

Not-for-Profit Risk Protector®

Management & Professional Liability
Insurance for Non-Profit Organizations

EXECUTIVE LIABILITY

Management & Professional Liability Insurance for Non-Profit Organizations

Not-for-Profit Risk Protector® is a flexible insurance package that allows non-profit organizations of any size to obtain precisely the protection they need for the risks that threaten their organization, management, employees, volunteers, boards of directors, and others. Underwritten by Chartis, Not-for-Profit Risk Protector lets organizations choose one or more of six coverages and combine them in one comprehensive program—with shared or separate limits. Coverages include:

- Directors, Officers, and Non-Profit Organization Liability Insurance
- Employment Practices Liability Insurance
- Fiduciary Liability Insurance
- Fidelity and Crime Insurance
- Employed Lawyers Professional Liability Insurance
- Kidnap and Ransom/Extortion Insurance

Each exceptionally broad coverage comes with the industry-leading financial strength and litigation management services of Chartis. Certain coverages give non-profits access to specialized services designed to mitigate ultimate damages and optimize claims recovery—from training in sound workplace practices, to crisis management expertise to help resolving kidnappings.

Drawing on over 40 years of experience underwriting non-profit risks, Chartis created Not-for-Profit Risk Protector to ensure sound precision-fit protection for any non-profit from a small homeowners association, to the largest healthcare and higher education institutions.

Coverage Insights spotlights key risk issues facing non-profits and how Not-for-Profit Risk Protector enables organizations of any size to address these issues head-on with insurance and services that fit their needs.

Directors, Officers, and Non-Profit Organization Liability Insurance

Risk: Certain entities and individuals can be left at risk if coverage does not specifically contemplate their exposure, or if the organization does not update coverage in a timely fashion as its structure grows or changes. The consequences of such an oversight can be substantial: a claim against one uninsured entity can sap cash flow and disrupt the organization's mission. Individuals left without coverage can find their personal wealth at stake; the assets of their spouse, domestic partner or heirs may be exposed in litigation as well.

Solution: The D&O Coverage Section of the Not-for-Profit Risk Protector provides coverage for a wide range of entities and individuals who find their assets at risk. Covered entities include the named organization and any non-profit or for-profit subsidiaries that exist at policy inception. Coverage automatically extends to non-profit subsidiaries created or acquired during the policy period if their assets total less than 30% of the

total assets of the named organization, and to for-profit subsidiaries created or acquired during the policy period if their assets total less than 20% of the total assets of the named organization. Larger subsidiaries created or formed during the policy period are covered for 90 days, provided that within that time the insured agrees to any additional premiums and/or policy provisions and submits underwriting information on the new entity so that underwriters can propose coverage beyond the 90 day coverage period. Affiliated organizations can be added by endorsement. Coverage encompasses a broad range of individuals operating on behalf of any insured entity, including trustees, directors, officers, employees, leased employees, independent contractors, and volunteers.¹ The estates, heirs, spouses, or domestic partners of insured individuals are also protected in claims arising from that individual insured's service to the organization.

¹ Coverage for leased employees and independent contractors is only provided if the organization indemnifies such individuals in the same manner as it indemnifies its own employees.

Violations of the Sherman Antitrust Act

Risk: Courts have ruled that non-profit organizations may be liable for violations of antitrust laws. Such laws prohibit a conspiracy to restrain trade and the operation of illegal monopolies.

Solution: Not-for-Profit Risk Protector provides coverage to non-profit organizations, such as hospitals, fundraising organizations, universities and labor unions, for claims arising under antitrust laws, the Sherman Antitrust Act or similar federal, state or local statutes or rules.

Mitigating a Crisis Management Event

Risk: Properly handling a brewing crisis is critical to keeping issues from developing into severe claims. Many non-profit organizations do not have the in-house public relations resources or expertise to manage potential crises.

Solution: Not-for-Profit Risk Protector's CrisisFund® coverage, automatically provided under its Directors, Officers, and Not-for-Profit Organization Liability Coverage Section, provides up to \$50,000 for the insured to hire a leading crisis management firm to help prevent or mitigate a severe claim and control damages.

Outside Entity Executive Liability Coverage

Risk: Executives at non-profits are often asked to serve on the boards of outside non-profit organizations for the benefit of their own organization. Such service exposes both the organization and the individuals serving it to liabilities that might not be covered under the standard D&O policy, putting both the assets of the organization and the personal assets of individuals at risk.

Solution: Not-for-Profit Risk Protector includes coverage for executives of the insured organization serving at the request of the insured organization, trustee emeritus, governor or an equivalent management position of any non-profit organization, excess of insurance and indemnity provided by the outside entity.

Punitive Damages Coverages

Risk: Juries frequently hand down astronomical verdicts to punish perceived improper conduct, yet coverage for punitive damages is often excluded or severely limited for non-profits. Many states restrict or prohibit the insurability of punitive damages.

Solution: Not-for-Profit Risk Protector covers punitive damages utilizing "most favorable venue" language. This is the best possible approach for an insured, since coverage is applied as allowed by laws governing punitive damages in the applicable state most favorable to their insurability.

Exceptions to the Insured Versus Insured Exclusion

Risk: There are multiple claim scenarios that could pit insureds against each other in court. An example is when board members disagree on policy matters. Excluding a claim made by one of the policy's insureds against another leaves a non-profit susceptible to serious losses.

Solution: Not-for-Profit Risk Protector modifies the industry-standard "insured versus insured" exclusion. Instead, coverage is excluded only in a situation in which a non-profit would probably not want coverage to apply: the event that a claim is made by the organization against an individual insured.

Employment Practices Liability Insurance

Employment Discrimination Claims

Risk: Employment discrimination is a frequent allegation made against non-profit organizations and those who serve them. Evolving legal theories continue to increase organizations' vulnerability in claims.

Solution: Not-for-Profit Risk Protector offers exceptionally expansive protection for employment-related claims, covering 12 named perils, including wrongful termination, discrimination and harassment.

Non-Employment Discrimination Claims

Risk: Vendors, potential beneficiaries of a non-profit's services, and other third parties frequently sue, alleging discriminatory practices or harassment. In fact, many large recent discrimination verdicts and settlements have involved allegations by third parties. If an insurer remains "silent," not specifically addressing this risk in its insurance contract, a non-profit could be left with a potentially devastating hole in coverage.

Solution: Not-for-Profit Risk Protector expressly covers discrimination and harassment claims brought by non-employee third parties, such as suppliers, students, patients or members.

Mitigating Discrimination and Other Employment Claims

Risk: Organizations must do more than ever to avoid or mitigate employment practices claims. For example, organizations must now produce evidence of proper employee sensitivity training and education programs in order to successfully defend certain discrimination claims. Many non-profits do not have access to the expertise and resources to instill proper practices and procedures, and manage potential employment crises.

Solution: Every Not-for-Profit Risk Protector insured receives EPL Pak® Premier, a package of loss prevention products and services designed to help them institute proper workplace training and practices, and document due diligence in doing so.

You and your company can benefit from free online employment training and legal consultation on HR and employment law issues plus invitations to webinars and local seminars nationwide including California-mandated sexual harassment training compliant with CA AB 1825.

Breach of Employment Contract Claims

Risk: Employees frequently bring suit against employers for breach of their employment contracts. Such suits can be costly for non-profit organizations to defend.

Solution: Not-for-Profit Risk Protector provides coverage for defense costs in breach of written employment contract claims.

Damages Coverages

Risk: When certain types of severe damages are not expressly covered in an EPL policy, the insured is vulnerable.

Solution: Not-for-Profit Risk Protector provides coverage for emotional distress damages in employee and third party discrimination claims and specifically states its intent to pay front pay, back pay, and pre- and post-judgment interest costs in employment claims.

Thousands of ERISA civil actions are filed annually against small and mid-sized organizations that sponsor 401(k), profit sharing, pension, medical and other benefit plans for employees.

Fiduciary Liability Insurance

Protection for the Personal Assets of Directors, Officers, Trustees and Other Potential “Fiduciaries”

Risk: Employees, their beneficiaries, and regulators now routinely seek to hold individuals personally responsible if they perceive mismanagement or improper handling of pension and welfare benefit plans. Consequently, inside and independent directors and trustees as well as an organization’s officers and employees have become targets of fiduciary liability litigation. Without proper insurance, their personal assets are at risk in claims alleging breach of fiduciary duty.

Solution: Not-for-Profit Risk Protector provides broad coverage extending to all of the insured organization’s directors, officers, and employees who may have fiduciary or administrative responsibility for employee benefit plans including individuals who may not realize they have direct discretionary authority but may still be considered fiduciaries under applicable law. The plan sponsor is covered, including, automatically, newly-acquired subsidiaries whose assets do not exceed specified thresholds. The plans themselves are also insured under the policy.

Coverage for Wide-Ranging Allegations

Risk: The Employee Retirement Income Security Act of 1974 (ERISA), which governs employee benefit plans and regulates fiduciary responsibility, has been steadily amended to expand protection for plan participants and make fiduciaries significantly more accountable. Many types of investments may be alleged to be imprudent and trigger fiduciary liability lawsuits. Allegations of lack of plan oversight and failure to monitor plan investments are also particular concerns.

Solution: Not-for-Profit Risk Protector provides broad coverage for the many types of claims fiduciaries can face, including those arising from alleged lack of plan oversight, imprudent investments, failure to monitor and disclose plan fees, and more.

Coverage for Numerous Organizations and Plans

Risk: Exposure for sponsors of 403(b) plans is growing, with increasing liability for breaches of fiduciary duty. Executives of organizations with such plans should ensure they are well protected against claims alleging breach of fiduciary duty. Executives of organizations with “prototype” and “self-directed” 401(k) plans are vulnerable too, although they often fail to recognize the exposure until they are named in a lawsuit.

Solution: Not-for-Profit Risk Protector broadly addresses the exposures of both large and small organizations. It covers, with no listing of specific plans,² the various types of plans an organization might maintain worldwide, including pension and welfare plans that are sold or terminated during the policy period and qualified and non-qualified plans.

Support Avoiding Fiduciary Claims

Risk: If an organization does not act quickly to correct a recognized plan defect it could face significant fiduciary liability.

Solution: Not-for-Profit Risk Protector supports insureds’ proactive efforts to remedy operational or administrative plan defects. It can cover certain fees and penalties imposed by the Internal Revenue Service (IRS) or the Department of Labor (DOL) when an insured acts to correct such defects under the DOL’s Voluntary Fiduciary Correction Program, the IRS’ Employee Plans Compliance Resolution System, and the DOL’s and IRS’ Delinquent Filer Voluntary Compliance Program.

² Except for Employee Stock Option Plans (ESOPs)

Fidelity and Crime Insurance

An Expanded Definition of Employee

Risk: Theft can be perpetrated by any number of individuals within the organization.

Solution: Not-for-Profit Risk Protector can respond to losses caused by these individuals. Its definition of employee can be expanded to include directors, trustees, and non-compensated officers performing employee duties, as well as students gaining work experience. The policy can be enhanced to cover losses resulting from terminated employees during the first 30 days post-termination.

Coverage Responds to the Universe of Potential Losses

Risk: Organizations of all sizes are susceptible to losses due to employee theft. These losses can take many forms, from forgery and alteration, to computer/funds transfer fraud, to misallocation of contributions. Since losses perpetrated by “insiders” tend to accumulate over many years, they often reach devastating proportions before detection.

Solution: Not-for-Profit Risk Protector responds to a wide range of losses arising from employee theft. The basic policy can be enhanced to respond to losses caused by non-employees arising from forgery and alteration, theft of money and securities, robbery and safe burglary, and computer/funds transfer fraud. It can also include coverage, by endorsement, for newly acquired subsidiaries.

Avoiding Long, Costly Loss Investigations

Risk: Once an incident of employee theft is discovered, the insured organization typically conducts an investigation of the loss at its own expense. The fidelity insurer hires its own forensic accountant to do a similar investigation. If the results are not aligned, settling the claim can be difficult. Either way, conducting two separate investigations makes the process protracted and expensive.

Solution: Not-for-Profit Risk Protector includes the Fidelity Research and Investigative Settlement Clause (FRISC), a unique provision that sets the stage for an efficient, cooperative loss investigation and settlement process. When a loss occurs, the insured selects an independent investigative specialist or forensic accountant to determine the facts of the case and quantify the loss. Chartis shares the investigation expense equally with the insured. Settlement can be reached quickly, with the cooperation of both parties, based on the objective report of one independent investigator. Even if the loss is ultimately determined uninsurable under the policy, Chartis still shoulders half the investigative expenses.

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FRISC promotes quick and efficient settlement, with cooperation of both parties.
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Employed Lawyers Professional Liability Insurance

In-House Counsel Susceptible to Myriad of Claims

Risk: In-house attorneys typically perform diverse legal services for an organization from complex mergers/consolidations, to routine contract negotiations. All of these services potentially expose the in-house attorney to claims of negligence. These claims are typically initiated by donors, vendors and business partners.

Solution: Not-for-Profit Risk Protector addresses the spectrum of claims commonly brought against in-house counsel and the non-profits employing them, including:

- Employment-related claims arising out of an in-house attorney's legal work
- Legal licensing procedures
- Civil, administrative or arbitration proceedings against an employed lawyer

Employed Lawyers' Personal Assets at Risk

Risk: Without proper insurance the personal assets of an organization's in-house attorneys can be jeopardized in professional malpractice claims.

Solution: Not-for-Profit Risk Protector protects an organization's entire in-house legal team, including: past, present and future full-time in-house attorneys and their paralegals and clerical staff.

Pro Bono and Moonlighting Services Heighten Risk

Risk: Many employed lawyers perform *pro bono* services on behalf of the organization they serve. This raises the risk that actual or perceived errors could result in a claim against the individual attorney and the employer organization. Employed lawyers also often provide legal services outside the scope of their employment, such as representations in real estate closings, or small claims for other non-profit entities. If the recipient of the moonlighting services is dissatisfied with the outcome, a claim could result.

Solution: Not-for-Profit Risk Protector covers individuals in claims of negligence or breach of duty in legal services provided to their employers, as well as moonlighting and *pro bono* services.

Kidnap and Ransom/Extortion Insurance

Addressing Financial Losses from Extortion and Ransom Demands

Risk: Kidnapping and extortion are significant threats to non-profits and those who serve them around the world. Most vulnerable are organizations with workers based or traveling overseas, high profile organizations, and operations that handle large amounts of cash, or work with sensitive information or technology. While rarely publicized, these incidents happen frequently in the U.S. as well.

Solution: Not-for-Profit Risk Protector protects organizations against the financial loss that can arise when an insured is seized or detained for ransom (including during a hijacking) or payment demands following a threat to the organization, its data or to an insured person. Among the covered losses are death or dismemberment benefits arising from an insured incident; ransom/extortion payment; loss of in-transit payment; judgments, settlements and defense costs; recall costs; business interruption loss; consultant costs and related expenses ranging from salary continuation to medical costs.

Ensuring an Effective Crisis Response

Risk: Properly managing a kidnapping, extortion, or hijacking incident is essential to protect the life and well being of the victim as well as the organization's assets. Non-profits typically do not have the experience and resources to manage and resolve these incidents successfully.

Solution: Not-for-Profit Risk Protector gives organizations immediate access to leading crisis management and security consultants who have the experience to anticipate how an event will unfold and work with perpetrators, employees, and victims' family members to develop and execute strategies that will secure the best possible outcome for victims and the organization.

Customized Coverage for Specific Segments

Risk: Certain segments of the non-profit world, notably healthcare institutions, educational institutions, and homeowners associations, face unique exposures not covered under traditional management and professional liability policies.

Solution: Not-for-Profit Risk Protector expands coverage via endorsement to include specific named insureds and offer coverage for the types of claims relevant to specialized segments. For example, specialized endorsements protect healthcare organizations in claims arising out of peer review and credentialing practices; provide educators legal liability coverage for educational organizations; and respond to the property management exposures of condo, co-op and homeowners associations.

Carrier Financial Strength and Market Commitment

Risk: Liability claims can arise years after a policy is issued and/or take years to resolve. If a carrier does not have substantial financial strength, it may not be able to fulfill its obligations to policyholders. If a carrier does not have a strong commitment to underwriting a line, it is not likely to have the expertise and resources to effectively support policyholders in claims or litigation.

Solution: Chartis is a world-leading insurance and financial services organization with over 90 years of experience. In addition, Chartis has a proven commitment to underwriting the lines of business comprised in Not-for-Profit Risk Protector. We have been dedicated to writing and to serving the non-profit sector for over 40 years.

Dedicated Claim Specialists

Risk: Management and professional liability claims often involve complex, specialized issues. If claims handling is outsourced to third-party administrators, the level of expertise brought to an insured's claim is usually uncertain at best.

Solution: Chartis devotes specialists to managing non-profit D&O, Employment Practice Liability and Fiduciary claims as well as Professional Liability and Fidelity matters. The experience of the claims teams standing behind Not-for-Profit Risk Protector is unparalleled.

Litigation Management

Risk: The quality of the defense an insured receives is pivotal in determining the outcome of a claim. Judging the quality of a carrier's litigation resources can be difficult to dissect before a claim.

Solution: When litigation is necessary, D&O and EPL insurance policyholders can access their choice of Panel Counsel firms, which include the nation's top legal defense firms specializing in D&O and employment related lawsuits. For Fiduciary Liability claims, Chartis has access to Panel Counsel firms which include the nation's top legal defense firms specializing in ERISA related lawsuits. Fiduciary Liability policyholders also have the flexibility to assume the duty-to-defend, in which case such policyholders have access to Panel Counsel firms.

To learn more about Not-for-Profit Risk Protector, please visit www.chartisinsurance.com, e-mail executiveliability@chartisinsurance.com, or contact your insurance broker.



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Chartis is a world leading property-casualty and general insurance organization serving more than 45 million clients in over 160 countries and jurisdictions. With a 90-year history, one of the industry's most extensive ranges of products and services, deep claims expertise and excellent financial strength, Chartis enables its commercial and personal insurance clients alike to manage virtually any risk with confidence.

Chartis is the marketing name for the worldwide property-casualty and general insurance operations of Chartis Inc. For additional information, please visit our website at www.chartisinsurance.com.

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