



Blue Avocado Presents: Why Nonprofits Need Directors & Officers Insurance (Live Q&A)

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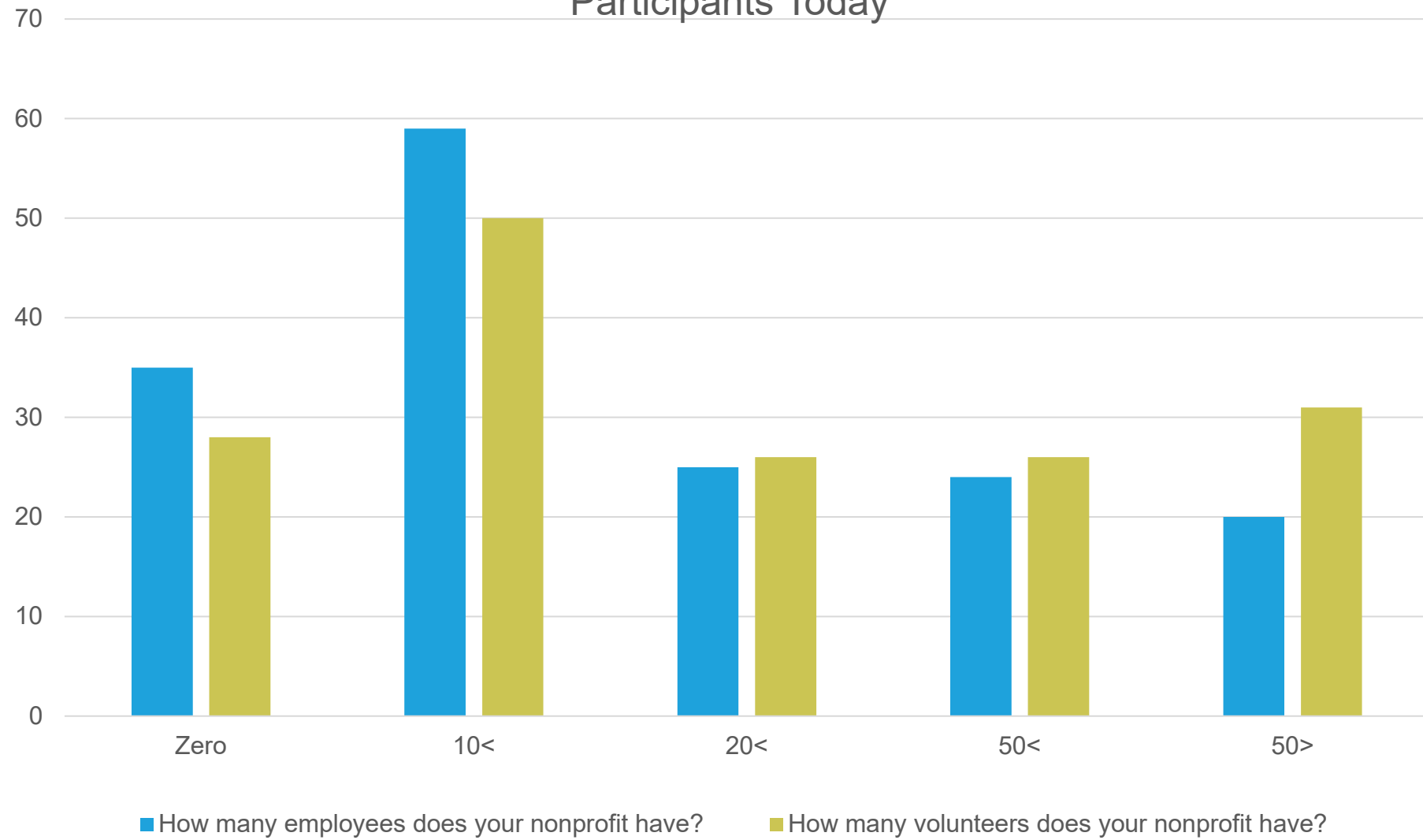


Why Nonprofits Need Directors & Officers Insurance (Live Q&A)

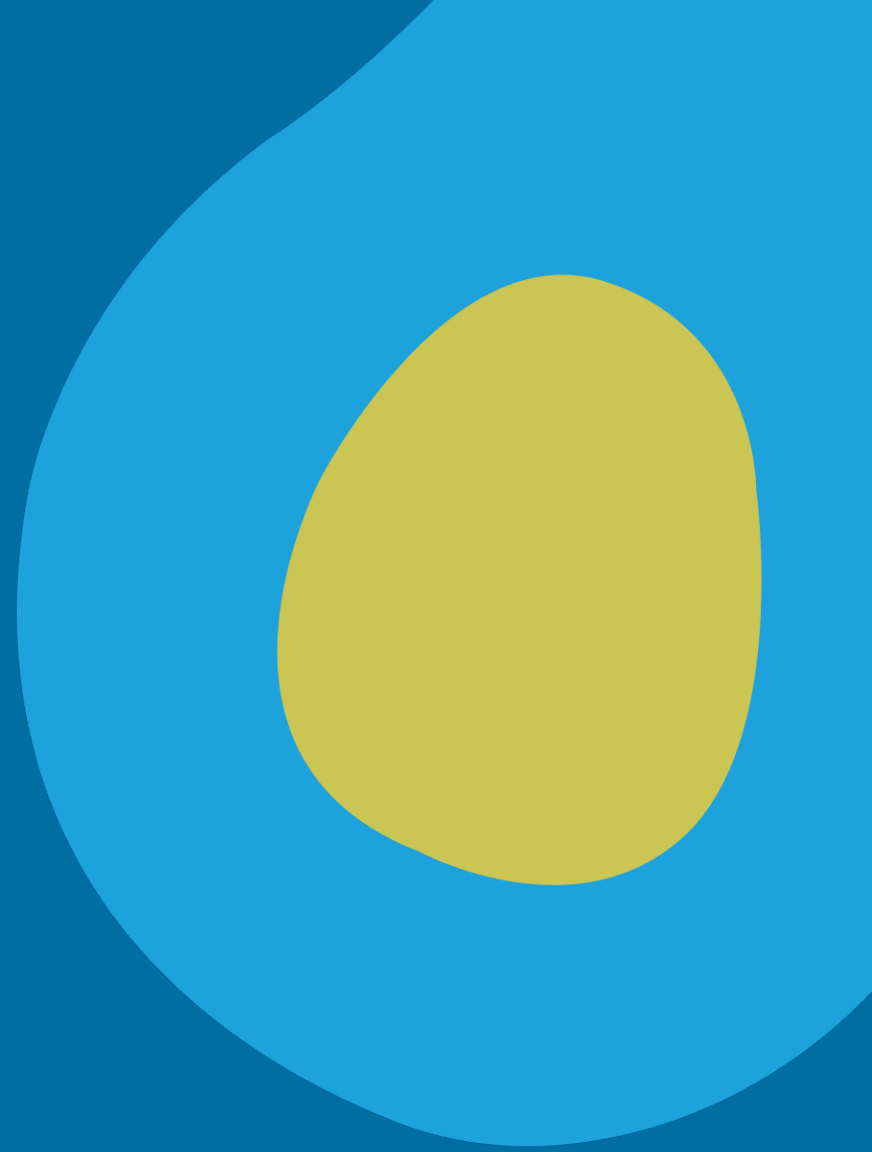
Agenda

- Key coverage components
- Additional coverages to consider
- The difference between D&O and General Liability
- Other safeguards

Participants Today



Key Coverage Components



Key Coverage Components

Side A: Individual Coverage

Protects directors and officers personally when the nonprofit does not indemnify them (for example, cannot legally or insolvency).

Side B: Organization Reimbursement

When the nonprofit indemnifies the directors and officers.

Side C: Entity/Organization Coverage

Covers claims made directly against the organization itself.

Most often employment-related or regulatory claims.

Key Coverage Components

Limits of Liability Core Coverages

Common Limits

Choice of limits are often dependent on organization/board risk tolerance and requirements by funders.

Core Coverages

- Wrongful acts (actual or alleged)
- Errors or omissions (by the board not professional services)
- Misstatements or misleading statements
- Breach of fiduciary duty and oversight
- Failure of oversight
- Misuse or misallocation of funds or authority

Claims can come from donors, beneficiaries, employees, vendors, regulators, stakeholders, etc.

Defense costs are often the largest part of the costs and may be inside the limits or outside, depending on the policy.

A nonprofit enters into an agreement with a local town to provide specific administration of services for an arts program. Several months later, the nonprofit terminates the agreement before its expiration. The town now alleges that the nonprofit breached the agreement.

A nonprofit organization providing community services retained a third-party cleaning company. After a few weeks of working on the site, an employee of the cleaning company claims race discrimination and differential treatment by the employees of the nonprofit.

Claims Considerations

A director of a nonprofit organization made comments about another person in that community. Later on, a demand letter was received on behalf of that individual seeking damages, alleging that the director's comments were false and constituted slander/libel and defamation.

Additional Coverages to Consider

Additional Coverages to Consider

Fiduciary

Employment Practices Liability Insurance (EPLI)

Fiduciary Liability

This coverage protects and defends the board, staff, and trustees of employee welfare plans (retirement, health, etc.).

It can cover allegations of breach of duty, admin errors, and allegations of improper oversight of plan service providers.

This is not to be confused with the fiduciary obligation of board members to the organization.

Employment Practices Liability Insurance (EPLI)

This coverage protects and defends the board and staff for allegations of improper hiring and wrongful acts related to employment.

This can include wrongful termination, discrimination, unfair hiring practices, and harassment.

Additional Coverages to Consider

Defense cost: Inside or outside the limits of liability?

Since the defense cost can be significant, will this erode your ability to pay a claim? Or will it be covered in addition to the claim?

Duty-to-defend policy?

A claim may not fit neatly within the policy. A duty-to-defend form will obligate the carrier to defend you until they can prove the claim is not covered.

Retention/deductible: Does it apply to just a claim, or claim and defense?

If the retention only applies to a claim, you may not incur any cost if you only need defense to prove you are not liable.

Is the retention different for D&O versus EPLI claims?

Some policies have higher retentions for EPLI claims (since they are more frequent). Know what your potential costs are when submitting a claim for consideration.

Claims Considerations

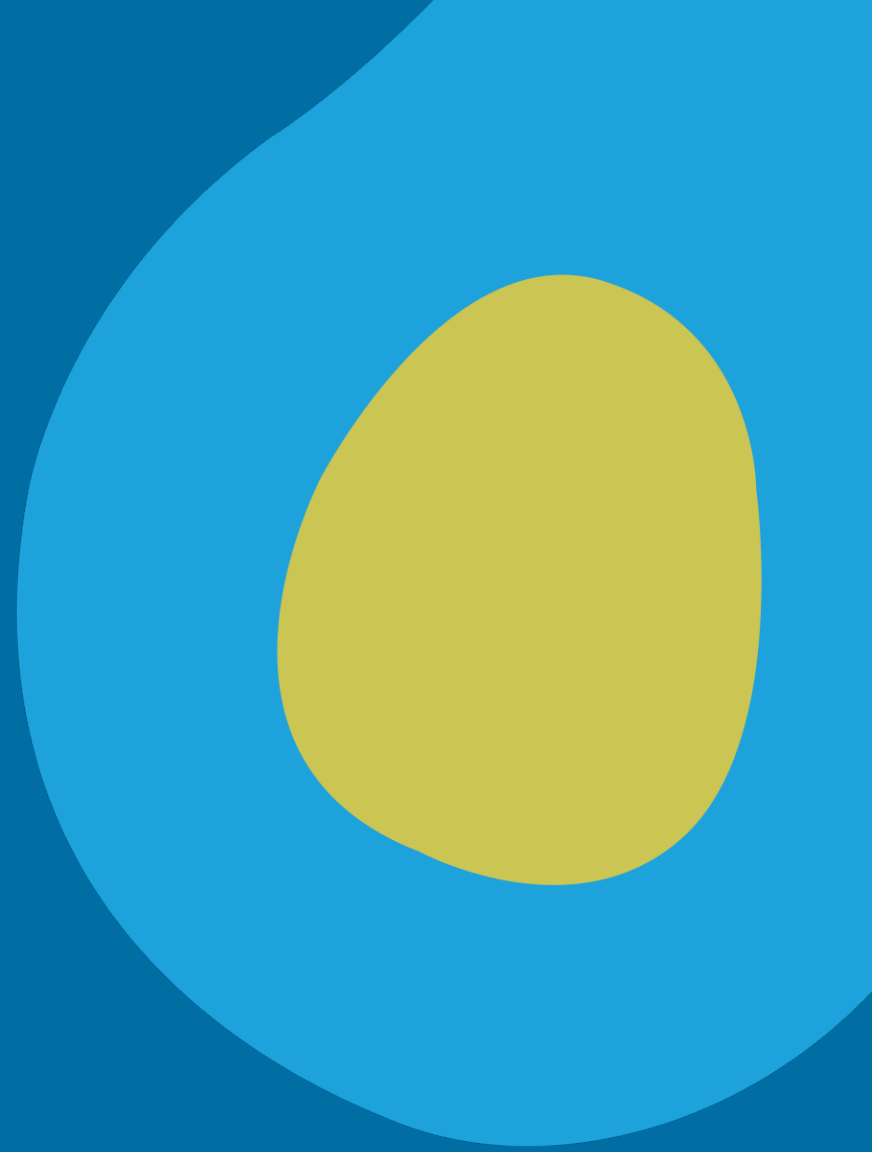
Fiduciary Liability

A board of directors received a demand letter alleging breach of duties, breach of duty of care, financial mismanagement, and not complying with bylaws.

Employment Practices Liability

An employee of a nonprofit, who was an executive director, files a lawsuit against the organization and its board for defamation, discrimination, and wrongful termination.

Understanding the difference between D&O and General Liability



Understanding the Difference Between General Liability and D&O

Common Questions:

“Exactly what is Directors & Officers Liability insurance?”

“What does it cover?”

“How is it different than General Liability insurance?”

“Do I really need to buy both?”

General Liability

Covers claims for bodily injury, property damage, and personal/ advertising injury, where any or all were caused by the nonprofit’s acts or omissions (something the nonprofit did or didn’t do).

Directors & Officers (D&O)

Covers damages for which the nonprofit is liable, which result from bad decisions, errors, or omissions made by the nonprofit’s directors, appointed officers, employees, or volunteers.

Understanding the Difference Between General Liability and D&O

Common Claims Examples

General Liability

- Bodily injury (someone gets hurt)
- Property damage (something gets broken)
- Personal/advertising injury (someone is slandered)

Where any or all were caused by the nonprofit's acts or omissions (something the nonprofit did or didn't do)

Directors & Officers (D&O)

- Wrongful termination
- Unfair hiring practices
- Discrimination
- Sexual harassment

Claims Considerations

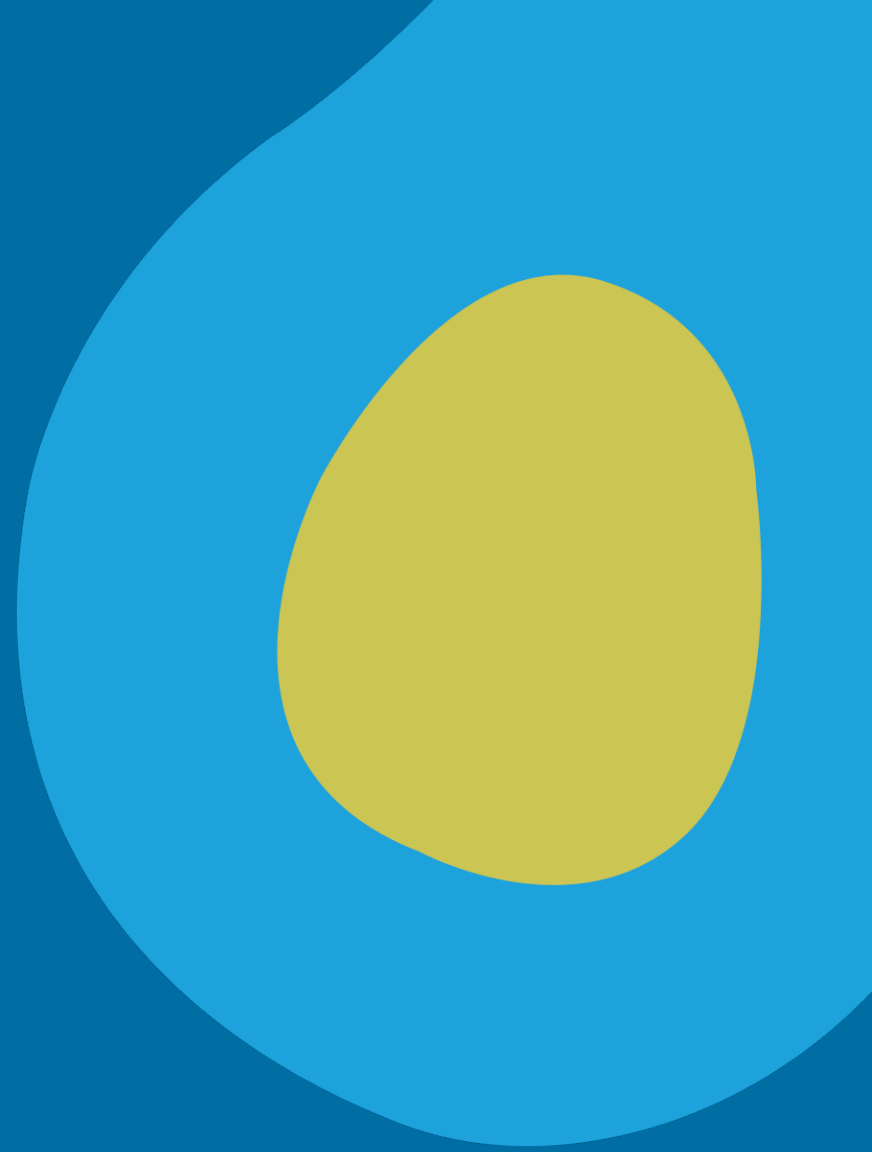
Directors & Officers Example:

A nonprofit gets sued for breach of contract, negligence, and misrepresentation.

General Liability Example:

A client tripped and fell on the property owned by a nonprofit and now claims damages.

Other Safeguards



Other Safeguards

Volunteer Protection Act (VPA) of 1997

This federal law was enacted to provide limited immunity to volunteers working with 501(c)(3) nonprofits.

The VPA applies if the volunteer is not compensated, acting within the scope of their duties, and not grossly negligent (willful) in their actions.

Does not prevent an allegation, protect the organization, or the paid staff of nonprofits.

Does not apply to vehicle use.

State Volunteer Protections

The VPA does not preempt state laws if the state law is at least as broad as the VPA, otherwise the VPA provides "baseline" protection.

Check your state's laws to see about any additional or different protections for board members and other volunteers.

Like the VPA, most states do not prevent an allegation, provide defense, protect the organization, or the paid staff of nonprofits.

Homeowners Policies

Many people believe homeowners policies will cover them as board members.

While they can extend to volunteer activities, they are for personal injury, bodily injury, and property damage claims.

Not for management claims or fiduciary obligations of nonprofit directors.

Additional Resources

BoardSource

<https://boardsource.org/>

Nonprofit State Associations

<https://www.councilofnonprofits.org/find-your-state-association#directory>

**Nonprofit Boards and Officers:
Key Facts About Insurance and Legal Liability**





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