

We are happy to provide you our publication for nonprofit risk managers, as part of our service to you. The titles in the contents section link directly to their articles, so you can navigate quickly. If you need to change the email address to which this is sent, please [contact us](#). Be sure to include your name, organization and address. You also are welcome to call us at 800.468.4200 for assistance.

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## **Employment practices -- Retaliation claims find fertile ground**

In 2010, for the first time, retaliation claims (36,258) passed race discrimination claims (35,890) as most frequent charge against employers, according to the Equal Employment Opportunity Commission. Retaliation claims have been increasing steadily for years. Employees who do not prevail on an underlying discrimination claim, then later are terminated or experience even a mildly adverse action such as an assignment change they do not like, often are successful when they claim that the job action was unlawful retaliation for their original claim. Retaliation claims have a broad base because they can be asserted under a variety of anti-discrimination laws.

In 2006, the Supreme Court issued a landmark ruling, in *Burlington Northern v. White*, in favor of an employee’s retaliation claim. In the current term, the high court has ruled twice in favor of employees in retaliation cases. In *Kasten v. Saint-Gobain Performance Plastics*, an employee claimed he was terminated in retaliation for exercising his rights under the Fair Labor Standards Act (FLSA). The employer countered that the employee’s FLSA complaint, which involved the

placement of time clocks in the workplace, was not legitimate because it had been made orally, and to management rather than to a government agency. The Supreme Court ruled that even oral complaints to management are protected activity as long as the complaints are “sufficiently clear and detailed for a reasonable employer to understand.”

In January, in *Thompson v. North American Stainless*, the Supreme Court ruled that an employer might violate Title VII of the Civil Rights Act of 1964 by retaliating against an employee who is *related* to a worker who engaged in protected activity – even if the employee himself never raised a claim of discrimination or engaged in any protected activity.

### **Investigate all complaints, document reasons for employment decisions**

To minimize the risk of a retaliation complaint, with or without merit, make sure all supervisors know that any complaint – oral or written – should be taken seriously. Talk with the complaining employee, and investigate the circumstances that seemed to give rise to the complaint. Just as important, document the reasons for any action that affects employees. Allen Smith, manager of workplace law content for the Society For Human Resource Management, said in *HR* magazine, “Whether they administer discipline, change an employee’s assignments or move an individual’s office, employers should be able to document the bona fide reasons for taking these actions.”

In a recent Towers Watson study, 35% of nonprofit organizations reported having at least one claim under their directors and officers liability insurance policy during the past ten years. Of those claims, 67% resulted from allegations of employment-practices violations. Legal defense costs in employment practices cases easily can reach \$250,000 or more. Broadly written D&O policies provide for legal defense costs outside of the policy’s limit of liability. If you do not already have D&O coverage or you have questions about it, please contact [Aaron Jones](#) of the CIMA staff at 800.468.4200. More information also is available at [www.cimaworld.com/htdocs/d&o.cfm](http://www.cimaworld.com/htdocs/d&o.cfm).

### **“The list” – Make sure you aren’t on it**

Approximately 350,000 nonprofit organizations in the United States are at risk of losing their tax-exempt status, as a result of not filing Form 990 (or the appropriate variation of that form) for three straight years. Temporary relief from the filing requirements expired last fall.

If you go to [www.irs.gov/thelist](http://www.irs.gov/thelist), you will see a state-by-state database of the nonprofit organizations the IRS has identified as noncompliant. Even if you are confident you have complied with the filing requirements, sometimes mistakes are made, so it’s a good idea to make sure your organization is not on the list, and contact the IRS if it is.

Protecting tax-exempt status is not the only reason to be very careful to comply with the new Form 990 requirements. In an environment where contributors have so many options, it is important that a nonprofit organization show its mission, accomplishments, and efficiency in the

best light possible. The Form 990 is a public document, and might be decisive for the potential contributor who is trying to determine which organization(s) to support.

You might want to visit sites such as [www.guidestar.org](http://www.guidestar.org), [www.charitywatch.org](http://www.charitywatch.org) and [www.charitynavigator.org](http://www.charitynavigator.org), observe what other nonprofit organizations are saying about their good work, and consider how your organization compares with them.

### **IRS resources for nonprofits**

More information on IRS compliance is available at [www.irs.gov/charities](http://www.irs.gov/charities), and at the IRS's special compliance Website for nonprofits, [www.stayexempt.org](http://www.stayexempt.org) (also found at [www.stayexempt.irs.gov](http://www.stayexempt.irs.gov).) IRS Publication 78 (Cumulative List of Organizations) and IRS Internal Revenue Bulletin, which shows charitable status that has been changed or revoked, also can be useful in your regular reviews to ensure that you protect one of your valuable assets – tax-exempt status.

## **Personal risk management -- “Social” security**

A recent survey by Harris Interactive and ID Analytics, Inc. found that a great many users of the Facebook social networking site are not selective about accepting “friending” requests from people they do not know – especially men accepting requests from women. You might have staff and volunteers who are not aware that some of the “friends” on their growing list are enemies, indeed – criminals who aren't interested in being friends but are very interested in stealing identities for financial gain. Some basic steps you might choose to pass along, to help keep social networking secure:

**Who are these people?** Is there anyone on your friends list you don't really know? Take them off.

**Check privacy settings** – Facebook in particular has been criticized for changing its profile features in ways that changed default privacy settings. Take time to review the settings that govern the type of information you share, and with whom you share it. ID Analytics estimates that 24 million U. S. adults keep their Facebook profiles open to everyone. There is no reason to do this, unless you want to be friends with everyone. A useful guide for deciding privacy settings is available from Mashable.com, at [www.mashable.com/2011/02/07/facebook-privacy-guide](http://www.mashable.com/2011/02/07/facebook-privacy-guide).

**Passwords** – Criminals troll profile pages of social networking sites for clues to passwords and lost-password-retrieval tools, then use their educated guesses to try to gain access to bank and credit card accounts and other financial resources. If you divulge your place of birth, pets' names, high school mascot name, etc. on a social networking site, don't even think about using those same words in any password, or as the answer to any password-retrieval question.

**Get your credit reports** – Remember, you are entitled to one free credit report each year from each of the three credit reporting bureaus – Transunion, Equifax and Experian. Just go to [www.annualcreditreport.com](http://www.annualcreditreport.com). (The heavily advertised [www.freecreditreport.com](http://www.freecreditreport.com) is in business to sell additional monitoring services.)

## 100 years ago – “The Great Tradeoff” is made

Before workers’ compensation laws existed, workers injured on the job had to seek recovery through the court system. To gain recovery, they had to prove their employer was negligent in causing the injury. Those without funds to wage this fight were left without income and often destitute.

Maryland (1902), Massachusetts (1908), Montana (1909) and New York (1910) each enacted workers’ compensation statutes, but all four were struck down under constitutional challenge as violating "due process." New York’s law was struck down March 24, 1911. The next day, 146 employees – mostly young women – died in a fire at the Triangle Waist Company (sometimes referred to as Triangle Shirtwaist Company) building a block off Washington Square in Greenwich Village. That event, which remained New York’s deadliest workplace disaster until September 11, 2001, is described by the Insurance Information Institute at [www.iii.org/articles/triangle-shirtwaist-factory-fire-centennial.html](http://www.iii.org/articles/triangle-shirtwaist-factory-fire-centennial.html).

A Wisconsin law signed May 3, 1911 became the first to survive legal challenges. Nine more states adopted workers’ compensation laws the same year. By the end of 1920, 42 states plus Alaska and Hawaii (even though statehood didn’t come for either until 1959) enacted statutes. Mississippi was the last state to fall in line, in 1948.

Insurance historian Christopher Boggs, writing in *Insurance Journal*, refers to the workers’ compensation system as “The Great Tradeoff.” As he notes, “Before any plan could move forward, an agreement between labor and industry had to be reached; each had to be willing to give up something...The employer agreed to pay medical bills and lost wages, regardless of fault; the employee agreed to give up the right to sue.”

Boggs notes that a catalyst for the workers’ compensation system was a document called “Work Accidents and the Law,” by Crystal Eastman. “This document presented the problems inherent in the then-current system of negligence-based compensation in light of the cost to human capital. It also highlighted the benefits of a workers’ compensation program as preventative in nature (employers would be more willing to invest in safety if the cost of injury was ultimately on them.) The work is credited with changing business and labor attitudes towards workers’ compensation and employee safety.”

The Workers Compensation Centennial Commission, formed in Wisconsin last year by a coalition of business, labor and government, has much more information at [www.workerscomp100.org](http://www.workerscomp100.org).



## CIMA service team for VIS® members

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We are always happy to serve our members. Please let us know, any time we can be of help!

## VIS® Commitment

Volunteers Insurance Service is committed to providing its members a complete resource for the nonprofit organization's risk management needs. Our services include:

- Publishing **VIS® Connections** as one of our information resources for members;
- Maintaining for members' use a library of information relating to management of risks in the nonprofit organization;
- Researching available and appropriate insurance relating to volunteer activities;
- Designing and administering insurance programs, and compiling underwriting information;
- Providing consultation on risk management issues at no additional charge to our members, via a toll-free line (800.468.4200);
- Assisting members, on request, with matters relating to insurance.

Insurance and administrative services are provided to VIS® and its members by The CIMA Companies, Inc. and/or one of its affiliated companies.

VIS®'s Articles of Incorporation, Financial Information, and a list of the members of VIS®'s Board of Directors are available to VIS® Members upon request.

## **CIMA licensing information**

The following licensing information is being provided in order to comply with state governmental regulations:

Volunteers Insurance Service Association, Inc. is a risk purchasing group formed and operating pursuant to the Liability Risk Retention Act of 1986 (15 USC 3901 et seq.)

**Notice to Texas clients:** The insurer for the purchasing group may not be subject to all the insurance laws and regulations of your state. The insurance insolvency guaranty fund may not be available to the purchasing group.

**Notice to California clients:** License #0B01377 and #0A06046, CIMA Companies Insurance Services

**Notice to Minnesota clients:** License #009285 and #07544084, The CIMA Companies, Inc.

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