



Revising Workers' Compensation Rules Would Help Small Nonprofits

Section 2.3 of the Regulatory Reform Act (H.B. 765) would help many small nonprofits throughout North Carolina by clarifying that board officers and other volunteers of charitable nonprofits are not counted as employees for the purpose of the state's workers' compensation law. **The extra cost of purchasing unneeded workers' compensation insurance is a problem for small nonprofits with no paid staff.** This is particularly troublesome since 78% of North Carolina charitable nonprofits experienced an increase in demand for their services in 2014, and 60% lacked the resources to meet this demand.

What is the current law?

- The existing North Carolina Workers' Compensation Act requires all employers with three or more employees to carry workers' compensation insurance. The definition of "employee" includes "[e]very executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation." The N.C. Industrial Commission has advised small nonprofits that – regardless of whether they are compensated – nonprofit board officers are "employees" within the definition of this statute.
- It is best practice for nonprofit organizations to have at least three members of their governing boards and to have at least three board officers. Therefore, most nonprofits are required by law to carry workers' compensation insurance, regardless of whether they have paid staff.

What penalties does current law impose?

- The fine imposed by the Workers' Compensation Act for failure to purchase insurance is \$50 to \$100 per day, depending on the size of the organization. These fines can reach back for years and thus become very substantial.
- Moreover, "any person who, with the ability and authority to bring an employer in compliance" with the requirements "willfully fails" to do so is guilty of a Class H felony and is personally liable for all benefits owed that would have been paid by insurance. The organization itself can also be subject to a Class H felony and a Class 1 misdemeanor.

What would H.B. 765 do?

- Section 2.3 of H.B. 765 would clarify the definition of "employee" under the Workers' Compensation Act to clarify that it does not include any person performing voluntary service for a nonprofit corporation – including corporate officers – as long as those persons do not receive compensation for their service other than reimbursement for connected expenses (such as travel). All paid employees of nonprofits would still be treated as "employees" under the clarification in H.B. 765.
- It also would prevent unintended consequences of treating uncompensated nonprofit volunteers as employees for legal purposes. For example, two other bills currently before the General Assembly (S.694 and H.B. 482) would use the definition of "employee" under the Workers' Compensation Act as the standard for applying penalties to employers that misclassify workers as independent contractors. Under the current definition of "employee," these bills could have the unintended consequence of imposing civil penalties on nonprofits that didn't classify their uncompensated board officers as employees.

For more information and other ideas for solutions, please contact David Heinen, Vice President for Public Policy and Advocacy, N.C. Center for Nonprofits, 919-790-1555, ext. 111 or dheinen@ncnonprofits.org.