



# How to Cut Your Risk of Lawsuits

*Here's what to do—and what not to do—to reduce your risk of being sued.*

**I**n today's legal climate, all nonprofits must have sound personnel policies to reduce their legal risks. And they must regularly communicate and enforce these policies. It's worse than useless to have a policy that says that your organization won't tolerate sexual harassment or discrimination—and then do nothing to implement it.

Any nonprofit can be hit with a huge employee lawsuit that could drain its bank account, tarnish its image, and even put it out of business.

A current employee may claim the organization did nothing to stop another employee from sexually harassing her.

A former employee may assert he was illegally and improperly fired.

A would-be employee may sue because he feels he was discriminated against based on age, sex, race, or disability.

Employee lawsuits are the fastest growing area of civil litigation today. One factor is the 1991 Civil Rights Act, which gives employees claiming any type of discrimination the right to a jury trial.

Additionally, the Americans with Disabilities Act (ADA) has inspired lawsuits. Plaintiffs may claim you've violated the ADA by failing to change the workplace to accommodate their disabilities. Even "mental impairment" can be the basis of a suit. Recently an employee fired for carrying a loaded handgun to work claimed he was entitled to ADA protection because he was under psychiatric care. A federal judge agreed he had

the right to take this case to court.

Here are a few simple steps you can take to reduce your risks:

## **Have an Up-to-Date Personnel Manual.**

Writing a personnel manual from scratch can be time-consuming and expensive. You can't just take some other nonprofit's manual and put your name on it; such a document probably won't meet your needs. You can, however, start with a model personnel manual and tailor it to your nonprofit. Statewide nonprofit associations and chambers of commerce can provide model personnel rules. Through your board of directors, you can perhaps find a qualified consultant or attorney to develop a manual for you for free or at a reduced rate.

Have your board review and approve your draft document. Every year, have a lawyer or personnel expert review your manual to be sure it still complies with current state and federal law.

Everyone in the organization must have a clear understanding about what kind of behavior won't be tolerated. This is a joint responsibility of the executive director and board of directors.

Make sure that you, or the person who hires

for your organization, knows the law. It's illegal to ask applicants about their marital status, age, ethnicity, childbearing status, or past workers' compensation claims.

When hiring staff, provide written manuals, and be sure all personnel policies are clearly communicated. If your organization has disciplinary steps, review them with the new worker. Be sure the employee understands that these steps will be exempted during the probationary period, allowing for immediate dismissal if necessary.

After the probationary period, if correction is required, managers should follow the disciplinary steps scrupulously. Communicating personnel rules and promptly enforcing them is a nonprofit's best risk management tool.

## **Create a Sexual Harassment Policy.**

Because sexual harassment claims are exploding, every nonprofit needs a strong policy. Too often, organizations don't act on harassment claims immedi-

The 1991 Civil Rights Act gives employees claiming any type of discrimination the right to a jury trial.



ately; thus, the situation festers and eventually becomes a lawsuit. Take all complaints seriously, and act on them promptly.

## Use Performance Reviews to Manage Risk.

Performance reviews can be a risk management tool. The board should annually review the executive director's performance, and the executive director should conduct annual performance reviews of the staff. These reviews should be put in writing and placed in personnel records.

Someone who has been warned about poor performance is less likely to sue than someone who's fired without warning. If a terminated employee does sue, poor performance reviews will be invaluable in your defense.

If a terminated employee sues, poor performance reviews will be invaluable in your defense.

## Obtain D & O Insurance.

While sound management can reduce your risks, it can't eliminate them. That's why almost all nonprofits need a directors' and officers' (D & O) liability policy.

The D & O policy will pay for your organization's legal defense, which can be extremely expensive. And it will pay the judgment or settlement up to the limits of the policy if your organization is found liable.

You must scrutinize D & O policies carefully, because they're not standardized. The differences can be subtle, and coverage can vary substantially among insurance companies. Some D & O policies do not cover sexual harassment claims, for example. Others exclude employment-related claims, such as wrongful termination, discrimination, and failure to promote or hire.

Make sure you know what you're buying with your premium dollar. Otherwise, you may not be getting the protection you, your organization, and your directors most need. ■

### Selected References

Brinckerhoff, Peter, "Nonprofits and the Americans with Disabilities Act," *Nonprofit World*, March-April 1993.

Conroy, Charles, "Sexual Harassment: Don't Let It Destroy Your Organization," *Nonprofit World*, March-April 1992.

Dixon, Greta KMarie, "Do Your Job Descriptions Comply with ADA?," *Nonprofit World*, May-June 1993.

Grunewald, Don and Barbara Frees, "Does Your Board Need Liability Insurance?," *Nonprofit World*, November-December 1994.

Mahoney, John, "Protect Yourself Against Employee Lawsuits," *Nonprofit World*, March-April 1997.

Michaels, Mark, "CEO Evaluation: The Board's Second Most Crucial Duty," *Nonprofit World*, May-June 1990.

Muehrcke, Jill, ed., *Law and Taxation, Leadership Series, Volumes I and II*.

Muehrcke, Jill, ed., *Personnel & Human Resources Development, Leadership Series, Volumes I and II*.

*Nonprofit Organizations' Business Forms, Disk Edition*.

Society for Nonprofit Organizations, *Volunteer Liability and Risk Management Handbook*.

Tesdahl, D. Benson, "Are You Complying with Compensation Laws?," *Nonprofit World*, July-August 1994.

Tremper, Charles, *Reconsidering Legal Liability and Insurance for Nonprofit Organizations*.

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).

For more information, contact U.S.A. Risk Services, P.O. Box 2139, Sarasota, Florida 34230-2139 (phone 800-533-3097; fax 941-957-3488).

Nonprofit World • Volume 17, Number 3 May/June 1999  
Published by the Society for Nonprofit Organizations  
6314 Odana Road, Suite 1, Madison, WI 53719 • (800) 424-7367