



Protect Yourself Against Employee Lawsuits

Employment-related lawsuits can cost you millions. Here's how to protect your organization.

BY JOHN MAHONEY

Though many nonprofits realize that employment-related lawsuits are expensive, few understand just how costly these lawsuits can be. Settlements and legal fees can add up to millions of dollars. Employment-related lawsuits such as those charging sexual harassment or age discrimination are growing at a record pace across the country. In response to this trend, an increasing number of insurance providers now offer nonprofit directors and officers (D & O) liability insurance to help cover these risks. With the extensive array of choices available, it's important to know the facts about D & O insurance so that your organization can select the coverage that fits your needs.

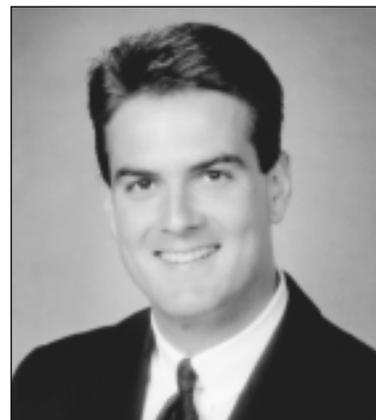
An Increasing Risk

A recent study of Equal Employment Opportunity Commission (EEOC) data showed that from 1990 to 1995, charges of employment discrimination climbed 41 percent. Workers are filing a record number of charges—more than 150,000 a year—with state and federal agencies.

These cases, along with other employment-related lawsuits, can be shockingly expensive. Legal fees, court fees, and financial settlements are at all-time highs. In a typical wrongful termination case, it's not uncommon for the plaintiff's lawyer to charge more than \$100,000 in attorney's fees. The only way to protect your nonprofit from these financial risks is with an adequate nonprofit D & O policy.

If Sued, You Lose

Regardless of whether your organization wins or loses, lawsuits cost money. They take up valuable time as well. Even if you eventually win a lawsuit, your organization and its executives, directors, and board members face the monetary loss attributable to the time spent defending the case. Often this will consume many hours of an executive's time and detract attention from the organization's mission.



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Case Studies

Sexual Harassment: A female employee at a Midwestern nonprofit hospital accused a respected doctor of sexual harassment. When the hospital management investigated, they discovered the doctor had been harassing female employees for more than 15 years. As a result of the investigation, several of the women filed lawsuits against the hospital. The hospital settled these cases for \$225,000 with an additional \$20,000 in defense costs.

Age Discrimination: Due to strict budget cuts, a trade association was forced to lay off staff. Included in this group were two older, highly compensated employees. Both employees had a history of satisfactory performance reviews. The two employees decided they were fired because of their age and cited derogatory comments that had been made in the workplace. The association faces an exposure in excess of \$500,000.

Wrongful Termination: An employee at a nonprofit organization expressed concern about a contract that was awarded to a particular party. The employee was subsequently fired and sued the nonprofit, claiming that “whistleblowing” was the cause of termination. The case was settled for \$237,500.

In addition, a nonprofit that is tied up in employment-related litigation risks a drop in morale and productivity. Once your organization’s reputation has suffered, you may find it difficult to attract volunteers and employees. If the case receives publicity, fundraising may become an even greater challenge. While even the best nonprofit D & O policy won’t prevent a lawsuit, a good policy should alleviate your financial concerns if you ever are sued.

What to Look for

Without a nonprofit D & O policy, your organization could face expenses not even the largest corporation could afford. The high cost of settlement plus legal fees could bankrupt your nonprofit if it’s unprotected. That’s why one important feature to look for in a D & O policy is a duty-to-defend option. With this option, the insurance company will pay for your nonprofit’s legal defense if legal action is taken against you for a reason covered by the policy. Look for the following characteristics in a duty-to-defend option:

- **It will cover all legal defense fees.** Look for a policy that covers the full cost of the legal defense, even if the allegations are unjustified or false.
- **It will pay legal costs as you incur them.** Many nonprofits don’t have the resources to pay legal bills when they are due. Some insurance companies now pay legal fees directly to the lawyer so that you don’t have to pay the bills and then wait to be reimbursed.
- **It will defend you outside the policy limits.** Look for an insurance company that pays all eligible

legal expenses even if they exceed the policy limits.

- **It will provide defense from the very first dollar.** Find a policy with no deductible for legal expenses.

If your organization is sued, be sure to seek counsel from an attorney who is an expert in the field of employment-practices liability. Some insurance companies will help you find such an expert.

Today, a satisfactory nonprofit D & O policy is one of the hallmarks of a well run nonprofit. By fully understanding the differences in D & O policies, you can make the right choice for your organization. ■

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These publications are available through the Society for Nonprofit Organizations’ Resource Center. For ordering information, see the Society’s *Resource Center Catalog* included in this issue, or contact the Society at 6314 Odana Road, Suite 1, Madison, Wisconsin 53719 (800-424-7367).

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