of the firm's Not-for-Profit Team. Her practice focuses on not-for-profit, administrative, health, state tax, and federal and state tax exemption law and lobbying. Significant areas of practice include creation, reorganization, mergers and consolidations and ongoing advice to not-for-profit corporations, state and federal tax and tax exemption for not-for-profit organizations, and legal issues related to charitable solicitation and fundraising. She has experience as borrower's counsel for not-for-profit entities and has been involved over many years with legislative initiatives affecting the regulation, operation and taxation of not-for-profit entities. Ms. Sweterlitsch received her B.A. from The Ohio State University and her J.D. from The Ohio State University Moritz College of Law.

[Alvis House](#), a Benesch client, operates a range of research-based residential and community reentry programs as well as an intermediate care facility, licensed beds and supported living programs for individuals with developmental disabilities. Each year, Alvis House provides direct services to more than 5,000 men, women, young adults and children, and impacts tens of thousands more. Learn more about Benesch's relationship with Alvis House at www.beneschlaw.com/MyTeam.

Affordable Care Act: The Upside for Employers

Amidst all of the hype and haranguing about the Affordable Care Act (ACA), there may actually be some upside for employers in the proposal to expand Medicaid to include more low-income workers and families. Currently an employable adult can qualify for Medicaid in Ohio only if the household income falls at or below 90% of the federal poverty level (FPL). For a family of four, that is \$21,195 or \$10.18 per hour total wages. Those at \$10.19 per hour, with four mouths to feed, cannot afford health insurance. The ACA puts the burden on employers to either provide "affordable" insurance or pay a penalty. Almost no insurance is affordable for families and individuals living below the poverty level. Some of those who cannot afford the insurance may qualify for a tax credit they can use to shop on one of the insurance exchanges being established to serve each state, but an

employer may still wind up paying the penalty in many circumstances.

The ACA permits expansion of Medicaid to families with incomes up to 138% of the FPL, with the U.S. treasury picking up 100% of the cost of the expansion for the first three years and continuing to provide a higher match than current Medicaid offers until 2020. The Governor of Ohio has proposed that Ohio take advantage of this opportunity to cover 366,000 individuals, including 270,000 previously uninsured Ohioans. The Administration has proffered many economic arguments for the expansion, but the direct advantage to employers has been lost in the din surrounding the debate.

A [policy brief prepared by Health Policy Institute of Ohio, in partnership with the Ohio State University, Regional Economic Models, Inc. and the Urban Institute](#) estimates that from FY 2014 through FY 2022, a Medicaid expansion

would save a total of \$1.7 billion for the state's employers in increased premium costs and avoided penalties. Accessing Medicaid coverage does not trigger an employer penalty. Employers with full-time employees with incomes between 100% and 138% of the FPL could experience increased penalties if Medicaid is not expanded. In addition to the direct financial benefit described above, employers may be able to benefit from a healthier workforce who would be able to access primary and preventive care for themselves and their families. Many low-paid health care workers are expected to benefit by gaining access to Medicaid. Ironically, that should help their employers, many of which rely on receiving Medicaid reimbursements.

For more information, please contact **Marty Sweterlitsch** at msweterlitsch@beneschlaw.com or 614.223.9367.

Not-for-Profit Spotlight: Health Policy Institute of Ohio (continued from page 1)

by providing policymakers and the people who influence them with information about these practices and programs, including any relevant policy implications.

This year, HPIO has focused much of its attention on informing policymakers about the Medicaid program. Not only does Medicaid represent a substantial portion of the state budget, this year lawmakers have also been given the rare opportunity to decide whether the state expands eligibility for the program. In partnership with The Ohio State University, Regional Economic Models Inc. and the Urban Institute, HPIO has created several publications that attempt to project the impact of Medicaid expansion on Ohio, both in terms of the number of Ohioans who would gain coverage and in terms of the fiscal impact at the state and local level. HPIO also recently released *Ohio Medicaid Basics 2013*, the organization's biennial overview of Ohio Medicaid, including eligibility, enrollment and financing. All of HPIO's Medicaid-related resources are available at www.hpio.net/medicaid.

For more information about HPIO, including links to all of its publications and details about upcoming events, visit www.hpio.net.

SAVE THE DATE

Benesch and Blue & Co.
are pleased to present...

The 2nd Annual Not-for-Profit Executive's Guide to Success

May 9, 2013
1:00 P.M. – 6:00 P.M.
One American Square
Main Auditorium (Ground Floor)
Indianapolis, IN 46282



Not-for-profit organizations are faced with an ever-changing array of challenges.

We invite you to join us for a complimentary half-day seminar during which we will provide useful tips and ideas to assist not-for-profit executives in successfully leading organizations.

RSVP by May 1, 2013 to Annette Nugent at anugent@beneschlaw.com or 317.685.6117.

Invitation to follow.

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Events

Association of Fundraising Professionals Events

Cleveland

Blue Ribbon Recipes for Capital and Endowment Fundraising Success

This presentation will cover key considerations in preparing for a capital or endowment campaign. Today many organizations are facing urgent new needs or are revisiting critical capital and endowment needs that were reluctantly shelved in the recession. Perhaps you conducted a philanthropic study or actually began a campaign a couple of years ago and want some ideas on how to get a fresh start. Your leaders may be asking themselves, "Is this the right time, and is it too soon or when will the timing be right?" They may be wondering, "What is different about our donors today and their view of capital and endowment needs?" This session will address what you must do to succeed in a campaign today.

Date: April 18

Location: Crowne Plaza, 5300 Rockside Rd., Independence, OH

Time: Registration 3:30–4:00 P.M.

Webinar followed by Q&A: 4:00–6:00 P.M.

Networking: 6:00–7:00 P.M.

Cost: \$15–AFP members, \$25–non-members

RSVP: Please click [here](#) for more information and registration.

Indianapolis

AFP Indiana Chapter Spring Conference: "Developing Relationships and Closing Major Gifts Better Than The Person Next to You"

Jim Gillespie, President & CEO of WealthEngine, will discuss the hindrances to getting out of the office and how to overcome relationship-building and fundraising obstacles. Learn how to find good prospects, get in front of them, cultivate the relationship and close major gifts.

Date: April 17

Location: The Riverwalk, 6729 Westfield Blvd., Indianapolis, IN

Time: 8:30 A.M. Registration; 9:00–11:30 A.M. Program

Cost: \$75

RSVP: Please click [here](#) for more information and registration.

HandsOn Central Ohio Training Seminar

How to Start a Not-for-Profit

Are you ready to jump in and start your own not-for-profit? Then this two-part class, led by Benesch's Marty Sweterlitsch, is for YOU! Learn how to write a mission statement you truly care about and believe in. You will also learn the fundamentals of getting started, including how to file for a 501(c)(3). Class #1 deals with the creation, care and maintenance of a not-for-profit. Class #2 covers obtaining and maintaining your tax-exempt status.

Presenter: Benesch partner Marty Sweterlitsch

Date: April 23 and 30, 2013

Location: 195 North Grant Avenue, Columbus, OH (corner of N. Grant and Spring Sts).

Time: 9:00 A.M.–12:00 Noon

Cost: \$130.00

RSVP: [Register for How to Start a Not-for-Profit](#)

Ohio Association of Nonprofit Organizations Webinar

Introduction to Employee Handbooks

A not-for-profit's relationship to its employees is fundamental to its ability to achieve its mission. An organization's human resource policies should be fair, establish clear expectations and provide for meaningful and effective performance evaluation.

The employer-employee relationship begins with a thorough employee handbook. This webinar will discuss the fundamental elements needed in every employee handbook, such as:

- Personnel policies (working conditions, confidentiality, grievances...)
- Workplace practices (conflicts of interest, equal employment opportunities...)
- Performance evaluation
- Employee orientation

Following the presentation, participants will receive a model employee handbook that can be used as a template for their own organization.

Date: April 25

Time: 10:00 A.M.–11:30 A.M.

Cost: \$30–OANO Members, \$50–non-members

RSVP: Please click [here](#) for more information and registration.



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