

What Can You Do with a Renegade Employee? What's the board's responsibility when an employee takes unfair advantage of an organization?

Q As a board member at a nonprofit organization, I'm concerned about one of our organization's employees. Our organization has retained this employee (a facilities caretaker) for more than a decade. He has developed close friendships with several organizational leaders as well as some benefactors of the organization. Because of these friendships, he has dictated to us what he will and won't do. He doesn't always appear at the prescribed times to execute his job. Occasionally he sends a replacement (such as a friend, relative, or even a child) to perform his duties without obtaining approval by the organization.

In addition, the employee has periodically refused to supply documentation for reimbursable expenses. He has billed excessive hours for events that fall outside the scope of his duties. Yet the organization has continued to pay his salary plus the additional hours for fear of upsetting one or more benefactors. The organization has also continued to provide the employee with a paid residence (and related utilities). Incidentally, the employee has full-time employment with another employer as well as our organization.

Can you give me some advice I can take to the rest of the board? Several of us want to change this situation but don't know how to proceed or how to prevent such situations from occurring in the future.

A Clearly, the board can't allow this situation to continue. The caretaker's actions are placing your organization in great legal peril. You and the others on your board have the fiduciary duty to control such risks.

Your organization is paying the caretaker for duties executed by third parties who have no contract with you and aren't insured by your organization. The legal ramifications of this situation are broad. Your organization is obligated, for all your employees, to issue W-2s, pay related taxes and fees, and provide workers' compensation coverage. Therefore, your employee can't legally subcontract his job to another person or substitute someone else to execute his duties.

Considering how long this situation has festered, termination is most likely the best option. First, however, be sure you have documentation showing that you've spoken with the employee and asked him to change his behavior. You must be able to prove that you've made the employee aware of the problem and given him a chance to fix it. This documentation will help you avoid a wrongful termination suit. Such lawsuits have become increasingly common and can devastate an organization.

The next step is to meet with your lawyer to go over your case for termination. Be sure your case is legally solid before you proceed.

Next, work with your organization's leadership team to create a termination plan. To gain agreement, stress the fact that the caretaker will be treated fairly and with compassion throughout the termination process.

But be firm in moving forward. Make it clear to everyone on the board that nothing less than the organization's survival is in jeopardy if you don't act. If necessary, bring in an outside advisor to help you reach consensus. Ask your United Way, your affiliated or parent organizations, and your professional associations for assistance. Use your conflict-management skills, and ask the aid of others with such skills, to help negotiate a termination agreement.

Give board members copies of this article as well as the articles noted in "Don't Let Your Board Risk Your Future" on page 5. After giving them time for reading and reflection, get together to discuss the guidelines in these articles and create a plan for moving ahead to strengthen your board and resolve this dangerous issue before your organization faces severe liability.

Take care to explain the situation to members of the community and your organization's stakeholders, including the benefactors who have formed friendships with the caretaker. They, too, need to understand that the caretaker's employment is risking your organization's survival and can't be tolerated but that his termination will be as humane and kind as possible, preserving his dignity and your organization's integrity.

As your next step, you may need to remove some members from the board. It's imperative that all members be engaged and take their responsibilities seriously. Otherwise, there can be major legal consequences. It appears from what you say that some members are apathetic and disinclined to act even in the face of a crisis.

And, finally, take steps to change your organization's culture to one of transparency, integrity, and responsibility. Be sure your board is adhering to the following precepts for a principled, well-structured, and legally sound organization:

Maintain internal controls for the organization. Use these controls to assure that financial reports are accurate, that the potential for employee fraud is minimal, and that your organization is complying with the law. Staff members should monitor adherence to internal controls and report any deviations to the board. Board members should confront such problems immediately.

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Assure that external auditors perform a financial audit of your organization every year.

Establish written human resource policies. These policies should spell out requirements such as the following:

- Every employee should have a detailed job description with a set pay scale and prescribed duties.
- Supervisors should hold periodic performance reviews with employees. If work isn't satisfactory, supervisors should note this in the employee's file and provide the employee with a plan for improvement. All discussions about unsatisfactory work should be carefully documented. Employees should sign the written summaries of such discussions to make it clear that they understand what they need to do to improve.
- Clarify monetary restrictions. For example: Workers must document all their expenses and stay within defined limits. They must submit detailed receipts and invoices for any reimbursable expenses.
- Have clear-cut procedures for hiring and termination.

Monitor the budget report on a monthly or quarterly basis, comparing actual expenses to the budget. The board owns the budget and should expect these updates from the staff.

Document meetings in as much detail as possible.

Create conflict of interest policies for the staff and board. Take care that everyone understands and follows these policies.

Oversee the work of the CEO. Cultivate a strong relationship between the CEO and board.

Be sure all board members understand their fiduciary duties. Anyone responsible for governance is obligated to exercise due diligence. If you, as a board member, don't act to correct a problem, you must be on record as having objected to the organization's conduct, or you can be held liable.

Before every decision, ask: "How will this look in court before a judge?" Most courts will hold you as a board member responsible for the organization's governance. You could be held personally liable if your actions don't comply with governance standards. 

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Don't Let Your Board Risk Your Future

Many resources are available to solve problems that may be putting your organization at risk. To get started, see articles in the "Law," "Board," and "Personnel" categories at www.NonprofitWorld.org/members, including:

What Is the Board's Role in Managing Risk? (Vol. 15, No. 5)

How to Create a Strong Board-CEO Partnership (Vol. 27, No. 1)

Setting Up a Control System for Your Organization (Vol. 16, No. 3)

Do Your Board Members Know Their Fiduciary Responsibilities? (Vol. 33, No. 1)

How to Assess and Improve Your Board's Performance (Vol. 24, No. 1)

LQP: A Model to Remove Board Members (Vol. 22, No. 1)

How to Change the World by Changing Your Culture (Vol. 31, No. 2)

Conflict of Interest in the Board Room (Vol. 17, No. 2)

Top Tips for Writing Your Policies (Vol. 29, No. 5)

Six Ways to Reduce Risk & Comply with the Law (Vol. 25, No. 6)

How to Manage Internal Conflict (Vol. 12, No. 6)



WHAT'S UP ONLINE?

To broaden online discussions on nonprofit topics, we're expanding our Discussion Forum with a ListServe, provided by Yahoo Groups. To join, you can either click on the "Yahoo" button at:

<http://www.NonprofitWorld.org/social/>
(free Yahoo login required)

or send a blank e-mail to:

NonprofitWorld-subscribe@yahoogroups.com

If you have any questions, contact Jason Chmura at jchmura@NonprofitWorld.org.