

PBPA Podcast Transcript
Lessons from 2025 to Navigate 2026
(22:48 minutes)



[00:00:00] **Sireesha:** 2025 was a challenging year for many nonprofit organizations marked by uncertainty and significant funding changes driven by shifts in the federal landscape. In this episode of the PBPA podcast, we are revisiting some of our most popular episodes from the past year because the trends that emerged in 2025 are likely to shape the nonprofit sector well into 2026.

Hello and welcome to the PBPA Podcast. In each episode of the PBPA Podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at pbpatl.org. Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel, contact your attorney for guidance on your nonprofits' specific situation.

In our March, 2025, episode entitled "Navigating Major Government Changes: Strategic Conversations Your Board Should Be Having Now", PBPA Executive Director Rachel Spears and PBPA staff Attorney Eadaoin Walch shared recommendations and best practices to help board members steer their organizations through these choppy waters. First Eadaoin spoke about the types of organizations that are most likely to be impacted by the shift in the federal landscape. Eadaoin, what types of nonprofit organizations are being impacted by these recent initiatives?

[00:02:22] **Eadaoin:** All nonprofits are impacted to one degree or another, just as all organizations business and nonprofit are affected. However, top of the line is publicly funded nonprofits, those who receive direct federal funding or federal funding indirectly through state grants sort of middleman agencies that administer federal funding.

Those are the organizations that are most at risk and have may already have felt the impact of the executive orders that have been handed down since January. The January executive orders that have been all over the news and now to some extent subjective court orders and partial rescissions and injunctive relief, et cetera, creating a lot of confusion in the media, they are aimed at a few different things that are of concern to the current administration. The first is the elimination of fraud, abuse, waste, things like that, in federal expenditure. And so eliminating what the administration considers to be non-essential government spending, libraries, the arts, things like that.

Foreign aid, anything that does not. Administered directly to the needs of the American people also up for scrutiny and a reduction in funding. And then programs that work on DEI, diversity, inclusion, equity type concerns are certainly the subject of scrutiny. And environmental organizations. And missions that aim to advocate for or provide support for members of the LGBTQ community. I think those are the types of nonprofits that we have identified as being most at risk. Even if you're not on the government radar or high up on the government radar, shall I say, the potential for, private action pullback on government funding will affect private funders too. You know, there will be more competition for every nonprofit dollar as we enter this era of a dearth of government funding and

private funders may fear the environment of investigation and compulsory disclosure around nonprofit activity and this may impact their giving. Have heard some stories of that.

You may wish to review even for these non- DEI centric mission organization, you may want to consider reviewing programming and marketing materials to remove language that may subject your organization to DEI related scrutiny. Even as an organization that is not considered high risk, whether just a smaller organization, an organization that's entirely privately funded, or an organization with a non-risky mission.

[00:05:16] **Sireesha:** And Rachel Spears spoke about other important conversations that board members should be having, including the importance of contingency planning and best governance practices.

[00:05:29] **Rachel:** I really wanna emphasize, I think the time is now for organizations to think about possible mergers, acquisitions, things like this. If you know that you're gonna lose half your funding and an organization that you work with is also gonna lose a good chunk of their funding, now is the time to have conversations about whether it makes sense to combine your organization's operations in some way. It doesn't always have to be a true corporate merger, but there are lots of scenarios where you can look for efficiencies to hopefully survive as an organization or at a minimum, keep that important program you have running. So now is the time to think about this. Do not wait until it's too late.

One thing we saw, I would say with the great recession is organizations waiting until it was too late. They were not an attractive merger partner. But if you act now and start these conversations, that might be an option for you if the time comes.

[00:06:33] **Sireesha:** I would love to hear from both of you. Are there any other general thoughts you have for nonprofit leaders as they're strategizing for this new era?

[00:06:46] **Rachel:** I'll follow up on compliance, which I just brought up as just being very important for all nonprofits right now to, again, keep your organization out of the radar.

[00:06:59] **Eadaoin:** Always, but more particularly now is whether you're in good standing with the IRS. Is your mission correctly stated on your charter documents, on your documentation with the IRS, your 990, et cetera? Or have you timely filed your 990 and are you correctly reporting legislative lobbying on your 990, for instance? Is your Secretary of State record, correct? Correct. Officer information, et cetera. And if you're required to file anything with the attorney general in your state, have you done that correctly And then are exercising good corporate practice, complying with your conflict of interest, policy, whistleblower, and document retention policies, those are all policies that the IRS focuses on.

And you want to be above reproach in all of those regards. That is one thing that you can control and do very well, and signals good governance to anybody who may come looking.

[00:07:58] **Rachel:** This is something people hadn't thought much about before, but, if you may be subject to a government investigation, all of a sudden what documents you have or don't have become very important.

So I'd encourage you to think about make sure you don't not only have a document retention policy, but they're actually complying with it and doing those sort of audits of your documents periodically. You may not realize the 990 ask whether your organization has a conflict of interest policy, has a document retention policy, et cetera.

These are ways the IRS. Kind of signals to organizations that you should have these things and you want to be able to, of course, say on the form that you have them, but you also wanna make sure that you are actually following them, that the board is familiar with them and these are, you know, actually parts of the practice of your organization.

[00:08:51] **Eadaoin:** One thing I would add is in terms of just looking at good practices for board members and nonprofit leaders generally is to have a look at your D&O insurance. I think D&O insurance is always important to have in place, but now is a great time to really make sure you understand the terms of your D&O insurance. Make sure that it's adequate for your organization and its size. And look at the renewal date. Make sure that it stays current, that it stays in force. And again, an eyes wide open approach to that for all members of the board in addition to the executive leadership of the organization.

One other tip that I would, and this mentions something that Rachel referred to a second ago, is be aware that there is going to be more of an emphasis on reporting, documenting justification for grant receipts, and being prepared to respond to requests for information from various sources. Just focus on that. Having your information ready for reporting in a format that you're comfortable with and that the board is comfortable with sharing is an important way to be prepared for this for this new era too.

[00:10:08] **Sireesha:** In another one of our top episodes of 2025, I spoke with attorney Kristina Griffin about mission and messaging. As the federal government explicitly targets DEI language, some nonprofits were left wondering whether they should revise their messaging and whether certain language could expose them to legal or funding risk. Kristina spoke on our podcast about the potential risks when an organization is talking about its mission and its programs in language that specifically and explicitly references sex, gender, or race. Kristina shared some great insight to help nonprofits make their own risk analysis. Take a listen.

So now my next question is going to be related to programming. And you did talk about this a little bit, but how can nonprofit structures programs to serve marginalized communities without being perceived as discriminatory under these new enforcement priorities?

[00:11:14] **Kristina:** It's tough, right? Because as an organization you've created your mission and services and goals with a particular focus in mind. You've developed your programming and you likely have a target audience or a target population that you primarily work with. So again, I think the best way to continue the mission that you've always focused on it. Certainly there may be some organizations that should consider or may want to consider as a method of reducing risk, whether your actual programming should or could change, or if you could offer a broader range of services, but that won't be necessarily needed in all cases.

In some cases. Likely some changes about how you're thinking about being inclusive and again, using language that doesn't specifically reference a particular gender or race, but acknowledges that you're open to providing services to others in need as well. Maybe enough to be the right approach and strike the right balance that is lawful.

Again, just depending on what your organization does and certain other risk factors, like whether you're being asked to sign a certification or not, you may need very specific legal guidance from an attorney that can look at what your specific organization is doing. But for some organizations that are just assessing whether you're doing the right thing at this stage and whether you can try to best position yourself to ensure that you're complying with the law, then making these adjustments to the language that you're using about your programming to emphasize that you're an inclusive organization. And that you're not intending to exclude any particular group, and that even individuals perhaps outside your target focus. Would be eligible to receive services or would be considered for services?

Again, that's a good first step.

[00:13:37] **Sireesha:** So even though the programs generally serve a certain community and historically have drawn from that community. They should still be open to anybody who is interested and meets the qualification requirements that are outside those protected categories.

[00:13:55] **Kristina:** I think that's right. It's still certainly permissible and always has been permissible to have income requirements, for example, and other requirements. But basing services or eligibility for services on race or sex or age is potentially a violation of law. Again, the specific circumstances matter, but that's certainly a concern and likely to be a potential violation of the law.

For example, you've seen some organizations, and these are large organizations that may be more of a target than a smaller local organization. But you've seen them expand their language from being, having race-based eligibility requirements to having a purely financial based ones or purely some other requirement. That's not a fail proof method. If it were determined if it were subject to a challenge and were determined that it was not truthfully based on other characteristics, but used as a proxy for race, you could still have some concerns, but steering away from explicitly race-based requirements or sex-based requirements for eligibility is preferable, and you've seen some large organizations doing that so that they can essentially continue carrying out the missions that they've always had. But potentially be using more inclusive eligibility standards and more inclusive language as they're discussing those things.

[00:15:39] **Sireesha:** That was Kristina Griffin talking about the tightrope that some nonprofits find themselves walking now as they balance their mission with their messaging.

Finally, another episode that we recorded in 2025 that is sadly going to perhaps have even more relevance in 2026, was on furloughs and layoffs. In 2026, nonprofits may face greater demand for services while grappling with fewer resources, they'll contend with budget reductions from federal funding cuts, along with increased competition for philanthropic dollars and shifts in private donor giving trends. If your organization may need to consider a reduction in force in 2026, my conversation with Emily Borna includes some helpful information on strategy where she talks about temporary options and more long-term changes and how to factor in considerations like employee benefits and unemployment.

In this next session, Emily Borna spoke to me about what factors a nonprofit employer should take into consideration if they're deciding which employees to let go during a layoff decision.

[00:17:01] **Emily:** So these are certainly difficult business decisions to make. And they are subject to challenge if an employer is not thoughtful about the selection criteria used to determine who will be

impacted. So what we recommend, to put employers in the most defensible position in these very challenging situations is that there's, clear documentation from the decision makers about the reason for this action because, for example, of economic challenges, as you mentioned. And clarity about why these conditions have impacted the ability to continue operating. And what, if anything has been done? Other cost saving measures other than staff reductions before taking this relatively drastic step in my experience litigating employment concerns for three decades now, the employment action that is most likely to be challenged is a termination, and in that respect, we do recommend that employers carefully document why they're taking this action, who the decision makers are, and above all what the selection criteria are when involuntary layoffs, terminations, or even furloughs are contemplated. And you know, that means clarifying that despite our best efforts and alternative steps we've explored, we can only continue operating at this point through implementation of a furlough or of a layoff.

And if a furlough evolves into a layoff, why that's changed when we first considered it. What circumstances have come into play in the interim that were unanticipated. And then above all, how are we selecting the impacted employees? What criteria? Is it length of service? Is it job category? Is it preexisting performance or appraisal data? Is it skill sets? Is it qualifications to perform essential job functions? And that's very important to identify and document because that is the legitimate, non-discriminatory, non-retaliatory reason for selecting certain employees as opposed to others if there is a challenge to these actions.

[00:19:37] **Sireesha:** So basically be consistent, be intentional, be thoughtful and document document, document.

[00:19:44] **Emily:** Document, document, document is my mantra.

[00:19:47] **Sireesha:** Emily also shared some best practices for nonprofit employers facing a potential workforce reduction.

[00:19:54] **Emily:** These are certainly difficult circumstances and it affects morale. And the ability to continue operating. And so from a best practice standpoint, I can't underscore enough the importance of clear, transparent communication with your entire team, particularly in a mission-driven organization. Anytime there's a need to implement a furlough or a layoff or a reduction in force, it has a big detrimental effect on everyone's morale- those who are directly impacted, and those who are continuing to keep the lights on. And the best practice is to be as transparent and clear as you can about what's happening, why it's happening, what the intention is, and certainly considering any alternatives such as reduced work hours, job sharing, pay cuts before taking these relatively drastic steps that affect the employment of the team.

Also just for an employer's consideration, eyes wide open. Certainly the risk of losing your team, first and foremost, furloughed employees, but even other workers during these circumstances is a concern. Retention is challenging when people fear that there may not be a job for them there going forward.

We find the best practice is to have frequent and clear communications with the workforce to avoid panic and try to maintain, some upbeat morale in terms of what is happening in that organization.

[00:21:44] **Sireesha:** We hope you found this recap of some of our popular episodes from 2025 to be helpful as your organization ventures into the new year. If you would like to listen to the full version

of any of these episodes, please visit our podcast page for a link to those episodes. Thank you for joining us.

We hope that you found this episode of the PBPA Podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.