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Are Nonprofit DEI Initiatives Illegal? – Transcript

Jess Birken 00:00:02 Welcome to Charity therapy, the podcast where we explore the ups and downs of the nonprofit sector and answer your burning questions. I'm your host, Jess Birkin, owner of Birken Law Office, and I'm excited you're here. Imagine hanging out with me and my super smart, funny, nonprofit expert pals. You get to ask them anything about your nitty gritty nonprofit life and get their wisdom for free. Whether you're a seasoned pro or just strapping on your nonprofit boots, we're here to share stories and remind you you're not alone on this journey. So get ready to join the conversation and bring me the tough question. I ain't scared. Ready to rock? Let's dive in. Hello and welcome to this episode of Charity therapy. I'm your host, Jess, and today I'm joined by another Jess. Jess host. Jess is an HR consultant with her company aligned HRC. Jess, thank you so much for coming on the show. You're such a badass. I feel like privileged to have you.

Jess Holst 00:01:04 I'm so excited to be here.

Jess Holst 00:01:06 Thank you for having me, y'all.

Jess Birken 00:01:08 Jess and I met through some work we did in some networking. And when I let me tell you, when I looked this lady up, I was like, I'm scared to talk to her. She's worked at so many companies. Do you have quite the impressive resume? And so you're kind of the perfect person. I feel like to come in and sort of speak to this question today that we have and, you know, you work with a lot of small businesses. A lot of my clients are smaller nonprofits who only have maybe like a few employees, but are growing and expanding, and they find out real, real fast that HR gets complicated. What is like kind of one thing that you wish all smaller companies or nonprofits knew before they started hiring more staff?

Jess Holst 00:01:57 I wish people knew how many fractional resources there are but you don't need to have a full time HR person. There are companies that you can reach out to and say, hey, what do I need to know here? And they will help you get set up and that's all they need to do.

Jess Holst 00:02:11 There is an HR solution right now in 2025 for every sized company, and it is such a cost savings and it will make your employees lives better.

Jess Birken 00:02:22 Yeah, and I think this is one of those things where I see a lot of non-profits especially, are just like, almost like they don't feel like employment law should apply to them. Like the answer is often like, but we're a nonprofit. I'm like, yes, and an employer.

Jess Holst 00:02:39 So it's true. It's true. And I think also a lot of our values are aligned with supporting workers, and a lot of the laws are actually designed to do that. But if you aren't following them, you're not actually supporting your employees.

Jess Birken 00:02:54 Yeah. So for everybody that's like, hey, we want to be we want to be a good place and offer a safe space and a fair living wage. You also got to do your HR right. So with that I think like kind of let's get into the listener question for today. You ready. Ready to hear it.

Jess Holst 00:03:12 I'm ready.

Jess Birken 00:03:13 All right. Here we go. Listener writes in I've been the executive director of my organization for about five years. When I started I was one of four employees. Currently we have eight and a half full time employees and are probably on our way to 12 full time employees right now. I handle all the HR payroll and so on. That was fine at 4 or 5 people, but it's quickly becoming too much to manage. Takes a lot of admin time and I know I'm making errors. One of my board members suggested a PEO. PEO is professional employment organization and it looks almost too good to be true. How do I know if this would be a good move for us?

Jess Holst 00:03:57 That is such a great question and it's a question many small businesses are asking the upside of a CEO is. Is the part you're not even worried about right now? It's your health care costs. The real upside of joining a CEO is that you get access to large group insurance. There are a lot more downsides, however, to a CEO.

Jess Holst 00:04:17 The reason for that is it assumes a lot of knowledge to actually manage that system. There's a lot more that's still left on you. It's left on you to still do payroll. You still on board and off board people, and it assumes you have enough knowledge to know of the system set up properly. And if it's doing the things you're required to do. And I've seen some real horror stories, so a CEO actually wouldn't be my first place to go for a company in your position.

Jess Birken 00:04:46 Let me say what I think a lot of non-profits are thinking is that I thought that the CEO was taking care of the HR. Isn't that what they're doing? Because I feel like that is that feels like the sales pitch that the CEOs are making is that you don't have to do HR. We're the employer. We'll handle the HR. And that feels like that's what the sell is. So can you kind of like it sounds like you're saying that's not the case.

Jess Holst 00:05:18 Yeah that and that is the sell. It is.

Jess Holst 00:05:21 We will take care of everything. But what you find when you get to the fine print, which is the most important print of all, is that they will cover you and support you as a co employer, as long as you've done everything to the specific processes that they require you to do, and they're not always going to tell you what those are. Also a lot of these that yeah, okay. So they're like, don't worry, we've got you. If your employee sues you we're co employers. We're you know we're in this together. Except they're going to first want to know. Well did you read the manual. And did you do the first step which was calling us to let us know that you'd had an initial concern. And had you logged it the exact way we told you to. And a lot of times there's a lot of information that they don't give you and it protects them and they can say, oh yeah, no, we're out on this one because you didn't document it exactly the way our small print said.

Jess Holst 00:06:18 You didn't call us at the first sign of trouble, which to you wasn't really a first sign of trouble. So the problem is there you it looks really good because they are covering you under their apply under their insurance. Yeah, but there are a lot of things they can decline to support you on depending on how you've handled it. And the reality is you don't know what you don't know, so you don't know how you are supposed to handle it to begin with. And the other thing is, a lot of these systems are really just tech platforms, which is great, but they're meant to be self-managed and they're meant to be self implemented. So, for example, there are things in one of these large CEOs that you're supposed to set up yourself, for example, compliance training. There is an expectation that you actually still know what compliance training is required in every state, and make sure you've loaded it into the library for yourself, so that you can set it up so that it can be kicked out to a new hire in that state.

Jess Holst 00:07:21 All of that is still on you in a P.O..

Jess Birken 00:07:26 This is starting to maybe make some sense with the clients that I have who expressed frustration with their pose.

Jess Holst 00:07:35 Yes.

Jess Birken 00:07:35 Just saying. It sounds like like I think we're all familiar with insurance being sort of like, hey, there was a hailstorm, my roof got damaged, and then the insurance company is like, yeah, maybe it did. But like, actually, we're not going to cover that because it was a Tuesday in May or, you know, whatever. and so they're they're sort of. Interest is in not actually covering things, which that feels bad because it feels like the cell is that we're going to help you manage everything better and take care of everything with you. So it sounds like there, there, there may be a lot of a lot more due diligence that people need to have when they're considering a P.O. around. How do you make sure that we know what what we're doing, and how do you make sure that we know how to work with you so that we actually get the services that we were promised?

Jess Holst 00:08:35 Yes.

Jess Holst 00:08:36 I would definitely recommend if you have a P.O. Now, have somebody come in and do an internal audit for you and make sure that it's set up properly. Really, some of the things that I've seen that were possible under a CEO are things that are as easy to avoid as paying under the minimum wage, and a municipality that has its own minimum wage. And you should think that the technical system can avoid that, but it isn't set up to avoid it, and they don't have the internal checks and balances to make sure you're not doing those things. So it's really about your motivation. Why do you want to have a CEO? The number one good reason is large company. Healthcare. Yeah. Any other reason? It's likely not the best choice for you unless you have someone who can go in regularly. Make sure that it's set up properly. Make sure it's working properly, because if you don't know what you're missing, you don't know.

Jess Birken 00:09:33 So it sounds like a good like a winning strategy would be.

Jess Birken 00:09:40 Yes peo because we if we want to offer benefits and we're too small because we all know benefits are insanely expensive for a small employer. But you also need to be able to attract talent if you want to have good people. So if it's like yes, we need benefits, we're looking at doing a PEO. But the winning combination may be Pao plus a fractional HR person to make sure that everything is really set up right and that on on your side, on the employer side, you actually are having policies and procedures in place to execute things with the PEO in the best way possible.

Jess Holst 00:10:22 And really look at the cost. So if your motivator is saving money on employee health insurance, look at what that PEO is charging you and admin fees, what it would cost to strip down to their least amount of support and add in just a few hours a month with an outsourced HR firm. you may find that you're saving money. So I just helped a company who moved off of their PEO. When we audited the system, we found all kinds of things that were wrong that hadn't been taken care of.

Jess Holst 00:10:52 And at this point, we've gotten them moving forward. They've got a great outsourced HR person who can onboard and off board people. They have five hours of per a month at minimum. And she they are now saving \$1,000 a month. And and so they can actually then take that money and put it towards employee health care. So you can spend money where you want to. If you know what your options are.

Jess Birken 00:11:18 Yeah. I'll say like the way that peo sort of get on my radar is people are trying to hire and maybe they have multiple jurisdiction employees and the, the compliance around that is going to be insane. And so the CEO seems like a good solution for managing different jurisdictions. Like if you have an employee in Illinois, an employee in Colorado, an employee in Wisconsin, employee in New York, you have to comply with all of those states. Right. And so it seems like that's a good fit. And I've definitely told people to consider it. So this is this is good for me to know that, you know, you really do need to also pair it with fractional HR.

Jess Holst 00:12:04 Yeah. Yeah. And I think also a good benefits broker is really underestimated. So one of the first stops as you're thinking about all of this is talk to a good benefits broker who can tell you what is accessible to you at what price points, so that you have that quote before you even look at the CEO, because that really is the big cost savings in a CEO. But I, the client that I worked with who just moved off the CEO, had so many compliance issues. And the platform that you're using is a big name platform, and they couldn't even get a live human being there. They don't have a phone number to call. It took them two days to get their HR support, and for a mere eight people, they were spending about \$1,200 a month for that extra service, which is bonkers.

Jess Birken 00:12:53 Yep. The other way this comes up for me is clients will say, well, we're having this issue and the CEO won't give us an answer because it's it's a lawyer answer. And then, of course, I have to tell them I'm not an employment litigator.

Jess Birken 00:13:07 And I definitely don't know anything about employment law in Tennessee. So let me get you a referral. But I think that's also another mistake that people make is kind of assuming that the CEO is going to, like, be able to resolve everything for them. And obviously, even an HR manager is not an attorney. And sometimes you do need legal advice around employment law.

Jess Holst 00:13:31 Yes. And when they'll only give you legal advice, you need actual best in class HR advice about what you can do in this situation. I've seen a lot of situations where people bring up their paychecks or velocity or whomever, and talk to the HR person there because they have an employee issue, and that co employer has a very different motivation than you do. You are concerned about your work environment.

You're concerned about room to grow. You're concerned about impact on other employees. They are solely concerned about protecting themselves legally. They are going to have one line, one plan, and I've seen them take things that didn't need to be handled so mercilessly, to that degree, to protect themselves, because that's what they care about.

Jess Holst 00:14:23 They don't care about your environment. They don't care about your culture. They don't. That is not their issue. So there are better ways to get that kind of support.

Jess Birken 00:14:33 Yeah. Interesting. So of the the pros I'm sure you've encountered lots of them over the years. Do you have one that you actually like?

Jess Holst 00:14:41 No. It's there's.

Jess Birken 00:14:45 Oh amazing.

Jess Holst 00:14:46 I'm couching that because I'm talking to another one this week. I am I am forever in my job like constantly sourcing. But it's because none of them are holding your hand. None of them are as proactive as they say they are. None of them take accountability for everything working properly. It's really about what problem do you want them to solve? And if you want an impactful HR system, this ain't it.

Jess Birken 00:15:14 Okay. That's hilarious. You heard it here first peeps Jess Holst anti peo across the board. that's so fascinating. Tell anyone I'm surprised there's not a company out there that has realized there's this gap in the market for like peo plus outsourced HR like fractional HR.

Jess Birken 00:15:34 That's so that's silly that that doesn't exist.

Jess Holst 00:15:37 Well they have.

Jess Holst 00:15:38 Figured it out. They figured out that people want it. So they're selling it to people. They're just not giving them a good product because they're not dealing with educated consumers. So they're just selling you a bunch of snake oil. So also right now, in a point in time, every single company is trying to reduce actual human contact and customer service. And just saying AI can do it. And the answer is a cannot do it. And not so much with the nuance of dealing with employment issues. And that's that's the problem. And hopefully there'll be a swing back in the other direction where people realize, oh, actually, the real kind of competitive advantage here is having a

human being on the phone. But for now, we're actually moving even further away from the kind of attentive care that would be an effective CEO.

Jess Birken 00:16:29 So it sounds like your view is sort of like iOS or software as a service, and software is not HR, and it's not there's just not really software that's going to do a good job.

Jess Birken 00:16:40 So you're anti.

Jess Holst 00:16:43 Yeah it's soft. It's software as a service with its own motivation.

Jess Holst 00:16:48 Yeah. They have an.

Jess Holst 00:16:49 Agenda and it is not your agenda. This is not to say you can't be really successful with a CEO. It could give you a lot of the things you need. You just need to make sure somebody has your best interest in mind when they are babysitting that system every few months and making sure that it's set up properly and working properly, and that you have the information you need to be successful with it.

Jess Birken 00:17:13 I love that. Who knew we were going to have this, this, this take? I was so not expecting that. That's so spicy. I feel like you know that. What are the takeaways here? I feel like the takeaways are the spicy hot. Take that pose. Thumbs down. And if you're going to do it, really only do it because you're trying to incorporate health insurance at scale. That's truly it seems like the only good reason to use a CEO is to access benefits.

Jess Birken 00:17:43 But even saying that what I heard you say, which I think is a takeaway, is don't assume that's the best place to get benefits. Talk to a benefits manager first and really price things out. And then I think finally, most small nonprofits that are growing probably need to start with fractional HR Char before anything else is what I'm hearing. Did I miss anything?

Jess Holst 00:18:09 No. That. And your last point, is it. Make sure that someone's setting up a strong foundation for you, and you don't have to commit to them forever. But make sure that the foundation that you are building is going to hold up a structure that's going to grow.

Jess Birken 00:18:23 Yeah, well, I know that I have learned something today. I was not expecting to learn that. And so that is amazing. What a value bomb. Jess, seriously, thank you so much for being here and for joining me on the show. This was super informative.

Where can people find you if they want to connect with you? Learn more about your services.

Jess Birken 00:18:46 Where should they go?

Jess Holst 00:18:47 Go to a blind hrc.com/therapy. I'm happy to help any organization figure out if they've got the right setup for them.

Jess Birken 00:18:58 Right on. I think you're the first guest who's done like a direct link with the podcast name in it. Hats off. Y'all also need to know that, like, Jess is the consummate professional podcast guest because she was like, checking her mic levels before we even started. So type A Personalities Unite. Listen folks, if you enjoyed this show, do me a huge favor. You know, share it with a friend. If you have a nonprofit that you're involved with that's got a P.O. and no HR. Maybe share this episode with them. Just saying, just saying. Food for thought. Leave us a rating. Subscribe. And if you have a question or a story to share, or you have a spicy, apposite take about pose. Get after me. I won't let Jess host beat you up, I promise. Just send me a note, a charity therapy show.

Jess Birken 00:19:50 And thanks, as always for listening.

About the Author



Hi, I'm Jess Birken.

I'm the owner of Birken Law Office, I help nonprofits solve problems so they can quit worrying and get back to what matters most – The Mission. I'm not like most attorneys, I actually have an outgoing personality, and – like you – I like to think outside the box. Most of my clients are passionate and have an entrepreneurial spirit. I'm like that too. My goal is to help you crush it. Getting bogged down in the minutia sucks the joy out of the important stuff. My clients want to do the work – not the paperwork.

Let's connect!

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