

Managing Risks in Hiring and Firing

When a nonprofit organization hires paid staff, it enters the wide world of employment risks. These include:

- poor performance by employees ill-suited to their jobs
- wasted resources when an employee must be terminated after a lengthy or costly recruitment process
- disruption of the workplace or declining morale due to a poor performer
- formal and informal complaints made to supervisors
- formal complaints filed with administrative agencies
- injury to clients from poorly trained or poorly supervised employees
- lawsuits filed in state and federal courts.

While it's impossible for a nonprofit to insulate itself entirely from such risks, every organization can take certain positive steps to reduce its exposure to harm. The process begins by creating a workplace where policies and expectations are fair and compassionate. Beyond that, every nonprofit should commit its employment policies and procedures to writing. Written policies and procedures are the starting point for defensible, consistently applied and ultimately effective employment practices. They...

- ***Ensure consistency.*** Written policies increase the odds that you'll communicate a consistent message to all employees. Each person receives the same written statement of policy. You can avoid the risk that various supervisors will interpret a policy differently, causing inequitable treatment of employees. Employees are likely to feel that they have been treated fairly when they see that the same standards apply to everyone and the standards are applied consistently.
- ***Provide admissible evidence of the organization's policies, should the organization need to defend its practices in court or at an administrative hearing.*** You increase your chances of being held liable for unlawful employment practices when you're unable to demonstrate that a lawful policy existed and was followed. The absence of written policies could leave your nonprofit needlessly vulnerable to legal challenge.
- ***Establish the business-related reason for an employment action.*** Laying this groundwork will reduce the possibility that the employer's conduct will be challenged as subjective or discriminatory.

Employment Applications

Keep in mind that your organization may need to develop more than one application for employment. For example, for positions where driving is a responsibility, you may want to add driving questions to the application or use a driving supplement. For positions involving substantial one-on-one contact with children or members of another vulnerable population, you may want to add child abuse-related questions (or other pertinent questions) to the application. In addition, you should always use the same application for each person applying for the same position in your nonprofit.

It's a good idea to use job descriptions and applications for volunteer, as well as paid, positions. You should adapt your application so that it is suitable for use in volunteer recruitment and screening.

If your screening process for any position includes checking criminal history records or credit bureau records, consider using the following language on your application:

I understand that [Name of Nonprofit] may conduct a criminal records check or a consumer credit check to verify my suitability for employment. If [Name of Nonprofit] engages a consumer-reporting agency to report on my credit or personal history, I authorize it to do so. If a report is obtained, I understand that, upon my written request, the name of the agency will be provided to me, and that I may obtain information regarding the nature and substance of the information contained in the report.

A job application form should be signed by the applicant. The following language may be included just above the signature line:

I understand that this application for employment is not a contract and that employment with [Name of Nonprofit] is "at will," which means that either the employer or employee may terminate the employment relationship at any time, for any reason, with or without prior notice. I further understand that all employment is continued on that basis and that no supervisor or employee of the organization has the authority to alter the nature of the "at will" employment, and the Executive Director may do so only in a written statement.

I hereby consent to permit [Name of Nonprofit] to contact anyone it deems appropriate to investigate or verify any information provided by me to discuss my suitability for employment, background, past performance, education or

related matters. I expressly give my consent to any discussions regarding the foregoing and I voluntarily and knowingly waive all rights to bring an action for defamation, invasion of privacy, or similar causes of action against anyone providing or seeking such information.

I certify that I have provided and will provide information throughout the hiring process, including on this application for employment and in interviews with [Name of Nonprofit], that is true, correct, and complete to the best of my knowledge. I certify that I have answered and will answer all questions to the best of my ability and that I have not and will not withhold any information that would unfavorably affect my application for employment. I understand that misrepresentations or omissions may be cause for my immediate rejection as an applicant for a position with [Name of Nonprofit] or my termination from employment if I am hired.

Checking References

Carefully checking an applicant's references may be time-consuming, but it is a very important risk-management tool. Checking references in a haphazard manner is asking for trouble. There are at least three basic approaches to checking references:

- 1. Meeting with the applicant's references* - may elicit the most information, because the person checking the reference can interpret the facial expressions and body language of the person providing the reference. This approach may not be practical, however.
- 2. Telephoning the applicant's references* - gives an opportunity to interpret the vocal inflections of the person providing the reference, perhaps revealing more than the written word.
- 3. Requesting a written response by mail* - yields the least information beyond simple facts, although it may be the only feasible approach for certain positions.

Here's a simple system for effectively checking the facts and references provided by an applicant:

Step 1 - All applicants complete an application form that includes a waiver giving the nonprofit permission to verify information supplied by the

applicant during the hiring process and promising not to bring a lawsuit against either the nonprofit seeking or responding to a request for a reference, owing to information revealed in the process. The application may also contain a statement signed by the applicant, that the applicant can be terminated from employment for providing false information during the hiring process. (This is called a false information warning or "truth clause").

Step 2 - The nonprofit assigns one qualified staff member to verify the factual information provided by applicants on their resumes, application forms and during interviews, as well as checking references. This staff member makes a determination on a case-by-case basis as to whether the applicant meets minimum qualifications or whether to reject the applicant. The backgrounds of all applicants who meet minimum qualifications are then screened and all factual information provided by the applicant is verified. The staff member who checks references and verifies facts should be trained and capable of understanding underlying meanings. He or she should never be satisfied with "blanket" responses, such as, "She was generally effective." The screener should inquire about the specific contributions or skills that motivate such an assessment.

Step 3 - The staff member assigned the fact verification task uses a pre-printed form or checklist for each applicant to keep track of the information verified: level of education, degrees, licenses, dates of employment with previous employers, and so forth. The process should cover a five- to seven-year work period. The staff member verifies the information by mail, or telephone, using the checklist/form as a record of the verification.

Step 4 - A copy of each form/checklist is maintained in an "application pending" file for each applicant until all verifications have been received. The staff member assigned the fact verification task must follow up with any requests for verification that are not returned to the organization. When all facts provided by the applicant have been checked, you are ready to interview the applicant.

If any discrepancy appears in the facts provided by the applicant, you should either reject the applicant prior to conducting an interview, check additional records or references to resolve the discrepancies, or, if warranted, use the interview to explore the discrepancies with the applicant.

Here are examples of the kinds of questions to ask a reference:

General questions-

- In what capacity have you known the applicant and for how long?
- Would you re-hire the applicant? If no, why not?
- How does the candidate handle frustration and criticism while on the job?
- Was the candidate punctual?

Questions for applicants who will work with children--

- When and where have you observed the candidate working with children?
- What is the candidate's philosophy about discipline?
- In your opinion, are there any reasons why placing children in the care of the candidate would expose them to undue risk or harm?

Question for applicants for mentoring positions--

Would you be comfortable having the applicant assigned to mentor someone in your family?

This article is adapted with permission from The Risk Management Resource Guide, a publication of Nonprofits' Insurance Alliance of California (NIAC) and Alliance of Nonprofits for Insurance, Risk Retention Group (ANI-RRG), developed in cooperation with the Nonprofit Risk Management Center. Copyright © 2001, Nonprofits' Insurance Alliance of California and Alliance of Nonprofits for Insurance, Risk Retention Group. NIAC and ANI-RRG are both nonprofit organizations that provide liability insurance to 501(c)(3) nonprofits. The Risk Management Resource Guide is a member-only benefit for the member-insureds of NIAC and ANI-RRG. For more information on these two organizations, visit www.insurancefornonprofits.org