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The Employment Issue

Lend a Helping Hand: Employment Policies Worthy of Your Mission

By Erin Gloeckner

On the first day of a new job, most of us probably arrive wondering things like, “What will it be like to work here?” “What will my role entail?” and “How will I learn everything I need to know in order to do my job?” Whether you are a new hire or a longtime employee at your nonprofit, it always helps to have a roadmap to guide your day-to-day professional journey. Any

organization with paid staff should have a narrative document or handbook that describes key employment policies. This personnel manual or employee handbook will offer support to your employees while helping to ‘show them the ropes’ at your organization. Employee handbooks are an effective risk management tool used to mitigate myriad risks related to managing paid

continued on page 2

Risk Management ESSENTIALS

Vol. 24 • No. 3 • Winter 2015

Published three times annually by the
Nonprofit Risk Management Center
204 South King Street
Leesburg, VA 20175
Phone: (703) 777-3504
www.nonprofitrisk.org



**Nonprofit
Risk Management
Center**

Staff Directory

(All staff can be reached at (703) 777-3504)

Melanie Lockwood Herman
■ Executive Director
Melanie@nonprofitrisk.org

Erin Gloeckner
■ Project Manager
Erin@nonprofitrisk.org

Kay Nakamura
■ Director of Client Solutions
Kay@nonprofitrisk.org

Emily C. Stumhofer
■ Staff Attorney
Emily@nonprofitrisk.org

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*Lend a Helping Handbook: Employment Policies Worthy of Your Mission
continued from page 1*

staff—but handbooks can also invite risk if they are not drafted, reviewed, shared, and enforced appropriately.

Employee handbooks exist on a wide spectrum—ranging from those that are actually read, respected, and applied, to those that are downright dangerous and expose your nonprofit to legal and employment practices risks. Creating useful employee handbooks is a good risk management practice; they increase the likelihood of a shared and consistent view about the organization's values and key policies. They also provide a helpful roadmap for supervisors and managers charged with enforcing policies.

When Handbooks Cause Grief Instead of Good

A nonprofit employee handbook is more likely to cause grief than good when it:

- infringes employees' right to discuss the terms and conditions of employment or engage in other 'protected concerted activities' for their mutual aid or protection, provided to all U.S. workers in Section 7 of the National Labor Relations Act (see: www.nlr.gov/rights-we-protect/whats-law/employers/interfering-employee-rights-section-7-8a1).
- is hopelessly out of date. When early pages in your employee handbook contain clearly outdated references, the reader may stop reading, or worse, regard the entire handbook as useless, inapplicable drivel.
- is verbose or needlessly complicated, making it too cumbersome for employees to read or understand (much less follow!).
- contains policies that are rarely, if ever followed. For example, if dress code violations haven't occurred in

years and your nonprofit permits or encourages casual dress, it's time to strip the dress code do's and don'ts from your handbook.

- flip flops between gentle language about teamwork and overly stern warnings such as: 'This handbook may be changed or interpreted by management at any time and for any reason, and you may or may not be informed about the change by management.'
- features language that infers a contractual—versus employment at will—relationship with staff. Too many handbooks make promises that could undermine the organization's employment at will policy.
- combines policies and procedures meant for specific stakeholder groups that deserve their own distinct handbooks—such as employees and volunteers—and thereby blurs the legal boundary between employee and volunteer classification.
- is distributed without any coinciding training, coaching, or team meetings, and therefore fails to offer employees the chance to learn about new/updated policies, to refresh their understanding of well-established policies, and to ask questions about any policies they do not understand.

Designing a Handbook Worthy of Your Mission

So what is a handbook truly meant to achieve, and how can nonprofit leaders lend a helping hand(book) that protects their organizations from the legal risks and cultural challenges described above? To begin, design your handbook with the following qualities in mind:

continued on next page

Lend a Helping Handbook: Employment Policies Worthy of Your Mission
continued from page 2



- **Clarity:** Your handbook should clarify expectations that apply to all paid staff, as well as define consequences for inappropriate behavior. A handbook must also use clear, simple, concise language that caters to varying reading levels.
- **Relevance:** It is essential that all the content in your handbook be pragmatic and truly applicable in the real world. You wouldn't read a handbook if you thought it was impractical, idiotic, or irrelevant—and neither will your employees. Handbook content should have meaning; it should only reference policies that you sincerely expect your employees to follow, and that are actually enforceable. Simply put, if it is irrelevant to your workplace culture and expectations, then take it out of your handbook!
- **Fairness:** Employee handbooks should be designed with a specific audience in mind:

your paid staff. Your employee handbook should not reference policies or expectations that apply to volunteers or any other stakeholder groups. This can be confusing, seem unfair, or even create the perception that you are misclassifying employees and volunteers. Consistent enforcement can help protect your organization against legal claims, and help bridge the gap between new and longtime staff members. Sometimes these staff groups may skirt around policies that they have grown comfortable with, or adhere more strictly to specific policies that they find valuable. By consistently enforcing your handbook and expectations, you will place all your staff members on an even playing field.

- **Goodwill:** Perhaps the most crucial element of any employee handbook is the quality that convinces employees to *read and follow it*.

Problem...Solved!

Most employee handbooks contain a routine "acknowledgement" page at the very end, asking new employees to acknowledge their receipt and review of the nonprofit's HR rules. Yet from time to time, a new hire may refuse to sign the acknowledgement. What's an HR manager or nonprofit CEO to do?

Here are three options.

1. **Good:** Ask the employee to confirm in writing their refusal to sign on the acknowledgement page, such as: "I have read and understand the contents of this Handbook but I refuse to abide by all of the policies contained herein." After refusal is documented, consider discipline or termination as appropriate for the employee's insubordination. Make certain that you are consistent when you make discipline decisions: if your top development team member also refused to sign but her actions were ignored, you should not fire another employee for the same refusal.
2. **Better:** Ask the employee to explain his or her reasons for refusing to sign. Focus on the "why" behind the refusal. It's possible the employee simply needs a clearer explanation of one or more policies. And if one employee feels this way, others may too.
3. **Best:** Give the employee handbook to new hires before their first day, and make acknowledgment of your workplace policies a condition of employment.

continued on page 4

Overly Broad Policies May Violate the NLRA

In March 2015 guidance from the National Labor Relations Board (See Memorandum GC 1504), the agency provides specific examples of overly broad handbook language that violates Section 7 of the National Labor Relations Act (NLRA). Also provided are examples of permissibly narrow language. Handbook drafters and Personnel Committees creating or revising a nonprofit's handbook should review the Memorandum before completing their work.

The following are examples of language the NLRB considers overly broad, and therefore in violation of employee rights under the NLRA:

- [Be] respectful to the company, other employees, customers, partners, and competitors.
- Do not make fun of, denigrate, or defame your co-workers, customers, franchisees, suppliers, the Company, or our competitors.

When an employer requires employees to be respectful to customers, competitors, and the like, without specifically mentioning or narrowly focusing on management or the company itself, the workplace conduct rule is unlikely to violate Section 7 of the NLRA.

Memorandum GC 1504 contains the following examples of permissible workplace conduct rules:

- No rudeness or unprofessional behavior toward a customer, or anyone in contact with the company.

continued on page 5

There is no sure answer as to what quality this is, but I would guess that goodwill has something to do with it. The handbook is an essential resource for employees—one that demonstrates that the employer is approaching employment issues in a thoughtful way. Take the time to create a handbook that is realistic, helpful, and makes employees feel more confident—more confident in their own abilities, and more confident that you have sincere goodwill toward them.

Aside from embedding these qualities and values into your employee handbook, try the following tips to keep your handbook fresh, helpful, and fun to read.

- Distinguish between relevant and extraneous content for your handbook. Keep essential personnel policies in your handbook, but don't worry about including all operating procedures or the details of all employee benefits, which may change from time to time. For example, your personnel policies can summarize the available benefit categories, and then state where an employee can obtain more information.
- Explicitly state that handbook revisions and updated policies are intended to supersede previous handbook language and policies.
- Review and update your employee handbook at least every two years. Also update the handbook as necessary whenever there is a significant shift in employment law or in your organization's policies.
- Date the current copy of your handbook and keep a clear record of the policy revision schedule and

the dates when new policies are approved.

- Consider distributing the handbook to a prospective employee when the offer of employment is made. Too many nonprofits continue to hand over the handbook during the first week of employment. Yet few if any new employees who have already begun work will openly protest the provisions in a handbook. Remind new recruits about key policies at the new employee orientation. This will help you highlight priority policies that employees must fully understand and comply with. It will also give you an opportunity to address any questions or confusion regarding these policies.

Additionally, orientation might be the perfect atmosphere in which to study reactions to your policies and employee handbook. Watch for body language that suggests that your new employees think a policy is foolish, confusing, or purposeless. If you notice reactions like these, maybe it's time to do a little more research with your employees to learn which policies they believe in and actually follow. Remember that policies must be enforceable, realistic, and your team must 'buy into' the policies before they will be regularly followed.

- Make the handbook accessible in both hardcopy and digital formats. This will allow employees to access information virtually at any time, and in the format that best meets their individual needs.

Last, watch out for these four things to never include in a handbook:

continued on next page

Lend a Helping Handbook: Employment Policies Worthy of Your Mission
continued from page 4

1. Language implying that if an employee makes it through the introductory work period (often called the ‘probationary period’), the employee is somehow less vulnerable to termination.

Never use the phrase ‘permanent employee’ in your handbook. Sometimes this language is used to distinguish employees who have completed a ‘probationary period’ and are therefore eligible to remain employed. However, the word ‘permanent’ can weaken the at-will employment doctrine—the idea that the employment relationship may be terminated at any time and for any legal reason. Remember to prominently display your at-will employment disclaimer, and replace the phrase ‘permanent employees’ with a more appropriate expression such as ‘regular employees.’

2. Any language that limits the nonprofit’s flexibility in regards to employee discipline and termination. For example, do not use any language stating that termination can only be for cause. Additionally, do not include a narrowly defined list of reasons for termination. Similarly, do not include a definite list of disciplinary action (e.g., progressive discipline actions). An employee might interpret this language as meaning that *all* the disciplinary actions must be followed prior to termination, or that disciplinary actions must be applied in a *certain order* prior to termination.

3. “We do not pay overtime.” A version of this phrase often appears in nonprofit employee handbooks. The good intention behind its use is that the nonprofit wants to warn employees that overtime work isn’t

permitted because overtime pay is beyond the nonprofit’s means. This phrase suggests, however, a nonprofit’s intent to violate the wage and hour laws. If a non-exempt employee works overtime, he or she must be paid premium pay, regardless of the nonprofit’s budgetary situation. Along with that pay, the employee may be disciplined for violating the organization’s rules about working overtime. That discipline could be mild to severe, ranging from a verbal warning to suspension or termination for repeated violations.

4. “Confidentiality is assured.”

The topic of confidentiality often arises in an employee handbook. While it deserves mention, it’s never appropriate to provide outright assurances of confidentiality when the nature of the matter may require that persons within the organization be informed of the allegations or status of an investigation. Instead of promising confidentiality, consider stating that *“All complaints will be investigated promptly and as confidentially as possible.”*

The employee handbook should be viewed as a cornerstone—a revered piece of your organization’s foundation, and a resource that employees celebrate rather than denigrate. If your handbook is nonexistent or simply doesn’t live up to this description, then get to work drafting a handbook that you are proud to hand to your new hires. Happy handbooking!

Erin Gloeckner is a Project Manager at Nonprofit Risk Management Center. Erin welcomes your comments and questions about employee handbooks and the other topics covered in this article at Erin@nonprofitrisk.org or 703.777.3504.

continued from page 4

- Employees will not be discourteous or disrespectful to a customer or any member of the public while in the course and scope of [company] business.”
- Each employee is expected to work in a cooperative manner with management/supervision, coworkers, customers and vendors.
- Each employee is expected to abide by Company policies and to cooperate fully in any investigation that the Company may undertake.
- Being insubordinate, threatening, intimidating, disrespectful or assaulting a manager/supervisor, coworker, customer or vendor will result in discipline.

An important consideration for handbook drafters is to avoid overly broad rules that could “chill” protected concerted activity that is specifically protected under the NLRA. For more information, visit www.nlrb.gov.

Lend a Helping Handbook: Employment Policies Worthy of Your Mission
continued from page 5

“Be bold with your handbook—make it accessible, educational, and if possible, entertaining for your employees.”

Spice It Up! Modernize Your Employee Handbook

Some of the most troublesome handbooks reference obsolete policies and incorrect information. A stale handbook invites behaviors that simply do not support your organization's mission and future. Handbook elements typically become stale for one of two reasons:

1. Over time, practices change so that the written policy no longer reflects agency practice. For example, ABC Nonprofit follows the traditional 'nine-to-five' work schedule. As the organization grows and strives to attract top talent, it begins offering telecommuting and 'flextime' options to employees. The gradual, informal shift is not documented in policy, and a few new employees feel confused and disgruntled when they first read the employee handbook, which doesn't describe the flexibility they were promised, but instead references the traditional work schedule.
2. Over time, policies fail to keep up with evolving practices in public and private employment. An example of this is the recent trend for organizations to shift to Paid Time Off (PTO) policies, which are a modern alternative to traditional vacation and sick leave policies. PTO can ease the employer's burden by eliminating the need for employees to either produce a doctor's note or tell a convincing lie about feeling unwell when they simply need a day off. PTO also eliminates the resentment in workplaces with employees who use sick leave regularly and those who never do. PTO policies permit employees to decide how they will use their time off. Although it appears to be an evolving and beneficial Human Resources practice, many nonprofits are still slow to adopt PTO.

If the examples above resonate with you, then it's time to revitalize your handbook so it speaks to your 21st century employees. Be bold with your handbook—make it accessible, educational, and if possible, entertaining for your employees. Consider the value of entertainment in regards to your handbook—while it's not typical to draft a handbook that is 'fun' to read, maybe that's part of the reason why employees often fail to fully read their handbooks! Try these creative approaches to handbook drafting:

1. Integrate infographics or short, educational videos (~2 minutes) into your employee handbook to make essential content more memorable. There are plenty of user-friendly infographic and video tools online that offer free basic user accounts.
2. Consider using storytelling techniques, videos, and other engaging learning resources during team meetings in which the handbook is reviewed and discussed. For example, to note the significance of a policy you are reviewing during new employee orientation, tell a real, impactful story about a time when the policy was breached at your nonprofit. Then mix things up and use a short video to describe the next policy that you need to review. By using multiple techniques to review the handbook and specific policies, you will cater to diverse learning styles while giving employees a mental break from pure lecture.
3. Create a scavenger hunt or other game to get employees to read the handbook. Give new employees a chance to collaborate and review the employee handbook while searching for answers to questions about key employment policies. You can also include clues or questions that require new employees to meet their team members or to visit specific departments within your organization.



Hitting the Nail on the Head: Prioritizing Safety at Your Nonprofit

By Emily Stumhofer

Countless Center consulting clients and Affiliate Members list safety risks at the top of their concerns. Yet some organizations—especially those that aren't dealing with the Occupational Safety and Health Administration's (OSHA) "Fatal Four" hazards (falls, electrocutions, being struck by an object, and crushing injuries) that make up nearly 60% of fatalities—may not see the necessity of having workplace safety strategies in place. Although 2014 OSHA statistics indicate that 20% of workplace fatalities occurred in the construction industry, safety hazards are present in all work environments. Safety incidents at a nonprofit can result in the loss of life or permanent injury, plummeting employee morale, reputational damage, insurance claims and costly financial and human resource burdens for the nonprofit. Sector leaders must safeguard their

missions from these consequences, and strive to cultivate safe environments for their employees, volunteers, and service recipients.

Common Workplace Safety Mistakes

Adopting a Too-Narrow Definition of Safety

A common failure of many safety initiatives is defining the term so narrowly that it neglects the broad landscape of *safety* risk. In some cases, the term safety refers to the wellbeing of nonprofit personnel. Alternatively, safety may refer more broadly to the programmatic operations of the nonprofit, including appropriate maintenance and use of facilities and equipment, reducing the risk of harm to vulnerable clients (e.g., children, clients with disabilities or frail adults), and even ensuring that programs have

continued on page 8

Safety incidents at a nonprofit can result in the loss of life or permanent injury, plummeting employee morale, reputational damage, insurance claims and costly financial and human resource burdens for the nonprofit.

Begin putting safety first by defining safety, taking time to understand your safety hazards, and setting safety goals tailored to your workplace environment.

only minimal or neutral impacts on the environment.

Many nonprofit leaders are familiar with the Occupational Safety and Health Administration (OSHA) and some of the safety regulations stipulated by the OSH Act. Yet for some, OSHA brings to mind a construction site where workers wear hardhats and steel-toed boots, or a laboratory where scientists in goggles carefully label and store hazardous chemicals. But there is much more to a safe workplace, and the Center recommends a vigilant approach to safety, even if hazards are not easily identifiable in your customary operating environment. Begin putting safety first by defining *safety*, taking time to understand your safety hazards, and setting safety goals tailored to your workplace environment.

According to OSHA, there are six different categories of common workplace hazards:

1. **General safety hazards** are described as the most common, and may include spills and falls, working at height or in confined spaces, electrical hazards and machine-related hazards.
2. **Biological hazards** include blood, mold, bacteria, insect bites, plants, and other natural allergens.
3. **Physical hazards** may include things such as radiation, exposure to sunlight or UV, exposure to extreme temperatures or loud noises.
4. **Ergonomic hazards** include uncomfortable workstations that promote poor posture, heavy lifting, repetitive movements, and constant vibration. Most ergonomic hazards become problematic when workers are exposed to the hazards frequently over a long period of time.

5. **Chemical hazards** include cleaning products, paint, vapors and fumes, gases, flammable materials and pesticides.

6. **Work organization hazards** may include stressors such as heavy workload, violence in the workplace, high intensity or pace of work, levels of flexibility and control at work, and social support and interpersonal relationships.

Assuming Safety is Common Sense

Promoting safe practices requires a culture of safety and hazard awareness. In most office settings, it's easy to overlook subtle safety hazards or assume that everyone is safe. But do not discount the need for safety skills training, protective equipment, and special conditions training—even in a seemingly safe environment. Keep in mind that safety precautions may seem like common sense to an experienced or skilled worker, but they might not be obvious to workers or volunteers who are new to their job responsibilities and duties, or new to your workplace. The opposite phenomenon is also sometimes true: experienced personnel may be cavalier about hazards that alarm brand-new employees and volunteers.

In general, relying on common sense when it comes to safety is unwise. Asking employees and volunteers to rely on their own internal and individual senses of safety leads to the inconsistent use of safety precautions. In addition, imagine trying to defend your reliance on common sense after an employee or volunteer suffers a serious or fatal injury.

continued on next page

Hitting the Nail on the Head: Prioritizing Safety at Your Nonprofit
continued from page 8

Ineffective (or Nonexistent!) Training

Common workplace health and safety hazards include accidents involving motorized vehicles, exposure to toxins, repetitive motion injuries and exposure to communicable diseases.

Although some of these hazards may be rare at your nonprofit, all are possible exposures. Your employees and volunteers require safety training to prepare them to identify and respond to the diverse hazards that could arise.

Most nonprofits are exposed to transportation safety risks. Transportation safety training for employee and volunteer drivers might include a review of:

- the driver screening process and driver qualifications (e.g., current driver's license, motor vehicle records check, and verification of personal auto insurance)
- vehicle features and general driving safety tips (e.g., preventing distracted driving)
- rules regarding the transportation of passengers (e.g., which drivers are allowed to transport passengers and where)
- rules regarding the use of smartphones and GPS devices and CDs or radios while driving
- the nonprofit's auto coverage and which insurance will take effect in various vehicle accident scenarios (e.g., if a volunteer is driving a personally-owned vehicle versus if an employee is driving a vehicle owned by the nonprofit)
- what to do in the event of a vehicle accident (e.g., how to respond at the scene, when to move unharmed passengers to a safer location away

from the road, when and how to report vehicle accidents to the nonprofit, etc.)

- when and how to use vehicle safety inspection and accident reporting forms
- requirements for recurring transportation safety training (e.g., repeated training every three years).

As you can see, even a single safety topic may require a significant amount of training to ensure that employees and volunteers can thoughtfully identify, reduce, and respond to hazards.

Ignoring Close Calls

One of the biggest mistakes organizations make when it comes to safety is failing to learn from past mistakes, incidents and near-misses. Too often, safety snafus are reviewed quickly and soon forgotten—or worse, incident reviews are completed just for the sake of 'checking off a box.' When incidents and near-misses aren't subject to thoughtful review, a nonprofit forfeits the opportunity to make changes that will improve the organization's safety record in the long term. Potentially even more harmful is when something *almost* goes wrong, but ends up being ok. In these types of situations, reporting and feedback is often overlooked for the sake of appearance—no one wants to admit they almost caused a serious incident. In reality, nonprofit leaders should encourage their teams to openly report and assess near-misses and incidents, because an in-depth analysis of what went wrong can help the nonprofit reduce safety risks when planning future events and activities.

For example, a young volunteer is using a ladder to paint the walls of a new facility; she climbs to the top rung

...safety precautions may seem like common sense to an experienced or skilled worker, but they might not be obvious to workers or volunteers who are new to their job responsibilities and duties, or new to your workplace.

Hitting the Nail on the Head: Prioritizing Safety at Your Nonprofit
continued from page 9

of the ladder and accidentally tumbles off. As soon as this incident occurs, it's time to reassess the use of ladders and the ladder training provided to volunteers.

- Has this happened before? What actions did we take to improve ladder safety after prior events, and why were those actions ineffective today?
- What underlying conditions led to this risk event? (e.g., ineffective or nonexistent training provided to the volunteer, lack of supervision, the volunteer's choice to ignore safety protocols, etc.)
- Was our volunteer properly trained in ladder safety, or did we assume she knew not to stand on the top rung? What additional training can we provide to ensure that a similar situation doesn't happen again?
- What immediate response was taken after the fall? Was the response adequate?

Learning from mistakes, even when they don't cause catastrophic results, is a characteristic of smart and resilient nonprofits.

Strategies for Enhancing Safety

Be Proactive

Resilient nonprofits invest in internal capacity and strive to set both proactive and reactive safety measures in place. Increase your focus on proactive measures that can both lessen the possibility that an unwanted risk event will occur, and also prepare your team to react appropriately if the event does occur. Make safety a priority for your organization by initiating the proactive safety practices below:

- Analyze specific risks associated with a position (like OSHA's job hazard analysis)

- Re-train staff and volunteers when changes in duties and responsibilities occur
- Cultivate a sense of urgency and importance around incident reporting (to include the reporting and assessment of close calls)
- Institute program or department-wide safety assessments
- Provide training and support for recognizing unsafe practices and situations
- Develop and communicate clear and well-known procedures for emergency response
- Establish facility-specific standards and safety rules.

The proactive steps that will work for your nonprofit depend entirely on the type of work you do, the clients you serve, and your staffing mix. Thoughtful orientation and ongoing safety training programs are key to supporting a proactive safety culture, as are supervision and practical safety policies.

Increase Interactions

Certain workplace safety issues stem from stress, or from a feeling of being disconnected from management or the organization's mission. The simple strategy of increasing interactions between management and front-line staff can inspire a sense of connection to mission, and a sense that managers care about the wellbeing of employees. Senior leaders should also be comfortable admitting their mistakes and lessons learned, in order to inspire front-line staff to candidly report safety incidents and near-misses. Consider providing employees opportunities to openly talk about safety incidents or concerns, rather than relying only on paper or electronic reporting.

continued on next page

Hitting the Nail on the Head: Prioritizing Safety at Your Nonprofit continued from page 10

Just as important as providing appropriate safety training and opportunities for staff to submit incident reports, is providing feedback and follow-up after a safety event has occurred or an investigation has begun. If a new volunteer brings forth a concern about the lack of lighting in a facility entrance, don't let the conversation end there. Show appreciation that the concern was brought forward, and let the volunteer know what follow-up steps you will take to assess or address the concern. By encouraging these interactions, your team's safety awareness will grow, as will the level of comfort with reporting, assessing, and learning from safety incidents.

Cultivate a Safety Culture

Aim to bring considerations about safety into every decision made by your employees or volunteers. Whether it's safety risks involved with taking on a new age group of young service recipients, or safety risks involved with door-to-door fundraising conducted by volunteers, your team members should keep safety on their minds. If necessary, assign a team member to act as the 'safety advocate' to help initiate discussions about safety risks until such conversations become part of your culture.

The U.S. Department of Labor offers the following tips on creating a safety culture in the workplace:

- ❑ Take prompt action to rectify potentially hazardous situations or behaviors
- ❑ Train and motivate employees and volunteers to work toward the safest possible environment.

Sometimes the best place to start is at the top, to achieve "buy-in" and support from management and supervisors. Once employee and volunteer leaders are on-board with the safety culture, others will begin to recognize the importance of safety at your nonprofit.

Periodically Reassess Your Approach

Remember to review and reassess your organizational approach to safety on a regular basis. Organizations grow, regulatory pressures shift, programs change, and staff and volunteers leave the organization for other opportunities. Nonprofit leaders must regularly review and revise their safety policies and practices in order to keep them relevant in the ever-evolving nonprofit sector.

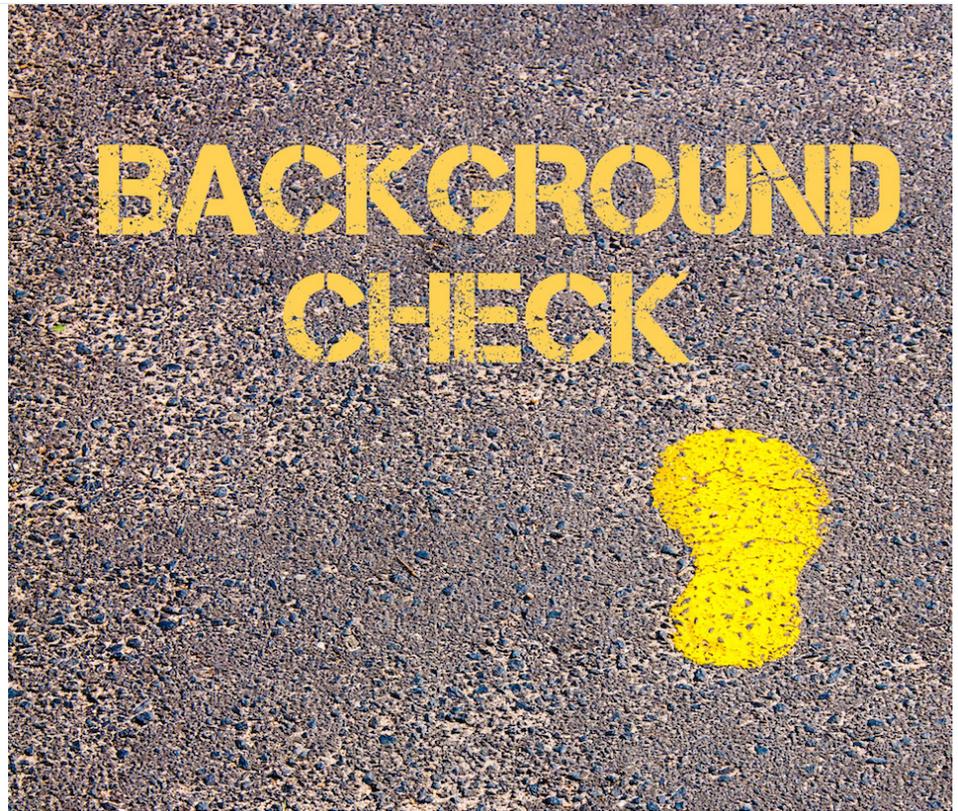
One way to incorporate the reassessment process into organizational life is to think about adopting an "after-action review" process. An AAR typically examines an event (or a close call), the strategies currently in place for dealing with that event, the response to the event in the particular situation, and what changes or revisions can be made to make the process more streamlined and effective in the future (or to reduce the likelihood of recurring events in the future).

After an event occurs and immediate needs have been addressed, convene an AAR involving personnel who possess different perspectives on the event. Facilitate a discussion that addresses the following questions:

- ❑ What underlying conditions contributed to the occurrence of the event?
 - Which of these conditions were outside our control?
 - Of the conditions within our control, were there measures in place to reduce negative consequences arising from them?
- ❑ What immediate conditions contributed to the event?
- ❑ Was the situation or event acknowledged right away?
- ❑ Was the response appropriate in terms of personnel and equipment?
- ❑ Was the response executed appropriately?
- ❑ Were there any mistakes made in the response?
- ❑ Were the organization's policies and procedures followed?
 - Were any of the policies or procedures unnecessarily burdensome?
- ❑ What opportunities do we have to influence the occurrence of a similar event in the future?
- ❑ What changes should be made to improve responses in the future?

Although achieving a sustainable and resilient safety culture at your organization can be a challenge, the ability to protect the lives of the clients you serve and the staff and volunteers that contribute to your mission makes the endeavor well worth the effort.

Emily Stumhofer is a Staff Attorney and Project Manager at the Nonprofit Risk Management Center. Emily welcomes your comments and questions about employee safety and the other topics covered in this article at Emily@nonprofitrisk.org or 703.777.3504.



“Many organizations fall prey to the misconception that criminal history background checks are the only effective way to prevent the hiring of an unsuitable employee.”

There's No Mystery to Your History: Using Background Checks in the Screening Process

By *Melanie Lockwood Herman*

Most nonprofits use some type of background check to vet potential employees and volunteers. However, the term “background check” is used to mean very different things by different people. Sometimes the term is used loosely to refer to a variety of screening tools, including:

- Criminal history background checks
- Sex offender registry checks
- Credit checks
- Education verification
- Prior employment verification
- Personal and professional reference checks
- Motor Vehicle Record checks

Other organizations use the term to specifically mean criminal history

background checks conducted through external vendors.

In whatever way your organization chooses to use background checks, keep in mind that this process is only one tool in your screening toolkit. Many organizations fall prey to the misconception that criminal history background checks are the only effective way to prevent the hiring of an unsuitable employee. For most nonprofits, screening may be improved by conducting criminal history background checks for employee and volunteer roles. However, to obtain a more complete picture of a potential candidate's suitability for a specific role, a combination of screening tools is an absolute necessity. For example, when hiring an employee to run an

continued on next page

There's No Mystery to Your History: Using Background Checks in the Screening Process continued from page 12

after-school program for elementary-aged children, you may wish to obtain general information through an application, find out why the applicant is interested in the position through a cover letter and interviews, and learn about the applicant's past experience in similar roles through reference checks and prior employment verification.

Screen for Successful Placement

Screening for successful placement in key staff roles begins with thinking through what you need in that specific position. Whether it's a role that has been on your org chart for a decade or a recently-created position funded through a brand-new grant, remember to resist the urge to start recruiting before you take time to design a position-specific screening process.

Resolve to screen for successful placement by taking the following steps.

1. Analyze the open position to *assess the risks* associated with that position (risks to either the nonprofit itself, or to the clients or recipients of services). This step may reveal the importance of using specific screening tools such as a series of interviews with the applicant's prospective co-workers, or the need for personal reference checks due to the likelihood of attracting new professionals.
2. *Identify the "musts"* in candidate qualifications, education, experience and perspective. Many leaders are unrealistic about the skills and talents a new team member will bring. If you're hoping a single applicant will be a brilliant coder, social media whiz, creative genius, outstanding writer, and proven fundraising powerhouse, prepare to be disappointed. Stop wishing and dreaming and spend your time more productively defining the skills you absolutely need in the role.

3. *Take a closer look at past mistakes.*

For example, is there a history of hiring someone overqualified or underqualified for this or a similar role at the organization? Do you know why the prior person vacated the position? Is the position description overselling the degree to which the position works directly with clients? Does the job announcement emphasize opportunities for advancement when they are in fact limited because your nonprofit is small and its structure is flat?

4. *Choose the most appropriate screening tools* for each position, rather than doing the bare minimum or going overboard.
5. *Engage team members who will support the new hire's success.* A common mistake made by nonprofit leaders is to limit the number of people involved in vetting and selecting a new hire. Unless your new hire will be working in complete isolation from others, there is no better way to increase their chances of success than involving people they will be teaming with in the recruiting and vetting process. When your team works collaboratively to select the most qualified applicant, they are invested in the new hire's success.

The Wide, Wonderful World of Screening

Changes in federal, state and local laws coupled with the growing awareness about hiring biases are changing the landscape for staff screening. Some current areas of importance in the world of background checking and screening include:

- **Rigorous screening of prospective volunteers.** In the past, employers were hesitant to do much, if any, screening for volunteers, with the thought that it would discourage

When your team works collaboratively to select the most qualified applicant, they are invested in the new hire's success.

Keep in mind that younger applicants or those who have recently returned to the workplace may have less recent job experience but valuable personal references.

potential volunteers from coming forward to provide services on behalf of an organization. However, there is a growing recognition that volunteers, like employees, may pose the same or similar risks to the organization and its clients. As this understanding grows, nonprofit leaders are coming to realize that the *specific duties and responsibilities of the role*, and not whether the role is paid or volunteer, is what really matters when determining the appropriate screening tools.

■ **Greater focus on reference checks.**

Although most job applications request “three professional references,” historically too few hiring managers took the time to actually ‘check’ references. Thankfully that is changing, as more employers recognize that reference checking is an important, if not the most important, screening tool. To increase the value of reference checking, make certain to:

- *Qualify the reference* to determine whether the individual is able to provide you with relevant information. Make certain you understand how and when the reference knew the applicant before you start asking questions about the applicant’s potential and talents.
- *Don’t ignore personal references.* Keep in mind that younger applicants or those who have recently returned to the workplace may have less recent

job experience but valuable personal references. In addition, family members or friends of an applicant are generally fearless when it comes to telling the truth about an applicant, unlike many employers who believe that providing negative feedback creates an unmanageable exposure to defamation claims (which it doesn’t if you provide only truthful and verifiable references!)

- *Draft questions pertinent to the organization and the specific role* before you start calling an applicant’s references.
- *Use the same or similar questions for all applicants*, with differences based on specific expertise and experiences listed on the application.
- *Follow-up any reference response that you don’t understand*, or comments that could be interpreted in more than one way. For example, when the reference-giver tells you that Mary “would make a good salesperson” make sure you ask ‘why?’ Unless you’re filling a sales position, you need to know more before you can add this comment to a list of pluses or minuses for that particular applicant.

- **Improved options for conducting criminal history background checks.** There have never been more choices when it comes to

continued on next page

There's No Mystery to Your History: Using Background Checks in the Screening Process continued from page 14

conducting a background check. Private third-party providers of background checking services include companies such as *HireRight, Intellicorp, HireEase, LexisNexis Risk Solutions, Trak-1* and specialty providers such as *Protect My Ministry*.

Many state agencies now offer online access to their criminal records. For example, the Minnesota Bureau of Criminal Apprehension provides access to public data on criminal convictions for 15 years following the completion of the sentence. The public, searchable, website includes: offense, court of conviction, date of the conviction and sentence information at <https://cch.state.mn.us/>. To search the database and determine whether your applicant is included, you need to know the applicant's first and last name and date of birth. A New York statewide criminal history record search is available from the NYS Office of Court Administration for a fee of \$65. www.nycourts.gov/apps/chrs/. Requests can be submitted online. These are just two examples of the state agencies that offer public access to criminal history databases.

- **Broader understanding of the application of the Fair Credit Reporting Act (FCRA).** In addition to providing less comprehensive criminal history background check results, cheap and speedy online searches may also be in violation of the FCRA if your nonprofit doesn't obtain written authorization to complete the search prior to conducting it. Although the Act has the term "credit" in its title, its applicability extends to any type of search done by a third-party consumer report company, including

criminal history background checks. Thus, when conducting these checks ensure that you:

- *Get written permission from the applicant, and provide notification that the purpose of the background check is to make a decision related to employment or volunteer service*
- *Provide a copy of the report and a Summary of Rights if adverse action will be taken because of information that was contained in the report*
- *Provide an opportunity for the applicant to dispute the accuracy of the report with the company that provided the information.*

FCRA requirements extend to any use of third-party consumer reports, including those done on potential volunteers. In July 2011, the FCRA published a report with a footnote that indicated that volunteer screening is subject to the same requirements as employee screening under the FCRA.

- **"Ban the Box" movement.** As of mid-November 2015, 19 states around the country have adopted policies disallowing employers from requesting information about an applicant's criminal record on the initial application. The purpose of these laws is to provide candidates with an opportunity to be fairly assessed based on their qualifications for a specific job, rather than being immediately disqualified. In most of the states with ban the box laws, the removal of criminal history questions from the application applies only to public sector employers. However, seven states and the District of Columbia extend their laws to private employers, as well. These states are Hawaii, Illinois,

continued on page 16

There's No Mystery to Your History: Using Background Checks in the Screening Process continued from page 15

Massachusetts, Minnesota, New Jersey, Oregon, and Rhode Island. In addition, over 100 localities (cities and counties) have adopted ban the box rules. Keep in mind that these laws simply prevent initial questioning about criminal records, but don't prevent questioning later in the hiring process.

The good news about background checking and screening for potential employees and volunteers at your nonprofit is that today's nonprofit leaders have faster, cheaper options for identifying prior criminal offenses that would render an applicant ill-suited for a key paid or volunteer position. On the other hand, the faster turnaround and more affordable pricing does not necessarily reduce the risk associated with poorly planned screening practices.

Background checking may be an essential part of your screening process—but remember that there are many other steps and tools that can help you make the most informed decisions about hiring for employee and volunteer positions at your nonprofit.

To learn more about this topic, read the Center's recent book on screening, *Staff Screening Notebook*, or reach out to the Center to learn more about additional resources and considerations, at (703) 777-3504, or info@nonprofitrisk.org.

Melanie Lockwood Herman is Executive Director of the Nonprofit Risk Management Center. Melanie welcomes your feedback on this article and questions about the Center's resources at Melanie@nonprofitrisk.org.

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Inside This Issue

Lend a Helping Handbook:
Employment Policies Worthy of Your Mission 1

Hitting the Nail on the Head: Prioritizing
Safety at Your Nonprofit..... 7

There's No Mystery to Your History: Using
Background Checks in the Screening Process 12

The Risk Management Marketplace 16

Products/Publications from the Nonprofit Risk Management Center.....19

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