

Reduce Legal Risks with These Pointers

Here are steps that will help you avoid devastating lawsuits.

By Stacy Flores

The changing statute of limitations throughout the United States and the shrinking insurance capacity have created a pressing need for effective risk mitigation strategies in nonprofits. These factors increase the potential for uninsured or underinsured legal and financial liabilities, making it crucial for organizations to take measures to protect themselves and those they serve.

With this in mind, let's explore the key components of successful risk mitigation programs. We'll outline concrete actions that you can take to reduce exposures to lawsuits.

Invest in Training Programs

Comprehensive training programs are essential for all clients and employees, including volunteers. These programs should go beyond basic orientation and cover topics such as recognizing signs of abuse and harassment, understanding

appropriate boundaries, and knowing how to respond to and report inappropriate behavior.

While internal education is fundamental, spending time to educate your clients is critical, too. Help them recognize improper behavior from those in positions of power and amongst their peers. Teach them to report the behavior, being certain to allow for documentation while honoring privacy throughout the process.

Use Proper Screening Procedures

During the hiring process, thorough screening of applicants is pivotal, especially if your organization works with children, people with disabilities, or any vulnerable group. Background checks should be conducted at the state, local, and federal levels, as appropriate, to assure that potential hires don't have a history of misconduct or criminal behavior.

Ordering a background check doesn't in itself constitute effective screening, however. Be aware of subtleties that may make background checks ineffective, such as:

- **limitations** on reported criminal information due to federal and state laws
- **breakdowns** in reporting systems

“Be sure to use all these tools to avoid any informational gaps.”



“Ensure a confidential environment for people to report concerns.”

- **the possibility** of sexual abuse and other criminal charges being reduced to lesser offenses
- **potential shortcuts** taken by background check vendors that may not be apparent to you at first glance.

For all these reasons, it's important that you don't rely on background checks as the sole means of screening applicants. Your screening should also include a comprehensive application form, multiple interviews, and reference checks, each serving a unique role in gathering information. All these tools are necessary to avoid any informational gaps.

In addition to holding in-person interviews, call references from prior employers and personal references to gain insights into each applicant's character. Gathering information about people's past behavior is the best way to predict future behavior.

While most organizations have screening measures, they often concentrate only on determining if the applicant is qualified for the role. Don't forget to also look for signs that a person might put your organization in legal jeopardy. Check applicants' social-media posts and look for behaviors such as blaming others, filing numerous grievances, or harassing co-workers. Make sure your application form, reference checks, and interviews include questions that ask about specific high-risk behaviors, such as violent tendencies and problems with anger.

Draft or Review Written Policies

Developing comprehensive and tailored policies and procedures is a must for risk reduction. These documents should clearly outline expectations, guidelines, and protocols for preventing and addressing abuse, molestation, harassment, and similar problem behaviors. It's vitally important to establish a zero-tolerance policy for abuse and to provide clear instructions on how to report such conduct. Also, set up anonymous reporting lines to encourage people to come forward with any concerns.

Identify Inappropriate Behavior after Hiring

Once people are hired, it's imperative to observe their behavior and performance in their roles. Regular monitoring and oversight can help identify any red flags early on, allowing for timely intervention.

Supervisors and managers should maintain open lines of communication with employees – both paid and volunteer. It's important to provide support and guidance while also being vigilant for any signs of misconduct.

Engage in Ongoing Education

Risk mitigation efforts shouldn't end with initial training. Organizations should provide ongoing education and training to all employees, volunteers, and clients. (This includes you and others in leadership roles.) Foster a culture of continuous learning, and ensure that everyone remains informed about best practices, evolving policies, and their roles in confronting the issues of abuse and harassment.

Promote Collaboration & Partnerships

You can benefit from collaborating with external partners and experts in the field of risk mitigation. This can involve seeking guidance from local child protection agencies, engaging in joint training initiatives with other organizations, and participating in industry conferences and workshops. Such tactics will help you stay up to date with the latest practices.

Use Strong Risk-Transfer Techniques

Many organizations employ third-party providers and subcontractors for specialty needs. These third parties may range from food and janitorial needs to physician care or exercise vendors. It's important to require such third parties to carry affirmative coverage for abuse and molestation. You also want their insurance programs to name you as an additional insured and have their insurance be primary in your defense for their actions. This could help protect and “save” your insurance coverage limits for you.

Look at the insurance of all your third-party providers to be sure that the coverage is appropriate based on their potential interaction with your clients. A plumbing contractor who is never alone with any of your clients may not need to carry limits as high as you require for someone who runs the gym or the physician group who meets with clients one-on-one.

Consider Your Own Insurance Limits

Due to the limited capacity for abuse coverage, many organizations have had to take a hard look at how much coverage they can afford for abuse or molestation liability. In many instances, the insurance carriers are deciding this for you by limiting how much coverage they will provide. Here are factors to consider when considering your limits of coverage:

Look at funding sources, landlords, clients, and vendors. Do you have contractual obligations to carry a specific limit?

Ask yourself: Is your policy written on a claims-made or occurrence policy form? If written on a claims-made form, you need your coverage limits to “stretch” over a longer period, allowing for more potential claims to be reported in a policy period. Higher limits may make more sense. If your coverage is written on an occurrence form, your limits are dedicated to each coverage period.

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Understand the coverage triggers. The abuse and molestation coverage in the U.S. triggers differently from coverages offered in London. Sometimes you may need to marry the two in your insurance program. Ensure your broker has explained these differences so that claims can be reported promptly and not denied defense.

Objectively evaluate past risk management and risk control techniques.

Benchmark yourself against your peers to better understand the trend in reducing policy limits related to this coverage line. Share this information with your board of directors on a higher level. They should be aware of it to allow for proper budgeting of losses that may exceed your coverage limits or to pay for retained losses.

There's no better time to mitigate and manage your risk than now. By nurturing a culture of awareness, you can safeguard the well-being of those you serve while protecting your organization's reputation and financial stability. **S**

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“Higher insurance limits may make more sense.”

Create a Risk-Aware Culture

Managing risk shouldn't be a mere checkbox to be hastily completed but, rather, should be viewed as an essential component of an effective safety system. More resources to manage risks are available at NonprofitWorld.org:

Trust: The Reason Screening Volunteers Is More Vital than Ever (Vol. 37, No. 3)

Setting the Stage for an Abuse-Free Organization (Vol. 30, No. 6)

The Risky Six: Keys to Shed Fear & Take Smart Risks (Vol. 40, No. 2)

How to Avoid Retaliation Claims (Vol. 21, No. 8)

Do You Need D&O/EPL Insurance? (Vol. 27, No. 3)

Overcome Unconscious Bias in the Hiring Process (Vol. 39, No. 3)

What You Need to Know about Sexual Harassment (Vol. 30, No. 5)

Foreseeable Harm (Vol. 20, No. 3)

Use Background Checks to Avoid Legal Pitfalls (Vol. 29, No. 1)

How to Write Effective Anti-Bias Policies (Vol. 30, No. 4)

Don't Be Sued for Negligent Hiring (Vol. 21, No. 3)

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