

# Legal Compliance Checklist for North Carolina Nonprofits

Created by the North Carolina Center for Nonprofits and updated annually, the legal compliance checklist outlines laws that affect North Carolina nonprofits' governance, finances, advocacy, human resources, and fundraising. This checklist is not intended to give legal advice and should not be relied on without your attorney's counsel. It is primarily a compliance tool for IRS Section 501(c)(3) public charities incorporated and operated in North Carolina. Private foundations and nonprofits classified as tax-exempt under other Internal Revenue Code sections may be subject to different rules and regulations.

Have you	Who has to do it	How and when to do it
<input type="checkbox"/> Filed your articles of incorporation?	<ul style="list-style-type: none"> <li>All NC nonprofits must file articles of incorporation with the NC Secretary of State to operate as a nonprofit corporation.</li> <li>Any individual (incorporator) can file the articles.</li> </ul>	<ul style="list-style-type: none"> <li>File with the NC Secretary of State Business Registration Division, <a href="http://www.sosnc.gov/divisions/business_registration">www.sosnc.gov/divisions/business_registration</a>.</li> <li>Then adopt bylaws and related governance policies at your initial board meeting.</li> <li>It is a good practice for nonprofit boards and key staff to review articles of incorporation and bylaws regularly to be certain they are consistent with each other, with state laws, and with the organization's actual practices.</li> </ul>
<input type="checkbox"/> Updated your registered agent's name, phone number, and physical addresses with the NC Secretary of State?	<ul style="list-style-type: none"> <li>Any nonprofit incorporated (or authorized as a foreign nonprofit) in North Carolina that has changed its principal office address, registered office address, or registered agent.</li> <li><b>Note:</b> If your nonprofit is registered as a foreign corporation in other states, you may need to file annual reports in those states. Currently, North Carolina is one of the few states that does not require nonprofit corporations to file annual reports. Legislation was introduced in 2017 that would require nonprofits to file simple, online, no-fee annual reports, beginning in 2020. The General Assembly could consider similar legislation in 2019. If this legislation is enacted, the Center will provide more information to help nonprofits comply with any new filing requirements.</li> </ul>	<ul style="list-style-type: none"> <li>File a Change of Registered Office/Agent or Change of Office Address form at any time. To get the form or check what is on file now, contact the NC Secretary of State, <a href="http://www.sosnc.gov/divisions/business_registration">www.sosnc.gov/divisions/business_registration</a>.</li> </ul>
<input type="checkbox"/> Made sure that your board members understand their fiduciary duties?	<ul style="list-style-type: none"> <li>All nonprofits.</li> <li>Every nonprofit board member is a fiduciary of the organization and has duties of care, loyalty, and obedience.</li> </ul>	<ul style="list-style-type: none"> <li>Part 3 of the North Carolina Center for Nonprofits' <i>Guidebook for Boards of Directors of North Carolina Nonprofits</i> explains the duties and liabilities of board members (free for members at <a href="http://www.ncnonprofits.org/resources/guidebook-boards-directors-north-carolina-nonprofits">www.ncnonprofits.org/resources/guidebook-boards-directors-north-carolina-nonprofits</a>). Share it with your board.</li> </ul>
<input type="checkbox"/> Filed IRS Form 1023 to apply for federal corporate tax exemption and made it available to the public?	<ul style="list-style-type: none"> <li>All nonprofits with gross receipts of \$5,000 or more that want to receive tax-deductible grants or contributions.</li> <li>Churches, their integrated auxiliaries, and conventions or associations of churches do not have to apply. See IRS Publication 1828 (<a href="http://www.irs.gov/pub/irs-pdf/p1828.pdf">www.irs.gov/pub/irs-pdf/p1828.pdf</a>) for more.</li> <li>Many organizations with annual gross receipts of \$50,000 or less and total assets of \$250,000 or less may file the online Form 1023-EZ.</li> </ul>	<ul style="list-style-type: none"> <li>Make your form available for review by anyone who requests it.</li> <li>Download the form at <a href="http://www.irs.gov/pub/irs-pdf/f1023.pdf">www.irs.gov/pub/irs-pdf/f1023.pdf</a> and instructions at <a href="http://www.irs.gov/pub/irs-pdf/i1023.pdf">www.irs.gov/pub/irs-pdf/i1023.pdf</a>.</li> <li>Download Form 1023-EZ at <a href="http://www.irs.gov/pub/irs-pdf/f1023ez.pdf">www.irs.gov/pub/irs-pdf/f1023ez.pdf</a> and instructions at <a href="http://www.irs.gov/pub/irs-pdf/i1023ez.pdf">www.irs.gov/pub/irs-pdf/i1023ez.pdf</a>. The form must be filed electronically at <a href="http://www.pay.gov">www.pay.gov</a>.</li> <li>File within 27 months of incorporation for retroactive recognition of tax exemption.</li> </ul>
<input type="checkbox"/> Filed Form 990, 990-EZ, or 990-N (e-Postcard) and made your forms for the past three years publicly available?	<ul style="list-style-type: none"> <li>Nonprofits with \$50,000 or less in annual gross receipts must file a Form 990-N (e-Postcard). Very small nonprofits with budgets under \$5,000 do need to file, even if they are not required to file Form 1023.</li> <li>Nonprofits with annual gross receipts of more than \$50,000 or with an average of more than \$50,000 over the past three years must file a 990 or 990-EZ.</li> </ul>	<ul style="list-style-type: none"> <li>File the form each year by the 15<sup>th</sup> day of the 5<sup>th</sup> month after your fiscal year ends (e.g., Nov. 15 if your year ends June 30).</li> <li>Large nonprofits (over \$10 million in assets) and private foundations must file electronically if you file at least 250 tax returns per year. Congress is considering legislation requiring all tax-exempt nonprofits to file their 990s electronically, but would have a two-year hardship delay for small nonprofits with annual budgets below \$200,000 and less than \$500,000 in assets.</li> </ul>

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<p><i>continued</i></p> <p>Filed Form 990, 990-EZ, or 990-N (e-Postcard) and made your forms for the past three years publicly available?</p>	<ul style="list-style-type: none"> <li>• Nonprofits with annual gross receipts under \$200,000 and total assets under \$500,000 can file Form 990-EZ.</li> <li>• All supporting or controlling organizations must file Form 990 or 990-EZ.</li> <li>• <b>Nonprofits that fail to file their 990, 990-EZ, or 990-N for three consecutive years will automatically lose their tax-exempt status.</b></li> <li>• Churches, their integrated auxiliaries, and conventions or associations of churches don't have to file.</li> </ul>	<ul style="list-style-type: none"> <li>• Get forms at <a href="http://www.irs.gov/charities-non-profits/current-form-990-series-forms-and-instructions">www.irs.gov/charities-non-profits/current-form-990-series-forms-and-instructions</a> and <a href="http://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard">www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard</a>.</li> <li>• You must make your forms available for review by anyone who requests them. You must provide immediately for in-person requests or within 30 days for written requests. You may charge a reasonable copying fee and postage, if any. Alternately, post your three most recent forms on your website or GuideStar.</li> <li>• For what to file, see <a href="http://www.irs.gov/charities-non-profits/form-990-series-which-forms-do-exempt-organizations-file-filing-phase-in">www.irs.gov/charities-non-profits/form-990-series-which-forms-do-exempt-organizations-file-filing-phase-in</a>.</li> <li>• Ask the IRS (877-829-5500) or your CPA for details.</li> <li>• State law now requires nonprofits that receive \$5,000 or more in federal, state, or local grants or loans to make their Forms 990, 990-EZ, or 990-N available to the public. Comply by posting it on your website or GuideStar. These nonprofits must also give anyone who asks a basic statement about the amount of public funds received and how they were used.</li> </ul>
<p><input type="checkbox"/> <b>Adopted and adhered to policies on conflicts of interest, gift acceptance, Form 990 review, whistleblower protection, and document retention and destruction?</b></p>	<ul style="list-style-type: none"> <li>• Most nonprofits.</li> <li>• On Part VI of Form 990, nonprofits may be required to indicate whether they have these policies in place.</li> <li>• On Part VI of Form 990, nonprofits are also asked whether officers, directors, trustees, and key employees are required to disclose annually interests that could give rise to conflicts.</li> </ul>	<ul style="list-style-type: none"> <li>• See the Center's website for sample policies on conflicts of interest (<a href="http://www.ncnonprofits.org/resources/sample-conflict-interest-policy">www.ncnonprofits.org/resources/sample-conflict-interest-policy</a>), gift acceptance (<a href="http://www.ncnonprofits.org/resources/gift-acceptance-policies">www.ncnonprofits.org/resources/gift-acceptance-policies</a>), whistleblower protection (<a href="http://www.ncnonprofits.org/resources/sample-whistleblower-policy">www.ncnonprofits.org/resources/sample-whistleblower-policy</a>), and document retention and destruction (<a href="http://www.ncnonprofits.org/resources/document-retention-and-destruction-policy">www.ncnonprofits.org/resources/document-retention-and-destruction-policy</a>).</li> </ul>
<p><input type="checkbox"/> <b>Used comparability data to determine executive compensation?</b></p>	<ul style="list-style-type: none"> <li>• Nonprofits with paid employees.</li> <li>• On Form 990, nonprofits are required to indicate whether they used comparability data to determine salaries and benefits.</li> </ul>	<ul style="list-style-type: none"> <li>• The Center will release a new report on salaries and benefits in NC nonprofits this fall.</li> </ul>
<p><input type="checkbox"/> <b>Reported and paid tax on Unrelated Business Income (UBIT) and made your Form 990-T for the past three years publicly available?</b></p>	<ul style="list-style-type: none"> <li>• Any nonprofit with unrelated business income of \$1,000 or more.</li> <li>• Effective January 1, 2018, tax-exempt nonprofits are also required to pay UBIT on the expenses they incur to pay for employees' parking or mass transit expenses. Note that nonprofits are not required to pay North Carolina corporate income tax on these parking or transportation expenses.</li> <li>• See IRS Publication 598, Tax on Unrelated Business Income of Exempt Organizations (<a href="http://www.irs.gov/pub/irs-pdf/p598.pdf">www.irs.gov/pub/irs-pdf/p598.pdf</a>). Ask the IRS (877-829-5500, <a href="http://www.irs.gov/charities-non-profits/unrelated-business-income-defined">www.irs.gov/charities-non-profits/unrelated-business-income-defined</a>) or your CPA for details.</li> </ul>	<ul style="list-style-type: none"> <li>• File IRS Form 990-T (<a href="http://www.irs.gov/pub/irs-pdf/f990t.pdf">www.irs.gov/pub/irs-pdf/f990t.pdf</a>) each year by the 15<sup>th</sup> day of the 5<sup>th</sup> month after your fiscal year ends (e.g., Nov. 15 if your year ends June 30).</li> <li>• File Form CD-405 with the NC Department of Revenue by the 15<sup>th</sup> day of the 5<sup>th</sup> month after your fiscal year ends and pay any applicable state corporate income tax.</li> <li>• The Center and other nonprofits have asked the IRS to delay implementation of the new UBIT on parking and transportation benefits until the IRS issues clear guidance addressing several unanswered questions about this new tax.</li> <li>• See <a href="http://www.ncnonprofits.org/content/new-tax-transportation-and-parking-benefits-problematic-nonprofits">www.ncnonprofits.org/content/new-tax-transportation-and-parking-benefits-problematic-nonprofits</a>.</li> </ul>
<p><input type="checkbox"/> <b>Stayed nonpartisan?</b></p>	<ul style="list-style-type: none"> <li>• Under federal tax law, all 501(c)(3) nonprofits are prohibited from supporting or opposing candidates for office or political parties. This means that nonprofits can't endorse candidates, contribute money in partisan elections, or coordinate activities with political campaigns.</li> <li>• <b>Note: Despite media coverage about efforts by Congress and the President to repeal or weaken the so-called Johnson Amendment, the law on nonprofit nonpartisanship has not changed this year. Regardless of potential changes to the law – or changes that prevent the IRS from enforcing it – the best practice for all 501(c)(3) nonprofits is to steer clear of partisan politics. The Center will provide nonprofits with any information about changes to the law regarding nonprofit nonpartisanship.</b></li> </ul>	<ul style="list-style-type: none"> <li>• Be certain your staff and board understand that they may not suggest or imply that they are speaking on behalf of your nonprofit when they engage in personal political activities.</li> <li>• Nonprofits can (and should) engage in a wide range of nonpartisan election-related activities, including voter registration, voter education, and get-out-the-vote efforts (<a href="http://www.nonprofitvote.org">www.nonprofitvote.org</a>).</li> <li>• For more on what nonprofits can and can't do during an election year, see <a href="https://bit.ly/2vTCJPW">https://bit.ly/2vTCJPW</a>.</li> <li>• For more on the nonpartisanship requirement and why it matters for charitable nonprofits, see <a href="http://www.ncnonprofits.org/public-policy/why-weakening-johnson-amendment-would-be-devastating-nonprofits">www.ncnonprofits.org/public-policy/why-weakening-johnson-amendment-would-be-devastating-nonprofits</a>.</li> </ul>

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<input type="checkbox"/> Elected 501(h) status to have clearer and more generous limits on your lobbying than if you stay with the default option of “insubstantial part test”?	<ul style="list-style-type: none"> <li>Any charitable nonprofit (other than a house of worship and integrated auxiliaries of houses of worship) that lobbies can choose to elect 501(h) status. Under 501(h), nonprofits can use for lobbying up to 20% of the first \$500,000 of their exempt purpose expenditures. For larger organizations, this limit increases on a sliding scale up to \$1 million.</li> <li>Nonprofits that do not take the 501(h) election must be prepared to demonstrate that lobbying is an “insubstantial” part of their activities.</li> </ul>	<ul style="list-style-type: none"> <li>Complete the simple one-page IRS Form 5768 (<a href="http://www.irs.gov/pub/irs-pdf/f5768.pdf">www.irs.gov/pub/irs-pdf/f5768.pdf</a>) once; the election will apply for the current and subsequent tax years. See <a href="http://www.councilofnonprofits.org/nonprofit-advocacy/501h-election">www.councilofnonprofits.org/nonprofit-advocacy/501h-election</a>.</li> <li>Note that advocacy for or against ballot measures, such as state constitutional amendments and bond initiatives (<a href="http://www.ncnonprofits.org/content/501c3-advocacy-state-constitutional-amendments">www.ncnonprofits.org/content/501c3-advocacy-state-constitutional-amendments</a>), is direct lobbying. A nonprofit’s expenditures advocating for or against ballot measures are included as direct lobbying expenses for the 501(h) expenditure test. For a nonprofit not taking the 501(h) election, ballot measure advocacy activities are included in the “insubstantial” part determination.</li> </ul>
<input type="checkbox"/> Provided donors with letters of acknowledgment for “quid pro quo” gifts of \$75 or more and all gifts of \$250 or more?	<ul style="list-style-type: none"> <li>Every nonprofit that provides goods or services to donors in exchange for contributions above \$75. Your nonprofit must disclose the value of the goods or services received by the donor. Only the remaining amount is tax-deductible.</li> <li>The US Tax Court has denied a donor’s significant tax deduction in part because the nonprofit didn’t follow these rules!</li> </ul>	<ul style="list-style-type: none"> <li>See IRS Publication 1771 (<a href="http://www.irs.gov/pub/irs-pdf/p1771.pdf">www.irs.gov/pub/irs-pdf/p1771.pdf</a>) for gift acknowledgement guidelines.</li> <li>Donors are responsible for obtaining written gift acknowledgments for contributions of \$250 or more, but it is a good practice for nonprofits to send timely acknowledgements for <i>all</i> contributions.</li> </ul>
<input type="checkbox"/> Applied for a state charitable solicitation license, renewed it every year, and included the required disclosure statement on your fundraising materials and donor acknowledgement letters?	<ul style="list-style-type: none"> <li>Most nonprofits must contact the Secretary of State each year. Generally, any nonprofit that receives \$25,000 or more a year in private grants and contributions is required to have a charitable solicitation license.</li> <li>If you receive less than \$25,000, you may be eligible to apply annually to become exempt from requiring the license. Government grants and contracts, fees for services, and other earned or investment revenues are not included.</li> <li>Nonprofit churches, hospitals, YMCAs, YWCAs, and schools are generally exempt. For other statutory exemptions to this requirement, contact the Charitable Solicitation Licensing Section (<a href="http://www.sosnc.gov/csl">www.sosnc.gov/csl</a>) or see <a href="http://www.ncnonprofits.org/resources/charitable-solicitation-faqs">www.ncnonprofits.org/resources/charitable-solicitation-faqs</a>.</li> </ul>	<ul style="list-style-type: none"> <li>Apply at any time, and renew annually by the 15<sup>th</sup> day of the 5<sup>th</sup> month after your fiscal year ends. Contact the Charitable Solicitation Licensing Section, NC Secretary of State, <a href="http://www.sosnc.gov/csl">www.sosnc.gov/csl</a>. <b>Online filing is available, but not required.</b></li> <li>A Unified Registration Statement is acceptable if you also complete the NC Addendum (<a href="http://www.multistatefiling.org">www.multistatefiling.org</a>).</li> <li>Check requirements if you solicit funds in other states. For more, see <a href="http://www.councilofnonprofits.org/tools-resources/charitable-solicitation-registration">www.councilofnonprofits.org/tools-resources/charitable-solicitation-registration</a>. The National Association of State Charity Officials (NASCO) is working on developing a single portal that may simplify multi-state filing for nonprofits that solicit funds in more than one state.</li> <li>Conspicuously display (in at least 9-point bold type) this disclosure statement on every printed solicitation, written confirmation, receipt, and contribution reminder: <b>Financial information about this organization and a copy of its license are available from the Charitable Solicitation Licensing Section at 888-830-4989. The license is not an endorsement by the State.</b></li> </ul>
<input type="checkbox"/> Confirmed that any contract fundraisers or fundraising consultants are licensed?	<ul style="list-style-type: none"> <li>Any nonprofit that uses a contractor to solicit contributions or to advise or assist in fundraising-related activities. <b>Note: All contracts with solicitors and fundraising consultants are filed with the NC Secretary of State and available to the public.</b></li> </ul>	<ul style="list-style-type: none"> <li>Check the registry of licensed solicitors and fundraising consultants at <a href="http://www.sosnc.gov/search/index/csl">www.sosnc.gov/search/index/csl</a>.</li> <li>Have at least two officials of your nonprofit (including at least one board member) sign all contracts with solicitors and fundraising consultants.</li> </ul>
<input type="checkbox"/> Requested state corporate income and franchise tax exemption?	<ul style="list-style-type: none"> <li>To be exempt from corporate taxes, all North Carolina nonprofits must request these state tax exemptions from the NC Department of Revenue.</li> </ul>	<ul style="list-style-type: none"> <li>Send a request to the NC Department of Revenue with a brief description of your charitable purposes and dissolution provision.</li> <li>Enclose copies of your articles of incorporation, certified copy of bylaws, and IRS determination letter.</li> <li>Sent the request to NC Department of Revenue, Corporate Income and Franchise Tax Department, PO Box 871, Raleigh, NC 27602.</li> </ul>
<input type="checkbox"/> Applied for exemption from local property taxes?  <i>continued</i>	<ul style="list-style-type: none"> <li>Most nonprofits owning real or personal property (buildings, land, or property such as office equipment) used wholly and exclusively for tax-exempt purposes.</li> </ul>	<ul style="list-style-type: none"> <li>Apply with your local county tax assessor. Call your local county tax office for details. You may appeal the local board’s decision to the State Property Tax Commission.</li> <li>Notify the county assessor of any change in the use of your nonprofit’s property.</li> </ul>

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<p><i>continued</i></p> <p>Applied for exemption from local property taxes?</p>		<ul style="list-style-type: none"> <li>Let the Center know if your request for property tax exemption is unreasonably denied by your county assessor.</li> </ul>
<p><input type="checkbox"/> Applied for refunds of state and local sales and use taxes that you have paid?</p>	<ul style="list-style-type: none"> <li>Any qualifying nonprofit that wants refunds of sales tax it pays on purchases in NC.</li> <li>Qualifying nonprofits include all 501(c)(3)s except those properly classified with NTEE codes of Community Improvement and Capacity Building, Public and Societal Benefit, or Mutual and Membership Benefit organizations (<a href="http://ncscs.urban.org/classification/NTEE.cfm">http://ncscs.urban.org/classification/NTEE.cfm</a>).</li> <li><b>Now applies to purchases made directly by the organization and through staff reimbursement (other than reimbursement for travel expenses).</b></li> <li><b>Refunds are capped at \$45 million per year (total of state and local sales taxes paid) per nonprofit, starting July 1, 2014.</b></li> </ul>	<ul style="list-style-type: none"> <li>Apply for an Account ID number from the Central Examination Division, NC Department of Revenue. Details at <a href="https://files.nc.gov/ncdor/documents/faq/e585_faq.pdf">https://files.nc.gov/ncdor/documents/faq/e585_faq.pdf</a>.</li> <li>File Form E-585 semi-annually for refunds: by Oct. 15 for taxes paid Jan.-June; by April 15 for taxes paid July-Dec.</li> <li>If the Internal Revenue Service misclassifies your nonprofit's NTEE code, you may appeal and request refunds from the NC Department of Revenue based on the proper classification.</li> </ul>
<p><input type="checkbox"/> Collected sales tax on items you sell and remitted these funds to the State?</p>	<ul style="list-style-type: none"> <li>Any nonprofit selling retail items like books, videos, t-shirts, concessions, webinars, and e-publications.</li> <li>Sales are exempt if (a) conducted only once a year to raise funds and if all products are delivered within 60 days after the solicitation; or (b) proceeds are given to the State of NC or a state agency (e.g., public schools). <b>Note: This exemption doesn't apply to sales tax on admission charges.</b></li> <li>A nonprofit charging admission for entertainment activities, including live performances or live events for the purpose of entertainment, motion pictures, museums, cultural sites, gardens, exhibits, shows, and similar attractions. Educational, recreational, and many fundraising events done by nonprofits are not subject to this tax.</li> <li>Admission fees are exempt if they are tax-deductible contributions, including any tax-deductible portion of membership fees that would otherwise be subject to the tax.</li> <li>Admission fees are also exempt if they are: (a) events sponsored by elementary or secondary schools; or (b) sponsored by "volunteer only" nonprofits that do not pay salary or other compensation to individuals and that do not compensate anyone for performing in, placing in, or producing the event.</li> </ul>	<ul style="list-style-type: none"> <li>Register with the NC Department of Revenue for a Certificate of Registration.</li> <li>File Form E-500 and pay the tax quarterly or monthly, depending on your volume of sales.</li> <li>If your nonprofit has collected taxes in more than one county, also file E-536 (Schedule of County Sales and Use Taxes). The county rate you charge is based on the delivery location. The tax rate differs by county (<a href="http://www.ncdor.gov/taxes/sales-and-use-tax">www.ncdor.gov/taxes/sales-and-use-tax</a>).</li> </ul>
<p><input type="checkbox"/> Properly classified all employees and independent contractors?</p> <p><i>continued</i></p>	<ul style="list-style-type: none"> <li>Any nonprofit with paid staff, consultants, or contractors. The US Department of Labor (DOL), IRS, and NC Department of Revenue can impose penalties for improper classification of consultants and contractors who are really employees.</li> </ul>	<ul style="list-style-type: none"> <li>See IRS Publication 1779 (<a href="http://www.irs.gov/pub/irs-pdf/p1779.pdf">www.irs.gov/pub/irs-pdf/p1779.pdf</a>) to find specific criteria for classifying employees vs. contractors.</li> <li><b>Note: In June 2017, DOL withdrew an Administrator's Interpretation from 2015 that described the standards for assessing whether a worker is an employee or an independent contractor. However, DOL notes that: "Removal of the administrator interpretation does not change the legal responsibilities of employers under the Fair Labor Standards Act, as reflected in the Department's long-standing regulations and case law. The Department will continue to fully and fairly enforce all laws within its jurisdiction including the Fair Labor Standards Act." The DOL fact sheet describing factors employers should consider in assessing whether workers are employees or independent contractors is available at <a href="http://www.dol.gov/whd/regs/compliance/whdfs13.pdf">www.dol.gov/whd/regs/compliance/whdfs13.pdf</a>.</b></li> <li><b>Note: On July 13, 2018, DOL issued its first Field Assistance Bulletin (<a href="http://www.dol.gov/whd/FieldBulletins/fab2018_4.htm">www.dol.gov/whd/FieldBulletins/fab2018_4.htm</a>) providing guidance on independent</b></li> </ul>

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<p><i>continued</i></p> <p>Properly classified all employees and independent contractors?</p>		<p><b>contractor status in a particular industry (home care workers) that indicates DOL will look at a “totality of circumstances” balancing test in determining whether workers are employees or independent contractors.</b></p>
<p><input type="checkbox"/> Properly classified all employees as either exempt or non-exempt from the Fair Labor Standards Act and paid overtime where appropriate?</p>	<ul style="list-style-type: none"> <li>All nonprofits and foundations with paid employees.</li> <li>Under the Fair Labor Standards Act (FLSA) and the NC Wage and Hour Act, <b>you must provide overtime pay to all workers unless they are specifically exempted from coverage.</b> See p. 20-22 of the Center’s <i>Employment Law for North Carolina Nonprofits</i>, free for members at <a href="http://www.ncnonprofits.org/sites/default/files/resource_attachments/employment_law.pdf">www.ncnonprofits.org/sites/default/files/resource_attachments/employment_law.pdf</a>.</li> <li><b>Note: In late 2016, a federal court stopped the US DOL regulations that would have significantly increased the salary threshold for exempt employees. Had these regulations taken effect, many more nonprofit employees would have been eligible for overtime pay when they worked more than 40 hours in a work week. DOL is scheduled to release new regulations to increase the salary threshold in early 2019. The Center will keep nonprofits posted on developments related to future overtime rules.</b></li> </ul>	<ul style="list-style-type: none"> <li>Employees are exempt from the overtime pay requirements of FLSA if they are paid at least the minimum salary level, are paid on a salary basis, and exercise job duties that are classified as exempt (<i>i.e.</i> executive, administrative, or professional). The minimum salary threshold is currently \$23,660 per year (\$455 per week). Highly compensated employees with salaries of at least \$100,000 per year are also exempt from overtime pay requirements if they regularly perform at least some of the job duties of executive, administrative, or professional employees.</li> <li>Change an employee’s status any time during the year.</li> <li>Pay non-exempt staff 1.5 times their usual hourly pay rate for any time they work more than 40 hours in one work week.</li> </ul>
<p><input type="checkbox"/> Followed all state and federal employment laws including: filing I-9, W-2, and W-4 forms; withholding tax; paying employment taxes; and putting up posters?</p>	<ul style="list-style-type: none"> <li>Any nonprofit with paid employees, whether part-time or full-time.</li> <li>Your nonprofit must pay Social Security and Medicare taxes for <i>all</i> employees.</li> <li>State law requires nonprofits with 25 or more employees to use the federal E-Verify system to check the immigration status of new employees.</li> </ul>	<ul style="list-style-type: none"> <li>Contact the US Department of Labor, <a href="http://www.dol.gov">www.dol.gov</a>, or NC Department of Labor, <a href="http://www.labor.nc.gov">www.labor.nc.gov</a>.</li> <li>Download free employment posters at <a href="http://www.labor.nc.gov/safety-and-health/publications">www.labor.nc.gov/safety-and-health/publications</a>. You do not need to buy these posters!</li> <li>See the Center’s <i>Employment Law for North Carolina Nonprofits</i>, free for members at <a href="https://bit.ly/2OsVYxL">https://bit.ly/2OsVYxL</a>.</li> <li>For more on withholding and paying federal employment taxes, see <a href="http://www.irs.gov/charities-non-profits/employment-taxes-for-exempt-organizations">www.irs.gov/charities-non-profits/employment-taxes-for-exempt-organizations</a>.</li> <li>Effective September 18, 2017, employers must use a new form for I-9 filings. For more information, see <a href="http://www.uscis.gov/i-9-central/handbook-employers-m-274">www.uscis.gov/i-9-central/handbook-employers-m-274</a>.</li> </ul>
<p><input type="checkbox"/> Applied for an Unemployment Tax Number and paid State Unemployment Tax?</p>	<ul style="list-style-type: none"> <li>Nonprofits generally pay state unemployment insurance (UI) taxes.</li> <li>Nonprofits that have employed four or more people for any part of 20 different weeks in the current or previous calendar year.</li> <li>Nonprofits have the option of electing to reimburse the state for unemployment claims instead of paying UI taxes. Nonprofits electing to reimburse must maintain 1% of their total payroll in an escrow account with the NC Department of Commerce.</li> <li>Changes to State Unemployment Tax laws went into effect June 30, 2013. See <a href="https://des.nc.gov/Portal/Common/Content/pdf/HB4/Memo-on-HB4-Changes-to-UI.pdf">https://des.nc.gov/Portal/Common/Content/pdf/HB4/Memo-on-HB4-Changes-to-UI.pdf</a>.</li> </ul>	<ul style="list-style-type: none"> <li>Apply before hiring employees.</li> <li>Contact the Division of Employment Security (DES) of the NC Department of Commerce, <a href="http://des.nc.gov">http://des.nc.gov</a>.</li> <li><b>The Center’s unemployment tax savings program for members has already saved nonprofits almost \$9 million.</b> For details, see First Nonprofit Group at <a href="http://www.ncnonprofits.org/services/money-saving-partnerships">www.ncnonprofits.org/services/money-saving-partnerships</a> and contact Joe Poretto (312-239-8388, <a href="mailto:jporetto@firstnonprofit.com">jporetto@firstnonprofit.com</a>).</li> <li>Starting in 2016, DES is charging benefits paid to employers’ unemployment insurance accounts quarterly instead of annually. For nonprofits that pay UI tax, benefits will be applied to accounts quarterly instead of annually, but the UI tax rate will still be calculated annually. For nonprofits that elect to reimburse rather than pay UI taxes, reconciliation of accounts will still be done annually, but DES will send a quarterly list of charges to help nonprofits budget better for UI charges on their accounts.</li> <li>Effective April 27, 2017, nonprofits that elect to reimburse the state for unemployment claims may apply for a refund if they erroneously remit more than the required 1% of payroll to the state.</li> <li>Because unemployment benefits are lower in North Carolina than in other states, electing to reimburse may be a more cost-effective approach for many North Carolina nonprofits.</li> </ul>

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<input type="checkbox"/> Obtained workers' compensation insurance?	<ul style="list-style-type: none"> <li>Any incorporated nonprofit with three or more employees and/or corporate officers. <b>Effective October 22, 2015, nonprofits are no longer required to provide workers' compensation for uncompensated board officers.</b></li> </ul>	<ul style="list-style-type: none"> <li>Contact the NC Industrial Commission, 800-688-8349, <a href="http://www.ic.nc.gov">www.ic.nc.gov</a>.</li> <li>For more, see <a href="http://www.ncnonprofits.org/public-policy/workers-compensation-good-nonprofit-employees-and-employers">www.ncnonprofits.org/public-policy/workers-compensation-good-nonprofit-employees-and-employers</a>.</li> </ul>
<input type="checkbox"/> Properly compensated your paid interns?	<ul style="list-style-type: none"> <li>Charitable nonprofits can use volunteer interns as long as they are unpaid and not provided a stipend.</li> <li>If a 501(c)(3) nonprofit chooses to pay its interns, these interns may be classified as employees who are subject to minimum wage and overtime pay requirements under the Fair Labor Standards Act. If a nonprofit pays an intern a stipend lower than the minimum wage of \$7.25 per hour, it must be certain that the internship satisfies the "economic realities" test that the relationship is not employment.</li> </ul>	<ul style="list-style-type: none"> <li>In January 2018, the US Department of Labor released guidance with a seven-factor test to determine whether paid interns are classified as employees who are subject to the minimum wage requirements of the Fair Labor Standards Act (<a href="http://www.dol.gov/whd/regs/compliance/whdfs71.pdf">www.dol.gov/whd/regs/compliance/whdfs71.pdf</a>).</li> <li>See the National Council of Nonprofits' resource on nonprofit interns at <a href="http://www.councilofnonprofits.org/tools-resources/interns-employee-or-volunteer">www.councilofnonprofits.org/tools-resources/interns-employee-or-volunteer</a>.</li> </ul>
<input type="checkbox"/> Created a plan document for your employee retirement plan and electronically filed a Form 5500?	<ul style="list-style-type: none"> <li>Nonprofits with 403(b) plans and other retirement plans subject to the Employment Retirement Income Security Act (ERISA).</li> </ul>	<ul style="list-style-type: none"> <li>You must file Form 5500 electronically. It is due seven months after your plan's year-end date. See <a href="http://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500">www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500</a>.</li> <li>Those at your nonprofit responsible for signing your Form 5500 need to register on the Department of Labor's EFAST2 website, <a href="http://www.efast.dol.gov">www.efast.dol.gov</a>.</li> <li>If your nonprofit has a 403(b) plan, you must have a written plan document. See <a href="http://www.irs.gov/retirement-plans/irc-403b-tax-sheltered-annuity-plans">www.irs.gov/retirement-plans/irc-403b-tax-sheltered-annuity-plans</a>.</li> </ul>
<input type="checkbox"/> Followed state laws for raffles and bingo events?	<ul style="list-style-type: none"> <li>Any nonprofit that offers a raffle or bingo game as a fundraising event.</li> </ul>	<ul style="list-style-type: none"> <li>Nonprofits may conduct up to four raffles per year as fundraising events. The maximum cash prize for any raffle is \$250,000, and nonprofits may raffle real property valued at up to \$500,000. At least 90% of the net proceeds of the raffle must be used for a nonprofit's mission-related purposes, and none of the net proceeds can be used to pay a person to conduct a raffle or to rent a space where the raffle is conducted. Nonprofits are not required to have a license to conduct raffles. See <a href="http://www.ncnonprofits.org/resources/raffles-101">www.ncnonprofits.org/resources/raffles-101</a>.</li> <li><b>Effective October 1, 2018, nonprofits may also offer alcohol in the manufacturer's original closed container as a prize for a raffle or auction, as long as the nonprofit has obtained a special one-time alcohol permit for the event</b></li> <li><b>Note: In North Carolina, it is currently illegal for nonprofits to offer casino nights or game nights as fundraising events. The law prohibiting these types of fundraising events are not consistently enforced in many parts of the state. In 2017, Governor Roy Cooper vetoed legislation that would have allowed nonprofits to conduct casino nights as fundraisers in all parts of the state east of I-26. The General Assembly could try to pass similar legislation in 2019.</b></li> <li>Nonprofits conducting bingo games are required to get an annual license from the NC Department of Public Safety (<a href="http://www2.ncdps.gov">www2.ncdps.gov</a>). The annual fee for a nonprofit bingo license is \$200.</li> <li>Nonprofits must file IRS Form W-2G on raffle prizes of \$600 or more where the payout is at least 300 times the amount of the wager, and must withhold 25% taxes on raffle prizes of \$5,000 or more. Raffle tickets are not deductible as charitable contributions. For more, see <a href="http://www.irs.gov/pub/irs-tege/notice_1340.pdf">www.irs.gov/pub/irs-tege/notice_1340.pdf</a>.</li> </ul>

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<p><input type="checkbox"/> Studied current reporting requirements for any funds that your nonprofit receives through the State?</p>	<ul style="list-style-type: none"> <li>Any nonprofit that receives state grant funds or federal grant funds that pass through a state government agency.</li> </ul>	<ul style="list-style-type: none"> <li>Any nonprofit receiving state grants and/or appropriations must provide certification to its granting agency that its state funds were used for the purposes for which they were awarded and must provide an accounting of all state funds it receives, uses, holds, or spends.</li> <li>Any nonprofit receiving \$25,000 or more in state grants and/or appropriations must report to its granting agency on its activities and accomplishments, including reporting on any relevant performance measures.</li> <li>Any nonprofit receiving \$500,000 or more in state grants and/or appropriations must have a single or program-specific audit prepared in accordance with Generally Accepted Governmental Auditing Standards (also known as a Yellow Book Audit).</li> <li><b>Beginning on July 1, 2016, nonprofits receiving state grants and/or appropriations must submit reports directly to their granting agencies, not to the NC Office of State Budget and Management.</b></li> <li><b>Nonprofits receiving appropriations or grants in the state budget for FY2018-19 – including those receiving one-time earmarks – must report the following information to the NC General Assembly and NC Office of State Budget and Management by June 30, 2019:</b> <ol style="list-style-type: none"> <li>A description of how the state funds were used, including outcomes and specific deliverables achieved;</li> <li>The amount of state funds received and spent during the fiscal year;</li> <li>The amount of state funds spent on administrative expenses and on salaries and benefits during the fiscal year; and</li> <li>For each employee, the amount of state funds used to fund her or his annual salary.</li> </ol> </li> <li>Cities and counties may require nonprofits receiving grants or appropriations of \$1,000 or more in any fiscal year to have an audit.</li> <li>The NC State Auditor has the authority to audit any nonprofit receiving \$1,000 or more in state funding in any fiscal year.</li> </ul>
<p><input type="checkbox"/> Followed the federal grant and contract rules under the OMB Uniform Guidance?</p>	<ul style="list-style-type: none"> <li>Nonprofits with federal grants or contracts – or state or local grants or contracts that include federal funds – with effective dates on or after December 26, 2014.</li> </ul>	<ul style="list-style-type: none"> <li>Nonprofits without a federally-approved indirect cost rate can elect to be paid a <i>de minimis</i> rate of 10% of modified total direct costs.</li> <li>Pass-through entities (state and local governments) are required to recognize this <i>de minimis</i> rate of nonprofits' federally-negotiated rates.</li> <li>More costs (e.g. some program administration costs) are treated as direct costs under the OMB Uniform Guidance.</li> <li>The threshold for single audits has been raised to \$750,000.</li> <li>The OMB Uniform Guidance requires the use of consistent, documented procurement processes for purchases made with federal funds.</li> <li>For more information, see <a href="http://www.councilofnonprofits.org/omb-uniform-guidance">www.councilofnonprofits.org/omb-uniform-guidance</a>.</li> </ul>
<p><input type="checkbox"/> Complied with Uniform Prudent Management of Institutional Funds Act (UPMIFA) to invest and spend from endowed and other restricted funds?</p>	<ul style="list-style-type: none"> <li>All nonprofits holding funds with donor-imposed restrictions.</li> <li>These rules do not apply to funds set aside for specific purposes by the board.</li> <li>Restrictions may be released for funds created more than 10 years ago <i>and</i> with total assets less than \$100,000.</li> </ul>	<ul style="list-style-type: none"> <li>Adopt a policy that requires the board to analyze statutory "prudence factors" when investing and spending from endowed and other restricted funds.</li> <li>Retain gift agreements creating endowed and other restricted funds in your permanent records.</li> </ul>

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<p><input type="checkbox"/> Registered with the state as a lobbyist principal or solicitor (organizations) and as a lobbyist (individuals), as well as filed quarterly reports?</p>	<ul style="list-style-type: none"> <li>• Nonprofit employees (but not volunteers) who spend at least 5% of their time lobbying members of the NC General Assembly or NC executive branch officers in any 30-day period must register as lobbyists. Any paid nonprofit contractor who lobbies must register as a lobbyist. Nonprofits compensating lobbyists need to register as “lobbyist principals.”</li> <li>• Nonprofits that are not “lobbyist principals” but that ask members of the general public to engage in lobbying must register as solicitors if they spend at least \$3,000 in any 90-day period on this type of solicitation.</li> </ul>	<ul style="list-style-type: none"> <li>• Lobbyists, principals, and solicitors must register with the NC State Board of Elections and Ethics Enforcement every year (within one day of starting to lobby) and pay a \$250 annual fee (separate fees for lobbyists and principals). Principals must report total compensation paid to lobbyists for actual lobbying and related activities once a year on their final reports. Lobbyists, principals, and solicitors must file notarized quarterly reports of their lobbying and solicitation activities. All forms must be submitted electronically.</li> <li>• Get forms at <a href="https://lobby.ncsbe.gov/lobbying">https://lobby.ncsbe.gov/lobbying</a>. See a summary of NC lobbying laws at <a href="http://www.ncnonprofits.org/resources/summary-north-carolina-lobbying-law">www.ncnonprofits.org/resources/summary-north-carolina-lobbying-law</a>.</li> <li>• <b>Note: In July 2018, lobbying registration and reporting was transferred from the NC Secretary of State to the NC State Board of Elections and Ethics Enforcement.</b></li> </ul>
<p><input type="checkbox"/> Filed for an assumed business name certificate?</p>	<ul style="list-style-type: none"> <li>• Any nonprofit that operates under a name other than the name identified in its articles of incorporation.</li> </ul>	<ul style="list-style-type: none"> <li>• Through November 30, 2017, any nonprofit that operates using a name other than its legal name (e.g., the name in its articles of incorporation) is required to file for an assumed business name certificate with the register of deeds in every county of NC where it conducts business.</li> <li>• Starting December 1, 2017, a nonprofit that operates using a name other than its legal name (e.g., the name in its articles of incorporation) is required to file for an assumed business name certificate with the register of deeds in one NC county where it conducts business. Under a new law passed in 2016, the NC Secretary of State will maintain a statewide database of assumed business names so nonprofits will no longer need to file in more than one county.</li> <li>• All assumed name certificates issued under the current law (Article 14 of Chapter 66 of the NC General Statutes) will expire on December 1, 2022, so nonprofits with existing assumed business name certificates will need to refile these under the new law (Article 14A of Chapter 66 of the NC General Statutes) in one county to continue to have an assumed business name certificate after that date.</li> </ul>
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