

# Cortland County Community Action Program Risk Assessment Report

## Risk Management Basics

### Introduction

Agency leadership teams manage risk in different ways and with different processes and structures. This segment of your Risk Assessment report provides feedback based on your answers to questions related to the assignment of risk responsibilities, whether you have a committee dedicated to risk management, risk oversight by the board, and your confidence with respect to understanding the property & casualty coverage purchased by your agency.

### Risk Manager

You indicated that your organization employs a professional risk manager. Risk professionals bring invaluable expertise to the risk functions they lead. Unfortunately, sometimes a risk manager is perceived as 'the risk police,' or 'the director of no'.

Risk managers should be viewed as mission champions, and at NRMC we encourage these leaders to self-identify as 'risk champions.' To inspire this change in how the risk manager--and others--perceive the role, review the position description of the risk manager to ensure that this leader's goals include:

- uplifting the notion of 'risk' as something more dynamic than a threat--something that is worth consideration and investment
- cultivating a culture of inquiry and candor among team members who must be willing to openly discuss and deconstruct risks
- driving a holistic or systems perspective that takes into account many diverse perspectives on risks and recognizes how risks intersect and play out across many departments and functions of an organization
- instilling productive--not punitive--risk assessment and risk management practices, including honest reflection on past risk events and organizational failures as a platform for collectively doing better next time.

For more information on the risk champion role, see [\*What's in a Word? Risk Management Leaders as Mission Champions.\*](#)

# Governance Risk

## Introduction

This report section contains recommendations to strengthen your board, including its structure, policies and operations. Like other areas in an agency, governance weaknesses can be addressed with focus, commitment and consideration of the unique circumstances and needs of your agency. Keep in mind that governance should evolve as an agency evolves: the best possible board during a time of growth may not be an effective governing body of an agency that is winding down.

## Board Awareness

You indicated that the members of your board understand and are able to convey your organization's mission and purpose. A board that is fluent with regard to an organization's mission and purpose is less likely to take actions that will invite litigation, or otherwise act in a manner that puts the organization's vital assets at risk.

## Legal Compliance

You answered that the members of your board are confident that the organization is in compliance with federal, state and local regulations. Every organization board should operate with this high level of confidence with respect to the organization's legal compliance. Organizations are subject to a wide range of regulations and laws issued by various regulatory bodies. Keeping up with these regulations and ensuring compliance is not an easy task, even in an organization that has a large number of paid staff.

Every organization needs professional advisors that it can turn to for assistance on legal, accounting, and insurance matters. These advisors can provide valuable assistance in keeping track of key laws and regulations, and suggesting strategies that ensure compliance.

The board should receive periodic updates from the organization's key staff or professional advisors about changes in laws that apply to the organization. The board should also be kept abreast of the organization's compliance activities. Healthy boards are inquisitive, interested, and engaged in the organization's success. This means asking questions about legal compliance from time to time.

## Board Training

You indicated that your organization provides a board orientation in compliance with Standard 5.7, and that you also offer periodic educational session for your governing board. These practices are an excellent way to help a board meet its legal *duty of care*. Most organizations are dynamic organizations that regularly face new challenges and opportunities. By providing a regular forum in which to keep the board abreast of these changes you are providing the information the board needs to thoughtfully govern the organization.

## Providing Timely Materials

You indicated that background materials are distributed to your board well in advance of board meetings. This is an excellent practice. A common complaint among organization CEOs is the time involved in preparing background materials for board meetings. Some argue that the time spent preparing for board meetings leaves little time to accomplish the organization's mission. Yet distributing

thorough and comprehensive materials well in advance of board meetings is essential to managing an organization's governance risks. A board cannot meet its legal *duty of care* unless it has the opportunity to review information on programmatic activities, the organization's financial position, and current challenges and opportunities in time to formulate thoughtful questions. This review enables members to actively participate in board meetings.

## **Board Minutes**

You indicated that the minutes of your board meetings reflect dissenting views and votes on specific issues. This is an excellent practice. Maintaining concise records of board votes and dissenting views could be helpful in defending a challenge or claim of malfeasance by the board.

## **Evaluation of the CEO**

You indicated that a committee leads an annual review of the CEO, but that the entire board participates in the process. This is an excellent practice. Evaluating the chief executive's performance is an often neglected, but essential responsibility of a nonprofit board, and one that in NRMCC's view, should not be delegated entirely to a committee. Congratulations on your diligence in undertaking this almost always difficult but critically important and valuable task.

## **Fiscal Oversight**

You indicated that you have an active board committee that receives periodic financial reports from staff, and that the committee transmits and presents these reports to the full board at regular meetings. Beyond the board's legal responsibilities and pure survival instincts--the desire to keep the organization healthy and focused on its mission--there are additional motivating factors for diligence in the area of financial management. Federal and state governments may impose criminal penalties on organizations and their elected and appointed leaders who misuse funds, allow the waste of charitable assets, or squander donor resources. Also, civil actions may be initiated alleging harm based on the mismanagement of the organization.

An active, engaged finance committee is key to effective fiscal oversight. Congratulations on the work completed to date to ensure a high level of engagement. Consider the following suggestions to sustain your success in this area:

- Consider rotating membership on your Finance Committee, with every board member serving for at least one or two years during their full term on the board
- Include discussion prompts and questions as part of financial presentations, to engage the board around critical financial issues facing the organization; strive to make financial presentations two-way conversations
- Experiment with having members of the Finance Committee present different segments of the report. For example, one member could present an overview of the current financial statements, another could address the year-end forecast, and a third could speak to proposed changes in the organization's fiscal policies or banking relationships.

## **Risk Oversight by the Board**

You indicated that your board discharges its responsibility for risk oversight through the work of a board-level committee with risk oversight responsibilities, which reports periodically to the full board. This is an increasingly common practice in nonprofit organizations.

In addition to presenting information about risks, make sure that your board-level committee is engaging the board in conversation about the risks and strategies described in your reports. These conversations can help the board engage with the management team to understand the changing risk landscape and also be assured that top risks have been assessed and addressed.

In a survey of nonprofit organizations conducted by NRMCM in 2017, 40% of participants reported that their boards talk about risk management *more than once per year*, and an additional 15% indicated that the subjects of risk and risk management are discussed at *every board meeting*.

One helpful tool for risk oversight committees is a charter. A charter describes the purpose and authority of a committee, its composition, and the committee's key goals and objectives. For additional insights on helping the board discharge its responsibility for risk oversight, examples of the types of risk information boards request, or to see sample risk oversight committee charters, see Chapter 9 - Risk Oversight by the Board in the NRMCM publication, [\*World-Class Risk Management for Nonprofits\*](#). Included in the book, on page 122, are reflection questions for risk oversight. These include:

- Does the board's agenda include consideration of the assumptions that inspire the key objectives of the organization? If not, how can we engage the board to reflect on these assumptions?
- How does the board contribute to our shared understanding of our risk landscape: aspects of the external environment that could cause a key strategy to fail or exceed expectations?

Another potentially helpful resource is the NRMCM article: [The Garden of Risk Oversight: Positioning the Board to Cultivate Strategic Risk-Taking](#).

## **Conflict of Interest Policy**

You indicated that your organization has a conflict of interest policy that applies to board members. A conflict of interest policy is a risk management tool that can minimize the likelihood that the board will make a decision that is inconsistent with the best interests of the organization. You have taken an important step to protect your organization. If you haven't already done so, ask your legal counsel to review your policy to make certain that it meets the needs of your organization.

## **Board Self-Assessment**

You indicated that your board of directors does not periodically assess its own performance. Self-assessment of performance is a potentially valuable activity for individual members as well as the board as a whole. By conducting a periodic self-assessment, your board can determine how well it is carrying out its responsibilities. A self-assessment also provides an opportunity to identify areas where the board can improve its performance. Self-assessments are often conducted prior to board retreats, and may be a valuable resource to consultants or other outside experts working with the organization to improve its operations and performance.

Options for board self-assessment include:

- an anonymous online survey and follow-up process to share the results led by the Board Development, Governance or Executive Committee
- one-on-one conversations between current board members and the Board Chair, or Chair of the Board Development or Governance Committee
- completion of a survey asking questions about personal results (effectiveness) while serving as a board member, as well as the board's performance/effectiveness as a whole, with a follow-up session at a board meeting giving member the opportunity to share their assessments

Assistance developing a self-assessment tool and timeline suited to your mission and culture is available from NRMC through the risk-coaching component of this project, or through the Risk Help service available to Affiliate Members.

# Facilities and Building Security

## Introduction

This section of your report contains recommendations based on your answers to the questions in the Facilities and Building Security Module.

## Renting Space

You indicated that your agency rents space to others. Most property owners and landlords appreciate fully the risks and potential liabilities that exist when they operate campgrounds, conference centers, and other facilities open to the public on their property. These same owners and landlords, however, often fail to understand that these risks and potential liabilities still exist when they rent or loan their premises to outside groups.

As an owner or landlord, your agency owes a general duty of care to visitors to your sites, whether they are guests, campers, or outside rental group members. These persons enjoy the legal status of invitee. An owner must use ordinary care to maintain the premises in a reasonably safe condition for invitees. The duty of ordinary care requires an owner to look for unsafe or dangerous conditions on the premises and either remedy the problem or issue an appropriate warning. This duty attaches to both regular invitees and outside rental groups, unless specific affirmative steps are taken to limit that duty.

*Limit Liability* - There are a number of ways that an agency owner/landlord can limit its liability when dealing with rental groups. First, many states have “Recreational Use” statutes that limit a landlord’s liability for any injuries that may arise if rental groups aren’t charged for use of the property. Check with your legal counsel to see if your state has a “Recreational Use” statute and if it would apply to your situation.

*Agreement* - An agreement should establish, in clear terms, the duties and responsibilities of the owner/landlord and the group [borrowing the premises]. The following items should be considered for inclusion in the standard rental agreement, depending on the circumstances:

- **Maintenance and Upkeep:** While the owner typically remains responsible for any hazardous condition on the property in existence at the time of the lease, the rental agreement can establish who will be responsible for general upkeep such as trash pickup, repairing broken steps, clearing snow and ice, etc.
- **Indemnification Clause:** The agreement should include a provision holding the owner/landlord harmless for any negligent acts or omissions by the rental group during the term of the lease.
- **Instructions on Use of Property and Facilities:** The owner/landlord should provide detailed instructions on how its facilities operate or what to do if problems arise.
- **Limits on Accessible Areas:** If the group is only using a portion of the premises, or if certain areas are off-limits, those boundaries should be clearly established in the lease. Then, if a group member strays beyond this area, his status will change from an invitee to a trespasser. Once that occurs, the borrower takes the risk of the place as he finds it and the duty of the landowner is greatly reduced.
- **Potential Hazards:** Specific warnings about dangerous or hazardous conditions on the premises should be provided.
- **Delegation of Supervision:** Depending on the situation, the owner/landlord may need to provide its own staff members to assist with supervision. For example, if swimming is available on the premises, additional lifeguards may be required.

- **Alcohol Consumption:** If alcohol is part of the rental group's activities, it may be necessary to obtain a temporary liquor license. The lease or rental agreement should require the rental group to obtain both the license and, if available, liquor liability insurance, adding the owner/landlord as an additional insured. Finally, the contract should include an acknowledgment by the rental group that no one under the age of 21 will be served alcohol.

## Renting Space for Special Events

Your agency rents additional space for special events, meetings or field trips. Renting space when needed can be an economical way to manage your agency's assets and fulfill its mission. You might rent a bowling alley for an outing, a room at the town library for a board meeting, an historic mansion for a fundraiser or a campground for an overnight field trip. No matter what the use, it's always wise to put the agreement in writing (even if--and maybe especially if--the property is owned by a "friend" of the agency). The rental agreement spells out the expectations and limits of both parties and thus may defuse many disputes before they occur.

*Rental Agreement* - Under the letter of the law, "rent" refers to property borrowed for a fee or for free. Rental agreements written by the owner/landlord serve the purpose of protecting the landlord. They are contracts and should be reviewed by the agency's attorney before being signed. The attorney can advise you whether or not you are getting the deal you discussed and whether you might protect yourself in other ways.

A rental agreement should establish, in clear terms, the duties and responsibilities of the owner/landlord and the rental group. The following items should be considered for inclusion in the standard rental agreement, depending on the circumstances:

- **Maintenance and Upkeep:** While the owner typically remains responsible for any hazardous condition on the property in existence at the time of the lease, the rental agreement can establish who will be responsible for general upkeep such as trash pickup, repairing broken steps, clearing snow and ice, etc.
- **Indemnification Clause:** The agreement should include a provision holding the owner/landlord harmless for any negligent acts or omissions by the rental group during the term of the lease.
- **Instructions on Use of Property and Facilities:** The owner/landlord should provide detailed instructions on how its facilities operate or what to do if problems arise.
- **Limits on Accessible Areas:** If the rental group is only using a portion of the premises, or if certain areas are off-limits, those boundaries should be clearly established in the lease. Then, if a renter strays beyond this area, his status will change from an invitee to a trespasser. Once that occurs, the renter takes the risk of the place as he finds it and the duty of the landowner is greatly reduced.
- **Potential Hazards:** Specific warnings about dangerous or hazardous conditions on the premises should be provided.
- **Delegation of Supervision:** Depending on the situation, the owner/landlord may need to provide its own staff members to assist with supervision. For example, if swimming is available on the premises, additional lifeguards may be required.
- **Alcohol Consumption:** If alcohol is part of the rental group's activities, it may be necessary to obtain a temporary liquor license. The lease or rental agreement should require the rental group to obtain both the license and, if available, liquor liability insurance, adding the owner/landlord as an additional insured. Finally, the contract should include an acknowledgment by the rental group that no one under the age of 21 will be served alcohol.

## Evacuation Plan

You indicated that your agency has an up-to-date evacuation plan. This is not only a wise risk management procedure, it is probably a jurisdictional (city, town, parish or county) requirement. If you are concerned that your plan may not be as thorough as it could be, check to make sure it contains the following elements:

- Conditions under which an **evacuation** would be necessary
- Conditions under which it may be better to [shelter-in-place](#)
- A clear **chain of command** and designation of the person in your business authorized to order an evacuation or shutdown
- Specific evacuation procedures, including **routes and exits**
- **Specific evacuation procedures for high-rise buildings**
- Procedures for **assisting visitors and employees** to evacuate, particularly those with disabilities or who do not speak English
- **Designation of what, if any, employees will remain** after the evacuation alarm to shut down critical operations or perform other duties before evacuating
- A means of **accounting for employees** after an evacuation
- **Special equipment** for employees

Although some agencies are reluctant to test their evacuation plan, not testing it can cause anxiety. Once the plan is complete, conduct evacuation drills no less than annually, and convene your team for a debrief to discuss what went well and how your plan can be improved.

OSHA's helpful publication on evacuation planning is available here: [www.osha.gov/Publications/osha3088.pdf](http://www.osha.gov/Publications/osha3088.pdf)

## Sign in/Sign out Log

You answered that your agency uses visitor sign in/sign out logs. Many people have a narrow view of who constitutes a “visitor” to the building. For security purposes, anyone who isn’t an employee — temporary employees, VIPs, consultants, contractors, volunteers and clients — should sign in upon entering the building and sign out when exiting. When in doubt, you might ask an unknown visitor for photo identification to verify the person is who he says he is. Record the driver’s permit number or other traceable number in case you need to follow up later.

## ID Badges

You answered that visitors aren't required to wear identification badges while in your facilities. A visitor badge program helps quickly legitimize people in the building who aren't staff. The badge says the visitor has signed in at the reception desk or guard station and provided information about who they are and what their business is. All visitors should be instructed to turn in their badges prior to leaving the building.

Badges may be all alike or color-coded to quickly identify various types of visitors and their business with the organization:

- temporary employees
- general visitors, such as contractors
- clients or volunteers

The word "Visitor" and the date should be readable from several feet away. Some badge systems include a photo of the visitor, and others include a bold expiration date. No matter how simple or fancy, the

purpose is to monitor and record the entrance and exit of people who are not employees of your agency.

## **Visitor Escorts**

You indicated that escorts aren't required for visitors in all of your buildings. It may be helpful to have a consistent procedure for all buildings. Barring that, clearly identifying which buildings require an escort and which buildings don't will emphasize the importance of the procedure in areas where unescorted visitors could be a risk.

This practice, along with visitor logs and visitor badges, provides a level of protection for employees and clients of your agency. Consider instigating this practice if you serve a vulnerable population, or if it would be easy for visitors to get lost or "lose themselves" while navigating your facility. This would be the case if you have many floors or a low building that spreads over a lot of ground or has many wings or corridors. In practice, the receptionist or guard at the building entrance would phone the person being visited and ask the visitor to be seated until the escort arrives. The visitor log could have a space to indicate who the escort is for each visitor.

# **Human Resources and Employment Practices**

## **Introduction**

This section of your report contains feedback and recommendations based on your answers to questions in the Human Resources and Employment Practices Module.

This report contains recommendations in the area of employment practices. Every agency with paid staff faces the possibility of a claim or lawsuit alleging illegal or unfair employment practices. The financial and other consequences of a claim can be substantial or devastating. Every organization can take steps to reduce the likelihood of a claim, and ensure a strong defense to charges of wrongdoing.

As you review these recommendations, remember that obtaining the assistance and advice of an employment attorney licensed in your state is absolutely essential to protecting your agency's assets and good name. Your mission is too important to risk losing it all in a suit you could have avoided.

## **Multiple Locations**

You indicated that you employ workers at more than one location. While a structured approach to employment practices is advisable for all employers, it is particularly important for agencies with large workforces or workers deployed at more than one location. Multiple locations increase the likelihood that an employee will not be notified in a timely fashion of a new or changed policy. Therefore, it is very important that you commit to developing standardized, written employment policies and identify the most effective methods for ensuring that everyone in the organization receives timely notification of policies and practices.

## **The Human Resources Function**

A cornerstone of effective and legal employment practices is the development and consistent application of sound policies. Unfortunately, some organizations develop and administer employment policies in an ad-hoc fashion. Where practical, it is advisable to centralize the human resources function. You indicated that responsibility for human resources in your organization is centralized in a position or department. This is an excellent first step to ensuring the development of coherent and effective policies.

## **Periodic Review of Employment Policies**

You indicated that you have a process in place to ensure the periodic review of your employment practices. How often you review these practices depends on a number of factors, including your agency's hiring frequency, rate of turnover, employee satisfaction, resource constraints or opportunities, and size. Organizations facing rapid growth or high turnover should review hiring strategies and results semi-annually. All aspects of the recruitment and selection process should be considered in light of the organization's hiring goals and commitment to not pursue strategies that adversely affect a protected group of applicants. Smaller organizations or those with very low turnover may choose a less rigorous schedule, such as annually.

## **The Board's Role**

Nonprofit boards have an important role to play in establishing appropriate employment policies and ensuring that an organization follows its policies.

The board must recognize that the policies included in an Employee Handbook or Personnel Policy Manual - as well as those found in other documents, such as employment letters, and those policies which emerge from practice - not only impose responsibilities or requirements on the employee (such as coming to work on time), but also create promises that the employer must honor and a court may enforce.

In most instances, a nonprofit board should avoid involvement in the day-to-day activities of personnel management - hiring (other than the executive director), promotions, discipline (except when the board has a defined role in a grievance process), and terminations. Overall, the board's main concern is the adoption and implementation of personnel policies and practices of the nonprofit, not its daily personnel actions.

Every board should be confident that the agency's employment policies comply with applicable federal and state laws. The board should seek guidance and assurance on this matter from an employment attorney licensed in the state in which the nonprofit operates. In addition, each board should be confident that the nonprofit's managers and supervisors are applying the policies uniformly. Board members should raise any concerns about special or preferential treatment with the chief executive officer.

For instance, did a manager terminate an entry-level employee for an infraction that he or she would have forgiven in a long-time staff member? This scenario raises the issue that every board should understand the nonprofit's policies concerning termination. Is "gross misconduct" - conduct for which an employee may be subject to immediate dismissal -- specified in the handbook? Is it clear in the handbook that certain policy violations (such as bringing a weapon to work) constitute grounds for immediate dismissal? The board should be informed and educated on these issues to ensure it fulfills its legal responsibilities. This does not mean that the board should review or question every employment action. Board members should, however, raise questions and seek clarification whenever they have reason to believe that the organization's employment policies are not in compliance with legal requirements or have not been followed.

Because termination of an employee raises considerable risk to the nonprofit, the board should know what the nonprofit's procedures are for termination and have total confidence that these procedures are adhered to.

## **Legal Review of Written Policies**

You indicated that your Employee Handbook was reviewed by an employment attorney licensed in your state before it was distributed. This is an excellent practice and we urge you to obtain further review and counsel before making any changes to this important document.

You indicated that your Employee Handbook was last reviewed by an attorney more than three years ago. It is very likely that your Handbook is now out-of-date with regard to federal and state employment laws as well as the personnel practices of your organization. We strongly urge you to seek the assistance of an employment lawyer licensed in your state to thoroughly review your Handbook.

## **Policy Changes**

You indicated that when a new employment policy is developed, a document explaining the policy is distributed to all staff. Written policies are the cornerstone to effective, defensible employment practices. Communicating the intent and nuances of new policies is essential. If not already your current practice, consider requiring each employee to acknowledge receipt of the written explanation of the policy and retaining these signed acknowledgements in your personnel files. In this way, the nonprofit

will be able to prove that each employee was aware of the changed or new policy.

## **Legal Review Prior to Implementing Policy Changes**

You indicated that you consult an employment attorney before revising existing policies or adopting new policies. It is prudent practice to request a legal audit of existing policies and seek an employment lawyer's recommendations for revisions. Another way to approach the review is to meet with key staff and any other personnel-related resources at your disposal and request suggestions on policies that they would like to see changed. With firm objectives in hand, consult legal counsel, who can recommend how to coordinate the nonprofit's objectives with legal obligations.

## **Tracking Policy Distribution**

It is prudent to request newly hired employees, whether in the offer letter, during orientation or another time, to sign an acknowledgement of receipt of personnel policies that includes a commitment, signed by the employee, to adhere to the policies. We recommend that you keep these acknowledgements in employee personnel files.

## **Confirming Receipt of Revised Policies**

Be sure to keep a copy of each employee's acknowledgement in their personnel file. In one instance an employer could not prove that a particular employee had received the newly revised version of personnel policies and therefore the former version of the policies applied to her termination. The court required the employer to re-hire the employee because her termination, under the prior policies, was found to be invalid.

## **Workplace Violence Policy**

You indicated that your nonprofit has a workplace violence policy. This reflects your understanding that violence is a reality in many workplaces today. Nonprofits, like other employers, need to train staff to be aware of the risk of workplace violence. Review your current workplace violence policy to make certain that it includes:

- Zero tolerance for violent, abusive conduct, threats of violence, or violent language;
- A complaint procedure;
- Emergency procedures in the event of any serious act of workplace violence;
- Designation of management personnel and security personnel who will be responsible to investigate complaints of violence and who will be responsible in the event of an emergency;
- Reservation of management's right to review employee e-mail, voice mail, and computer files.

While policies and raising awareness cannot completely insulate any nonprofit from the risk of workplace violence, the fact that the nonprofit has undertaken good faith efforts to educate and prepare staff for emergencies, and has acted promptly to address concerns of the incompetence of staff or threats of workplace violence, conveys the message that safety is a primary concern.

## **Technology Policy**

A comprehensive office technology policy should address privacy and appropriate conduct concerns. Consider reviewing your current policy to make certain that it:

- Prohibits or limits personal use of the Internet and e-mail while at work and prohibits personal use

- of the nonprofit's hardware and software or copying of the nonprofit's software;
- Defines the systems used at work as the property of the nonprofit;
- Prohibits use of the telephone, facsimile, or e-mail system for the dissemination or solicitation of information about for-profit ventures, religious beliefs or political causes, or any non-job-related business;
- Prohibits use of the telephone, facsimile or e-mail system to create or transmit any offensive, hostile, sexually explicit or suggestive messages, racial slurs, gender-specific comments or any comment that is unprofessional or offensive regarding someone's age, race, color, creed, sexual orientation, religious beliefs, national origin, gender, disability, marital status or any other protected category;
- States that the nonprofit's e-mail system may not be used to upload or download any protected, copyrighted, or proprietary information;
- States that the nonprofit reserves the right to review, audit, intercept, access and disclose all messages created, received, or sent through voice mail, facsimile or the e-mail system for any purpose, and that the content of such communications may be disclosed by the nonprofit for any purpose with or without notice to the employee;
- States that the confidentiality of any message transmitted over the nonprofit's telephone, facsimile or e-mail system should not be assumed;
- States that the use of a password does not indicate that the employee should have any expectation of privacy in computerized communications; and
- States that the nonprofit will discipline any employee who violates the office technology policy, and that violations may result in termination of employment.

## **Workplace Privacy Policy**

You indicated that you currently have a Workplace Privacy Policy. We recommend that you review your policy to make certain that it:

- reminds staff that work areas (including desks, filing cabinets, etc.) are the property of the nonprofit.
- requires that employees consent to monitoring.
- cautions employees not to have an expectation of privacy in voice mail, e-mail or requires consent to monitoring.

## **Sexual Harassment Policy**

You indicated that your Employee Handbook includes a policy specifically prohibiting sexual harassment. As you know, the risk of liability for harassment may also come from outside the organization: clients, vendors, consultants, board members, or a member of the general public could pose a threat of sexual harassment to your staff. Your written policy sends a message to staff that the organization will not tolerate harassment and helps ensure that your staff will know what to do in the event they experience or observe prohibited harassment.

Your policy should also require the reporting of observed or experienced harassment at the workplace. It is to the employer's advantage to have knowledge of alleged wrongdoing. Once the nonprofit knows of allegations of improper conduct, steps can be taken to minimize the potential harm to victims -- and in so doing to minimize potential liability to the nonprofit. By taking swift and effective remedial action, many employers have been able to reduce their liability or eliminate it altogether.

Congratulations on having a written policy in place. We recommend, however, that you review your policy to make certain that it:

1. defines prohibited conduct;
2. encourages reporting of any offensive conduct *before* it rises to the level of a hostile environment and imposes no barrier on reporting complaints, such as requiring that complaints be in writing;
3. requires the reporting of observed or experienced harassment at the workplace;
4. explains the rights of complainants under the policy (such as not to be retaliated against and to have complaints and the investigation file maintained in confidence);
5. describes procedures for the investigation of complaints;
6. contains a description of the consequences for breach of the policy; and
7. provides at least two persons to whom the employee can report complaints to avoid any claim that the employee is excused from reporting because the person designated to accept complaints was the harasser, or a friend of the harasser.

## **Internal Complaint Procedure**

You indicated that your Handbook describes your internal complaint procedure for sexual harassment. The burden on employers to promptly investigate and respond to complaints has increased in recent years. A well thought-out and prescribed complaint procedure is an excellent risk management tool. It sends a strong message to your employees that you intend to follow-up on any complaints of harassment and takes the guessing out of the process when an actual complaint is received.

## **Job Descriptions**

Job descriptions should be used during the hiring process so that candidates for a position can review the job description and answer the question "Are you able to perform all the functions of this position?" Make sure that your written job descriptions are up to date and describe "essential functions." Identifying the essential functions is necessary in the event that an employee becomes disabled and there are concerns whether the employee is qualified. Essential functions are those tasks which are essential to the job. Examples are: the ability to lift a certain number of pounds, drive a van, carry a child, or raise arms over head. It is also helpful if the job descriptions identify whether the position is "exempt" from overtime or "nonexempt."

## **Employment Applications**

Employment applications are important risk management tools. We suggest that you review your current application to determine if it contains:

- an "at-will employment" disclaimer that expressly states that the applicant understands that employment with the nonprofit is on an at-will basis;
- a truth clause or false information warning;
- an authorization to conduct record checks (criminal history, credit, etc.) - remember that whether to conduct a certain check should be determined by the risks of the position, not the particular applicant; and
- an authorization to check references (it is worthwhile to obtain permission from every applicant to check references, and it is required under the Fair Credit Reporting Act if your nonprofit uses a third-party agency to conduct reference checks).

## **Reference Checks**

You indicated that you always check references, either before making an offer of employment or before a new hire begins work. This is an excellent practice. Reference checks are among the most valuable screening tools at your disposal. Remember that if a candidate does not provide work-related references,

you should press him or her to do so. If you discover a discrepancy between the information provided on an application and the information obtained from a reference, you should always investigate further. This investigation might include asking the candidate to clear up the discrepancy, calling additional references, or verifying credentials directly.

## **Pre-Employment Tests**

Employers in the nonprofit, business and government sectors use a wide variety of pre-employment tests and background checks to obtain information about an applicant's suitability for particular positions. These screening tools are also used to verify factual information provided by an applicant.

The risks of these screening tools fall into two broad categories:

- inappropriate reliance on the information obtained through tests and background checks at the expense of more fundamental screening tools such as written applications, interviews and reference checks; and
- the inappropriate use or interpretation of test/background check results or the violation of an applicant's legal rights.

In the first category, the growing popularity of criminal history background checks as a screening tool for applicants in youth-serving organizations has led to the reliance on these checks as a barometer of suitability. Yet there is no question that these tests cannot be relied on to provide a "clean bill of health" for an applicant. Reliance on a "clean," state-based criminal history records check and discounting other screening tools is an unwise strategy.

In the second category of risk, many employers have rushed to use tests and background checks without first considering the legal limitations on the use of these screening tools or their appropriateness for a particular position. For example, it is unlikely that a credit check would be appropriate for the position of playground supervisor. Before using such tests and background checks, you must determine:

- what if any federal, state and local laws apply to restrict, limit or prohibit the use of these tools;
- whether the potential benefits outweigh the negative affect of the use of tests (for example, one negative effect might be that the use of background checks discourages applicants from a particular group);
- whether the proposed tests or checks offer truly reliable, job-related information;
- how the test/background check results will be evaluated. For example, will certain scores or findings disqualify an applicant? The failure to identify the criteria that will be used to evaluate results in advance increases the likelihood that the process will be a waste of precious resources;
- whether the proposed tests or background checks are clearly job-related and necessary to the thorough screening of applicants for a particular position.

Remember that few, if any tests or background checks are appropriate for every position in an organization.

## **Using a Hiring Checklist**

The reason why a hiring checklist is so important is to ensure that every candidate is subjected to the same level of scrutiny during the screening process. This not only helps guard against charges of discrimination, but provides a procedure so that elements of the screening process do not fall through the cracks. For example, after investigating an allegation of client abuse, a nonprofit discovers that the one employee for whom the nonprofit failed to get a criminal records check had a history of criminal abuse. Hiring checklists help allow the nonprofit to see at a glance if one step in the process has not been

completed.

## **Offer Letters**

A written offer letter is a practical way in which to confirm details about an offer of employment. It also provides an opportunity for an employer to obtain a prospective employee's acknowledgement of the terms of employment. An offer letter may increase the risk of a subsequent employment-related claim, however, if it is worded inappropriately or if it contains promises or commitments the employer is unwilling to live up to.

It is important to make certain that any written offer letters do not needlessly impair the employment-at-will relationship. Review the language of your offer letters and make certain that these letters reiterate the employment-at-will nature of the relationship being offered to the prospective employee. Also, make certain that your discussion of topics such as annual salary, eligibility for benefits, duration of employment, potential for advancement, probationary period or other job rights, does not contravene your written policies. Before mailing the letter, make certain that you are willing to live up to the commitments made in the offer letter.

## **Initial Work Review Period**

You indicated that new employees serve an initial work review period. Review your policy to make certain that successful completion of the first few months of employment does not ensure job security or in any way conflict with your employment-at-will policy. Make certain that you have defined the purpose of the work review period in your written policies, noting that completion of the work review period does not increase an employee's rights in a job. Consider using language such as:

"An initial work review period is a training and get-acquainted period, completion of which does not guarantee continued employment. Following completion of this period, you still may resign and the organization has the right to terminate your employment at any time, with or without cause."

## **Rejecting Applicants**

All applicants who are considered by your organization but not hired, should be informed of the reason for the rejection. Being truthful is a fundamental tenet of effective and legal employment practices. Applicants should never be given a false reason for rejection. This can lead to costly litigation. Make certain that your decision not to hire an individual is consistent with the reasons contained in your hiring records, and that the reasons and documentation are free from discriminatory bias.

## **Employee Orientation**

You indicated that you have an orientation program for new employees. This is a good risk management strategy, and may help ensure that all new hires receive the same, thorough orientation to the nonprofit's policies. From a legal perspective, a formal orientation program where policies are explained provides a defense to a claim that an employee was not informed about a specific policy. But providing an orientation with out-of-date, incomplete or inaccurate materials may be more risky than never conducting one in the first place. Review your orientation format and procedures to make certain that all policies distributed and explained to new hires are current.

You indicated that you maintain up-to-date personnel files for each employee. This is an excellent risk management practice.

## **Performance Appraisals**

You indicated that you conduct annual performance reviews for each employee. This practice is essential to (1) put employees on notice of unsatisfactory performance, and (2) articulate in an objective manner the goals and objectives for the employee's performance. In this way, employees are aware of their shortcomings and the nonprofit is in a strong position to support a discharge for poor performance. The practice of conducting regular, objective performance appraisals will also ensure that your organization is able to defend itself against charges of discriminatory employment practices.

A growing number of cases have reached the courts in which inadequate or nonexistent performance appraisals were the principal determining factor in a judgment for damages against an employer. Typically the litigation is brought by someone fired or denied a promotion, who then claims to be the victim of race, sex or age discrimination. The employer defends itself by claiming that the plaintiff simply wasn't doing his or her job. The plaintiff easily rebuts the employer's case by showing that his performance appraisals never mentioned any concerns or disappointments with performance. Employers that can present strong performance appraisal documentation are in a good position to defend their actions, whereas those that do not have written support for their position most often face liability. Consequently, evaluating the performance of staff and documenting the process carefully is "where the rubber meets the road" in employment-related risk management. Most often if there is a smoking gun in an employment action, performance appraisals (or the lack thereof) are the weapons of choice.

Evaluating performance is sound management and critical for the long-term health and prosperity of the nonprofit. In most cases the nonprofit's staff members are among the organization's most valuable assets. Staff influence the public's perception of the nonprofit, provide services to clients, and may be responsible for the welfare of vulnerable individuals on a daily basis. When staff can see how their own work successfully supports the achievement of the nonprofit's goals, a more effective organization will result.

If you are not already doing so, consider adding the review of performance appraisals by an administrator one tier above the actual supervisory relationship. This review can expose subjective comments or inconsistent rankings. The objective review is also an opportunity to evaluate how well the supervisors are conducting their roles as job coaches. In order for the objective third-party review to be effective, you need to work out a schedule for annual or six-month reviews which permits an extra period of time for the objective reviews. The objective reviews should occur prior to the employee's receipt of the formal review, in order to allow time in the event the reviewer challenges what is written and the appraisal needs to be revised.

## **Narrative Versus Multiple Choice Ratings**

Some experts believe that the most insightful appraisal format is pure narrative because supervisors are then forced to describe the employee's performance and can't make the mistake of checking a box that doesn't apply. However, narrative responses are also legally risky because a supervisor's comments might go off on a tangent that is irrelevant and subjective, or fails to support the rest of the appraisal. Or supervisors may put the nonprofit at risk by writing observations about performance that are not job-related and therefore inherently inappropriate. Most appraisal forms feature a combination of narrative and rating questions. Often there is a summary statement or rating which is useful when a distinction based on performance is required between similarly situated employees.

Performance appraisal software and human resources consultants are available to help customize appraisal forms. Customization is recommended over simply borrowing a format from another workplace. However, many nonprofits successfully borrow forms developed for another organization,

and then customize those forms as they discover what works and what doesn't.

Remember that a senior manager or the executive director should review completed appraisal forms before they are shared with an employee. The purpose of this review is to make certain that the review does not contain inappropriate information or anything that is inconsistent with the organization's policies. For example, a statement on a review indicating, "I'd like to see Mary retire from this organization" could contravene the nonprofit's employment-at-will policy.

### **Third-Party Review**

The best insurance against any pitfall in the performance appraisal process is an objective review by an administrator one tier above the actual supervisory relationship. This review can expose subjective comments or inconsistent rankings. The objective review is also an opportunity to evaluate how well supervisors are performing as job coaches. Remember that objective reviews should occur prior to the employee's receipt of the formal review, in order to allow time in the event the reviewer challenges what is written and the appraisal needs to be revised.

### **Training Supervisors to Conduct Reviews**

You indicated that you currently train or coach supervisors on the implementation of your performance review system. This is an excellent practice that should be continued.

Consider reviewing your training or coaching program to make certain it addresses the following issues:

- The common reluctance to provide a candid review. Suggest strategies for communicating "bad news" in a respectful fashion and explain that an individual who is unable to convey bad news or impose discipline on an employee risks disqualification from supervisory status.
- The importance of providing ongoing feedback. Inform supervisors that they should never wait until the annual review to communicate dissatisfaction with an employee's performance. They should also remember to document any performance counseling sessions, making certain that these reports are signed by the employee and retained in the personnel file. The supervisor's notes - if not signed - may be disputed.
- The legal significance and importance of candid reviews. Written performance reviews are an organization's best evidence of whether an employee is meeting, surpassing or failing to meet the organization's expectations. Someone who is unwilling or unable to provide candid reviews of performance should not be allowed to continue in a supervisory capacity. The notion that a favorable review will motivate improved performance is untrue. Explaining to an employee why his or her performance falls short of the nonprofit's expectations remains the best strategy to motivating improvement.

### **Multi-Source Assessments**

In theory, the idea of a multi-source assessment system is supposed to provide the highest level of management with a good sense of the effectiveness of the organization's supervisory staff. In practice, collecting such data as part of the formal appraisal system may not yield the most reliable results. Nonprofits must first have a culture of trust and honesty in order for 360-degree evaluations to be taken seriously. Many nonprofits find that facilitating roundtable discussions with staff about effective supervision and in extreme cases, arranging an internal arbitration between supervisors and subordinates is as effective as a formal system of multi-source evaluations.

### **Merit Raises**

You indicated that employees at your organization are not eligible for merit raises - salary increases based on performance. Many nonprofits continue to award cost-of-living or COLA increases only, however, the clear trend is to provide merit-based pay raises. There are two major downsides to awarding flat COLA increases. Morale can be negatively affected when employees who are strong receive the same salary adjustment as employees who are less skilled, or less committed to the nonprofit. Second, when employees who are under-performing receive an automatic raise, simply because everyone received the same adjustment, there is a risk that the employee will assume that his performance is satisfactory. More risky still is the fact that juries will make the same assumption, which will undermine an employer's defense that an employee was terminated for poor performance.

A merit raise system provides an incentive for employees to improve performance. It also rewards strong performers, helping with the nonprofit's ability to retain the most effective employees. A common way to structure a merit raise system is to create a salary scale which assigns a certain percentage or range of percentages for salary increases in each of several categories. The categories correspond to the rating system on the performance appraisal instrument. Each employee is eligible for whatever percentage raise is appropriate given the range for the rating assigned to that employee. For example, "Unacceptable" would merit no increase. "Meets expectations" would merit a 1-3% increase, "Exceeds expectations" would earn a 3.5%-4.5% increase, and "Greatly exceeds expectations" would be awarded a 5%+ increase. In this way, the CEO, finance or personnel committee can determine the budget for salary and compensation for the coming year by looking at historic data on the number of employees in each salary and performance range.

### **Progressive Discipline Policy**

You indicated that you currently have a Progressive Discipline policy. Remember that in general, only gross misconduct and serious violations of the nonprofit's policies justify skipping the first warning phases of progressive discipline and imposing more serious discipline in the first instance. The progression of disciplinary steps set forth in the nonprofit's Employee Handbook should be followed whenever possible, unless starting with a verbal warning would be illogical, as in a situation where an employee threatens another employee with physical violence.

Progressive discipline, if consistently applied and with flexibility for unusual cases, can be an effective risk management tool because it affords some assurance of fundamental fairness. The downside of progressive disciplinary policies is that they can create contractual obligations. If not carefully drafted, in most states policy language can be binding on the nonprofit under the theory of implied contract. Another downside of progressive discipline is that because the policy lists disciplinary steps in a certain order, the nonprofit's flexibility to select appropriate disciplinary action on a case-by-case basis can be greatly reduced. Even with language that states that the disciplinary policy is not a contract, employees will expect to be treated as described in the policy, so fundamental fairness dictates that the progressive disciplinary procedures be followed unless the employee is given notice otherwise. "Taking the high road" in employment practices requires an employer to live up to its promises, and employees regard policies as promises.

Keep in mind that progressive discipline policies should be carefully drafted and reviewed by an employment lawyer to ensure that the nonprofit will not be needlessly vulnerable to claims of breach of contract. In order to give the nonprofit the most flexibility, it is advisable to draft progressive discipline policies as guidelines, rather than set procedures to be followed in all cases.

### **Opportunity to Correct Deficiencies**

It is prudent to provide an opportunity for employees to correct deficiencies before you take adverse

action against them. We urge you to continue this practice.

### **Third Party Review Prior to Termination**

We urge you to continue the practice of having a person other than the affected employee's supervisor review the written record before an employee is terminated. This practice enables the organization to make certain that the action taken is supported in the written record, legally defensible, and consistent with action taken towards other employees.

# Financial Reporting and Internal Controls

## Introduction

This report section contains recommendations based on your answers to the questions in the Financial Reporting and Internal Controls Module. As a reminder, the assessment topics were: Fiscal Oversight, Financial Reporting, Financial Planning and Forecasting, Budgeting, Financial Monitoring, Contracts and Grants Management, Managing Fraud Risk and Internal Controls, Investments, Fiscal Policies and Audits.

As you review and consider these recommendations, keep in mind that some recommendations may need to be revised or tailored to suit your agency's unique structure or circumstances. In addition, remember to ask key advisors for their guidance and insights, including your internal finance team, board-level Finance Committee, Audit Committee, and any external finance advisors or audit firms.

## Inclusive Budgeting Process

You indicated that your agency has a modestly inclusive budgeting process. According to Propel Nonprofits, "a budget is just another version of a mission statement or strategic plan expressed in a different language, the language of numbers. In order for this to be true in practice, a budget must be the cumulative effort of all who implement the organization's mission..."

To improve collaborative budgeting at your agency, check out the following resources:

- Download Propel's [10 Step Budgeting Checklist](#)
- Download The Wallace Foundation's [5-Step Guide to Budgeting for Nonprofits](#)

## Daily Deposits

You indicated that receipts are not deposited intact on a daily basis. Just as you wouldn't keep large quantities of cash under your mattress, the safest place for your organization's cash and securities is in the bank. Funds that are on your premises or in the possession of an employee or other individual, are subject to theft, loss, or accidental destruction. Also, if you have an interest bearing account, undeposited funds represent lost revenues that your organization could otherwise be earning.

Sometimes it may be impractical to make bank deposits every business day. In this case, consider implementing a policy of never having more than a certain amount of funds awaiting deposit in your office at any given time. Funds awaiting deposit should always be kept under lock and key. Use of a bank lock box allowing payments to be mailed directly to the bank can also be helpful in minimizing the amount of cash stored on your premises.

## Use of a Bank Lock Box

You indicated that your organization does not use a bank lock box. A lock box is like a cross between a post office box and direct deposit. When you rent lock box services from your bank, the bank provides you with a unique box number to which your organization can have payments sent. Once the payment arrives, the bank deposits the funds in your account and sends the documentation (invoices, correspondence, etc.) along to you. A lock box offers the following advantages:

- Funds are deposited to your account immediately without delay and begin earning interest.

- Reduces the risk of theft or mishandling of funds.
- Saves staff time in processing checks onsite and preparing and making deposits

The fees banks charge for lock box service can vary widely. Contact two or three institutions before making your choice.

## **Annual Audit**

You indicated that your agency does not fully comply with CSBG Organizational Standards 8.1 - 8.4. Addressing this issue should be a top priority. Keep in mind that these Standards provide that:

Standard 8.1 - The annual audit is completed by a CPA on time and in accordance with Title 2 and other regulatory requirements

Standard 8.2 - All findings from the prior year's annual audit have been assessed and addressed to a degree deemed appropriate by the governing body

Standard 8.3 - The audit findings are presented by the auditor to the governing board

Standard 8.4 - The governing body formally receives and accepts the audit

See the [Nonprofit Audit Guide](#) developed by the National Council of Nonprofits for guidance on addressing this gap in your financial management practices.

# Contracts

## Introduction

This section of your report contains recommendations on the subject of contracts. Effective contracts help the contracting parties begin an endeavor with a shared vision of desired outcomes and deliverables, options to limit risk and exposure if either party decides to withdraw from the relationship, tools to minimize or prevent surprises with respect to staffing and cost, and a roadmap for winding up or winding down the relationships if warranted by the circumstances of either organization.

## Typical Contract Problems

Some of the typical challenges nonprofits encounter with contracting include:

- failing to limit contracting authority to designated persons
- not specifying expectations
- signing contracts that lack sufficient clarity
- not considering the possibility of termination, breach, or the possibility of circumstances that make it impossible to continue
- not realizing they have entered into a contract in the first place
- failing to assign responsibility for harm and the costs of harm
- failing to protect the nonprofit's assets, such as copyrights
- unexpected costs or disagreement about each party's responsibility for project expenses

As you review the recommendations in this report, remember that obtaining the assistance and advice of a lawyer licensed in your state is absolutely essential to protecting your agency's assets and good name. Your mission is too important to risk losing it all in a lawsuit or over unfavorable (and avoidable) terms in a contract.

## Independent Contractor Agreements

You indicated that your agency generally uses written agreements when you retain the services of independent contractors, however there are some instances when a contractor may begin work before the agreement has been finalized.

Congratulations on your use of independent contractor agreements. Using these agreements is an important risk management practice that can dramatically reduce the risk of a misunderstanding concerning the nature of the appointment and each party's expectations.

We recommend that you reconsider your process for entering into such agreements, so that you can be assured that the agreements will be signed before work begins. Perhaps there are extra steps or other reasons why it takes longer than is practical to finalize these agreements. For example, some nonprofits report that onerous insurance requirements in their independent contractor agreements cause a hold-up on the contractor's end. Try to identify the reasons that the agreements take so long to process, and identify process improvement steps.

Also, make certain that your Independent Contractor Agreements contain the following minimum information:

- Name, type of entity (e.g., corporation, limited liability company, partnership, other?), street

address, telephone number, and individual contact person of the independent contractor.

- A description of the services being provided and a timetable with measurable mileposts for when specific aspects of the service/work must be completed.
- Compensation (on monthly/work completed basis) based on invoices with dates, hours, and services performed, reports on milepost completion of work, and any out-of-pocket expenses that are necessary for the performance of the services (such as travel, lodging, and meals), but only if approved in advance and supported by appropriate documentation.
- The term of the agreement (beginning when, ending when).
- Provisions for terminating the agreement:
  - How much prior notice is required before termination?
  - To whom or how must the notice be delivered?
  - How much, if anything, must the parties pay upon termination?
- Statement clarifying that the contractor is an independent contractor solely responsible for determining the means and methods for performing the services and for its own payment of taxes, with no entitlement to workers' compensation, unemployment compensation, or any employee benefits, statutory or otherwise.
- Statement that the contractor shall at all times comply with all laws, rules, regulations, and ordinances applicable to the performance of the services described in the contract.
- Statement that information obtained from you and about your organization and its operations and clients is confidential.
- Statement that the contractor agrees that all creative ideas, developments and creations conceived in the performance of the contract are the property of the Organization and assigns all those rights to the organization.
- Statement that the contractor will not engage in discrimination.
- Statement that the contract is the entire agreement, which cannot be amended except in writing by both parties.
- The State of governing law and forum for any legal action.
- Statement that the work may not be re-assigned by the contractor (e.g., the contractor you choose has to do the work; s/he cannot have someone else do it).
- The signatures of both parties.

## **Obtaining Legal Review of Contracts Prior to Execution**

Unless your organization is volunteer-run and operated - which would suggest it might be small enough to be run with few contractual arrangements - you should have a lawyer review at least your organization's major contracts. By not using a lawyer in any way to protect your organization in its contracting is a risky practice.

Although a lawyer's time costs money (unless you manage to get legal services pro bono!), thoughtful use of a lawyer in contracting can save you money and headaches. If your organization uses any independent contractors, uses hotel rooms or meeting facilities, hires any fundraisers, leases office space, has employees, or uses volunteers extensively, getting legal advice and learning how to structure these arrangements will greatly limit your organization's exposure to risk.

# **Client and Participant Safety**

## **Introduction**

Every nonprofit offering services to children, dependent adults, individuals with disabilities and the elderly should take reasonable steps to protect its clients from foreseeable harm. The risk management tools available to a nonprofit must be evaluated and considered in light of practical, financial, and other considerations. This section of your report contains feedback and recommendations based on your answers to the questions in the Client and Participant Safety module.

## **Explicit Prohibitions Against Sexual Conduct**

You indicated that your organization's guidelines make it clear that any behavior that is sexual in nature -- or that could be interpreted as sexual in nature -- is not permitted. While many organizations assume that such common sense guidance would not be needed, some have discovered that failure to be explicit concerning sexual behaviors has resulted in service recipients being victimized and some organizations subjected to lawsuits. This has been especially true in some programs for adolescents in which staff members may be close in age to the residents of the facility.

## **Staff Responses to Inappropriate Client Behavior**

Staff members must know that it is their responsibility to set the boundaries when service recipients attempt to engage staff or other participants in inappropriate activities. You indicated that you have a policy that instructs staff about how they should respond when a service recipient attempts to initiate inappropriate contact.

Consider reviewing your policy to make sure that it instructs the staff to: confront the service recipient at the first sign of inappropriate behavior, identify the offensive behavior, explain that it is inappropriate, and request the service recipient to stop the behavior and not repeat it. Staff members should be directed to report all incidents to their supervisors. It is possible that service recipients may be attempting the same kind of boundary violations with other staff members and reporting it ensures that a consistent response is given. Repeat episodes should result in increased sanctions, including suspending the service recipient from the program.

## **Ensuring Adequate Staffing**

Adequate staffing of all your organization's services is critical to the effective control of risks of personal injury and harm. Your policy that requires a minimum of two adults (such as two staff members or a staff member and a parent) to accompany all trips and outings helps to ensure that the opportunity for sexual abuse is minimized.

You indicated that your organization has a policy that establishes a required minimum ratio of staff/volunteers or parents to number of service recipients, depending on the nature of the activity and the requirements of participants for assistance. Adequate staffing is a key component of conducting safe activities and also provides protection for the staff and volunteers from false allegations of inappropriate conduct.

## **Limiting One-to-One Contact**

You answered that your organization limits one-to-one contact between staff members and vulnerable clients. This is an excellent risk management strategy. Total elimination of one-to-one contact may not be practical - or possible - in your organization's programs. This is an example of a risk that can't be eliminated but should be monitored carefully.

### **Protecting Client Privacy**

You indicated that your organization has a written privacy policy that protects service recipients. Having a policy concerning client privacy is an important first step. It is also important to make sure that all staff members - employees and volunteers - understand the policy and are aware of their responsibility to use information about service recipients only as required by the organization for the delivery of its services.

### **Preventing the Release of Sensitive Information**

Service recipients expect that organizations offering them services will not release information about their association with the organization unless the organization received permission from them. By having a policy that provides a reasonable safeguard against the release of sensitive information, you are upholding an important trust.

### **Nonviolent Conflict Resolution Options**

Resorting to violence may be due to frustration -- the feeling that no other options are available. By offering opportunities for nonviolent conflict resolution and stressing the importance of using them, your organization has taken an important step to lessen the level of frustrations that individuals may otherwise experience and thereby avoid violence.

### **Review of Disciplinary Actions**

You answered that you have a review process for disciplinary actions to ensure fair treatment of service recipients. *An administrative review process before disciplinary action is taken can prevent unfair and angry reactions by service recipients against staff.* Your current practice reduces the risk that service recipients will respond inappropriately to discipline.

### **Activity Selection Policies**

You indicated that your organization has policies that guide the selection of activities offered by your organization. You have taken an important step in managing the risks which result from the kinds of activities you sponsor.

### **Ensuring That Programs and Services Support the Mission of an Organization**

An organization should only place the safety of their service recipients at risk to the degree necessary to accomplish its mission. You indicated that the programs and services offered by your organization are evaluated in terms of their relationship to the mission of your organization. This is an excellent practice that reduces the likelihood that service recipients will be needlessly exposed to risk.

### **Offering Appropriate Activities**

You indicated that the activities and programs offered by your organization are assessed for their appropriateness for the ages and abilities of the intended participants or service recipients. This is an excellent practice. Keep in mind that appropriateness may be measured in the context of the mental,

physical, and emotional requirements for the program.

## **Obtaining Medical Histories**

Many organizations that offer services to vulnerable clientele require either the service recipients or one of their family members to complete a medical history form. Information typically collected includes information about chronic conditions such as respiratory or cardiac problems, allergies, contagious diseases, immunizations and other relevant medical facts. Most organizations also obtain the name of the individual's physician or primary care provider and his or her telephone number.

## **Requiring Medical Clearances**

When service recipients' medical histories indicate that participating in your organization's programs might inflict harm on the service recipient, it is prudent to seek professional guidance before placing individuals in potentially life-threatening circumstances. Some individuals may be denied the opportunity to participate based upon their medical histories. Other individuals may need to have their activities restricted. Further, and above all else, the staff members in charge of the activities need to be informed of the risks and the appropriate responses if any of the risks become realities.

## **Ensuring the Confidentiality of Medical Information**

A policy intended to ensure the confidential handling of medical information obtained from service recipients is an excellent risk management strategy that protects your nonprofit as well as your clients. This policy should be continued and adherence to the policy monitored carefully.

## **Instructing Trip Leaders**

You indicated that you require or provide instruction for leaders of trips and outings concerning the appropriate steps in emergency situations such as medical emergencies, automobile collisions, fatalities, or injuries. Often tragedies can be averted when prompt action is taken. When leaders of an organization's activities know how to respond in the face of an emergency, precious moments can be saved in obtaining the required assistance. While every organization should take reasonable steps to prevent injuries and other kinds of emergencies, every nonprofit and its staff members should be prepared to respond when necessary.

## **Obtaining Emergency Medical Care**

Planning for activities should include the possibility that one or more participants may be injured. Individuals in charge of activities need to know how to respond when a service recipient is injured. Congratulations on your policy of providing instructions to key personnel about obtaining emergency medical care.

## **Prompt Reporting of Injuries**

You indicated that your emergency procedures require staff to promptly report incidents that result in injuries to participants. This is an excellent practice. Reporting incidents involving injuries to participants enables the organization to mobilize its resources to assist the injured parties and their families. It also enables the organization to be prepared for any media attention that the incident generates.

## **Communicating During an Emergency**

In many respects the availability of cellular communications has facilitated ready access to emergency services when a crisis looms. Cell phones are not a total answer, however, as cellular service may not be available in some areas in which your organization conducts its programs. Even when cellular service is available, batteries go dead and equipment may malfunction. In widespread emergencies, circuits may become overloaded. For these reasons, additional options should be considered.

## **Guidelines for Media Relations**

You indicated that your organization has written guidelines governing contact between staff members and media representatives. A media relations policy is an excellent risk management tool that can preserve public support of nonprofit programs while ensuring appropriate and timely responses to inquiries.

## **Guidelines Governing Access to Facilities and Clients**

You indicated that your organization requires visitors to report to a central check-in point. A sign-in procedure for visitors enables the organization to identify individuals who visit your location and determine if they have a legitimate reason for visiting by asking them whom they are visiting and the purpose of their visit.

### **Visitor Tags**

*The use of visitor tags enables staff members to extend courtesies and assistance to visitors as well as to monitor their activities.* If visitors require escorts and do not have them, a staff member can offer to show them where they are going. If someone is wandering around a facility used by the organization for delivering services, the staff can send them to check-in properly. The safety of vulnerable clients may require establishing reasonable controls on the access of visitors to service recipients.

### **Physical Barriers to Control Access**

You indicated that your organization employs physical barriers in order to control access to its facilities. Physical barriers can lessen the opportunity for unauthorized persons to gain access to your facilities and clients. Please note: do not create safety hazards by inappropriately locking fire/emergency exits in such a manner as to prevent evacuation in emergency situations. Also, never install or leave bars on windows unless the appropriate panic hardware is also installed.

### **Inspecting Facilities and Equipment**

You responded that your organization requires periodic inspections of facilities and equipment used in conjunction with the services you offer. Inspecting program areas is an important risk management tool for identifying hazardous conditions before they injure a program participant.

### **Checklists**

You indicated that your organization uses checklists for its inspections. Remember to keep your signed and dated checklists on file as documentation that scheduled inspections were performed.

### **Inspecting Equipment**

You indicated that your organization requires regular safety inspections of your equipment. This is an

excellent practice. Safety inspections ensure that equipment used by your organization is in safe operating condition and does not constitute a hazard when used for its intended purpose.

## **Making Your Expectations Clear**

You indicated that your organization makes it clear during the screening and selection process what you expect with regard to the behavior of staff towards vulnerable service recipients. This is an important practice that reduces the risk that staff will subsequently act inappropriately.

Managers and board members of some organizations feel that an explicit statement prohibiting sexual acts with service recipients is unnecessary because no one in their right mind would consider such relationships to be proper. Unfortunately, the prevalence of inappropriate sexual conduct involving staff members and vulnerable service recipients gives rise to the need to clearly state what should be obvious. By making these statements during the screening process, you are putting individuals who are seeking a position with your organization in order to gain access to sexual opportunities on notice that the organization does not and will not tolerate such behaviors.

## **Position Descriptions for All Staff**

You indicated that your organization uses written position descriptions for paid staff and unpaid volunteer positions. Position descriptions are a valuable risk management tool. Through the use of written position descriptions for all of your organization's employees and volunteers, you may establish the boundaries for the responsibilities that each position has and may even limit the activities of staff members to those that are within the scope of the position. This will help avoid staff members' involvement in activities for which they are not qualified or are outside the scope of your organization's services.

## **Use of Criminal History Record Checks**

The most common types of criminal history record checks are state-based checks and federal (FBI) record checks. Generally, checking both state and federal criminal history databases involves two separate processes. State-level criminal history record checks will only reveal convictions for crimes that occurred in the state being checked. If you do not conduct a federal criminal history record check you may miss offenses committed in other states.

## **Disqualifying Applicants**

You indicated that your organization does not use pre-selected criteria to disqualify applicants based upon record checks. Record checking is a process. Before initiating the process, an organization needs to determine the criteria it will use to evaluate the records being checked. For example, if the records being checked are driving records, what kind of a driving record would preclude an individual from being placed in a position that requires operation of a motor vehicle? For criminal history records, what offenses would automatically disqualify an applicant from working with children?

## **Verifying Required Credentials**

When specific credentials -- degrees, licenses, or certificates -- are required for holding a position, your organization is wise to verify that applicants possess the applicable credentials. According to human resources experts, more than a third of all resumes contain material misstatements.

## **Orienting New Staff**

You indicated that your organization provides an orientation session for new staff members. This practice is an important tool for reducing the risk that staff members will behave inappropriately toward clients, or otherwise violate the organization's rules and procedures. An effective orientation provides a clear explanation of the organization's mission, policies, procedures and expectations, and affords an opportunity for participants to pose questions about specific circumstances.

### **Mandatory Reporting**

Most states have laws requiring caregivers of vulnerable individuals to report suspected abuse to either a protective services agency in state or county government or to a law enforcement agency. Failure to report suspected abuse could result in both criminal and civil penalties.

See the following [website](#) for an overview of mandated reporter obligations in New York and basic information about the New York State Child Protective Services (CPS) system.

### **In-service Training**

You indicated that your nonprofit provides in-service training for staff who work with vulnerable populations. This is an excellent practice. Congratulations on your efforts to train staff members in order to maintain the quality of your programs and the safety of your service recipients.

# Transportation

## Introduction

This segment of your report contains feedback and recommendations on the subject of transportation risks. Vehicular accidents are one of the leading causes of injury to nonprofit staff and volunteers and they are a common source of claims filed against nonprofit organizations. A surprisingly high percentage of these claims involve a single vehicle, such as property damage caused by backing into a post in a parking garage. Single vehicle accidents are most likely to occur when a driver is unfamiliar with a vehicle.

The risk of a transportation claim exists whenever a car, truck, bus, or other vehicle is used on behalf of a nonprofit. Many accidents can be avoided through the adoption of policies and procedures concerning drivers, vehicles, and passengers. In some cases, risk can be transferred to or shared with a contract transportation provider. A transportation risk financing strategy that includes automobile coverage is a must for every nonprofit.

## Understanding Your Transportation Exposure

You indicated that your organization provides or sponsors transportation services or owns (or leases) one or more vehicles. Transportation is the means for an organization to carry clients, volunteers, employees, goods, or equipment from one place to another. For many nonprofits, transportation services are an integral part of fulfilling the organization's charitable mission. For example, a nonprofit that delivers hot meals to shut-ins cannot operate without volunteers or employees driving either their own or agency vehicles. Many nonprofits that do not provide transportation services overlook their incidental transportation exposures. It is nearly impossible for a nonprofit to operate today and not have some form of transportation exposure. The risks may arise from "incidental driving" such as an employee or volunteer driving his or her own vehicle to attend meetings, or an agency function, or to run an errand to the bank, post office, or office supply store.

While every nonprofit has the possibility of a loss from an automobile claim, the level of risk increases when an organization's core business includes transporting people, materials, or equipment, or when an organization owns or leases vehicles. Therefore, your agency must be diligent in managing the risks associated with your transportation activities as well as the risks from incidental driving.

It is always prudent to consider whether your nonprofit's transportation activities are essential to achieving your core mission, or whether you can transfer or share the risk of loss by engaging a contract provider of transportation services.

## Direct Versus Vicarious Liability

Your organization's potential liability can be direct or vicarious. With direct liability, your organization may be responsible for the actions that caused harm to another. These allegations can include failure to screen, select, train, or supervise your drivers. Vicarious liability occurs when responsibility for the actions of your "agents" (drivers) is transferred to your nonprofit. Vicarious liability is the reason why your organization needs to be concerned about who is driving on its behalf - especially when they are driving their own vehicles. To be considered your "agent," the driver or agent must be acting on behalf of the organization and with its authority. Second, the organization must have the right to control the driver's actions. Finally, the incident must have occurred while the driver was acting within the scope of his or her duties.

The following section further explains the conditions needed for your organization to be deemed vicariously liable.

### *Organizational Authority*

In order for a nonprofit to be vicariously liable for the actions of its drivers, the drivers must be acting on behalf of the organization and with its authority. Therefore, the driver must be an active part of your program and someone to whom you granted authority to drive on your behalf. Consider the following in determining if your personnel are operating with organizational authority. Did your organization:

- sanction or approve the activity?
- approve either the driver or the transportation activity (either actively or passively)?
- benefit from the approved transportation activities?
- have a formal driver selection and training program?

The issue of organizational authority is related closely to the organization's right to control its personnel and the scope of the person's duties.

### *Right to Control*

The organization can also be liable if it had the right to control the driver, even if the organization never exercised its right of control. Consider the following questions when determining control. Did your organization:

- decide to undertake the activity?
- plan the scope and detail of the activity?
- ask the driver to participate?
- supervise driver performance and, if necessary, could it have reassigned the task to someone else?

Under some circumstances, a "yes" answer to any of these questions may prove to be sufficient evidence of the organization's right to control the driver.

### *Scope of Responsibility*

Another factor in determining liability is whether or not the person causing the harm was acting within the scope of his or her duties. To determine the scope of the driver's responsibilities, consider:

- Was the activity consistent with your organization's mission?
- Was the activity a regular part of the organization's program?
- Did anyone within your organization authorize the trip?
- Was driving part of the person's position description?
- Was driving related, or incidental, to normal duties?
- Did your organization benefit from the trip?

A "yes" answer to any of these questions may prove to be sufficient evidence that the driver was acting within the scope of his or her duties.

## **Transportation Risk Management Statement**

You indicated that your organization has a transportation risk management statement. This is an excellent practice. Too often organizations do not state clearly their purpose and goals in providing

services to their constituents. If transportation is integral to fulfilling your organization's mission you should state your view on transportation safety and risk management. The most basic risk management statement is that safety is always first and the number one priority within the organization. A "safety first" philosophy simplifies the decision-making process by making it clear that safety is your top priority. Many decisions are easier to make when the first consideration is the effect on the well-being of the people serving and being served by the organization. Putting safety first enables people to make the right decision and not be influenced unduly by other pressures such as quotas or scheduling issues.

The statement can also incorporate your basic driver safety rules. The rules delineate the desired behavior. Suggested rules are to always wear seatbelts, lock car doors, do not play loud music or have other distractions. Other guidelines are to not drive when overly tired or taking medication that impairs your abilities, do not use cell phones while driving, and so on.

## **Vehicle Use Policy**

You indicated that you have a policy concerning the use of your organization's vehicles. This is an important risk management tool.

We recommend that you review your policy and consider making sure that it clarifies:

- Who is authorized to drive the agency's vehicles;
- Who is authorized to drive their own vehicles on behalf of the organization;
- The approved uses for the vehicles (transporting clients, materials and equipment, etc.);
- If employees, volunteers, or clients can use the vehicles for personal errands. If yes, the process for requesting and granting permission for personal use of the organization's vehicles;
- If members of the employee's or volunteer's family can drive the organization's vehicles;
- Whether your organization prohibits any uses such as transporting hazardous materials, carrying passengers in an open truck bed, participating in car rallies, or other activities;
- What driving restrictions apply, such as limited night driving, limits on the number of hours someone may drive in one day, or the requirement that drivers take periodic rest breaks.

## **Passenger Behavior Policy**

Most people have witnessed drivers coping with mild to severe passenger distractions. From heated arguments with "back seat drivers" to imposing discipline on children or other passengers within the vehicle, passenger distractions are accidents waiting to happen.

You indicated that you have a policy concerning passenger behavior. This is an important component of a comprehensive transportation program. All passengers transported by your paid and volunteer staff should be required to use basic safety equipment such as seatbelts, child safety seats, and wheelchair tie-downs as needed. Passengers should also adhere to minimum safety procedures, such as not causing distractions to the driver of the vehicle, remaining seated, not playing loud music, and no horseplay while in the vehicle. Drivers and other passengers should be required to report all violations of these rules to the appropriate personnel. The organization should consider taking action with respect to passengers who repeatedly violate the organization's rules, such as suspending future transportation privileges. Passengers should also be encouraged to report any observed unsafe driving practices to the appropriate personnel.

## **Accident Reporting Procedures**

Consider reviewing your guidelines to make sure that they:

- Stress the importance of reporting accidents to the organization as soon as practicably possible (after medical assistance has been rendered to victims).
- Clearly delineate the person to whom accidents should be reported.
- Emphasize that the organization's primary concern - and that of its drivers - is the health and well-being of the driver, passengers, the occupants of any other vehicles involved in the accident, and, if applicable, involved pedestrians or bystanders. Instruct the driver to stop at once and give aid to anyone injured in the accident and check for injuries. Drivers should also be told not to move occupants who appear to be seriously injured.
- Emphasize the importance of getting out of harm's way and protecting everyone after the accident. Many secondary accidents occur when drivers involved in a collision fail to pull over and get out of traffic lanes. A growing number of states are adopting fender-bender laws that require motorists involved in accidents to move their vehicles into breakdown lanes.
- Explain the importance of placing warning devices 200 to 300 feet behind the vehicle. Flares or markers should be placed so that traffic has enough warning to react and slow down.
- Instruct drivers and passengers involved in an accident to notify the police or highway patrol immediately, and also, to request a copy of the police accident report.
- Instruct drivers to collect additional information at the accident scene such as the license plate numbers of all involved vehicles, and the names, addresses, and driver's license numbers of all persons involved in the accident, including any witnesses. Require that an Accident Reporting Form be kept in the glove box of a vehicle at all times. Train all personnel in the proper completion and distribution of the form.
- Inform drivers and passengers that they may furnish the name and address of the insurance company that provides your organization's automobile liability insurance coverage to anyone involved in the accident who requests the information. They must also give the name of the organization's local insurance agent. This information should be accessible to all drivers, and may be stored in the glove compartment with blank accident forms. Most states require that every vehicle contain proof of insurance.
- Explain the importance of preserving evidence after a collision. Many organizations keep a disposable camera in their vehicles to use in taking pictures at the accident scene.
- Clarify the importance of avoiding a discussion with persons at the scene about who is to blame for the accident. Drivers should be instructed not to apologize or admit responsibility or guilt for the accident, but express concern without admitting liability.

Require an internal review following an accident to determine if the organization's policies and procedures were followed and if they were effective. Based upon the findings, revise any policies or procedures to more effectively respond to an automobile accident.

## **Potential Liability for Damages Caused by an Unpaid Driver**

A nonprofit *can* be held liable for the negligent act of a volunteer whether the volunteer is driving an agency vehicle or his or her own auto on agency business. An organization can be held *directly* liable for actions that cause harm to another. The injured party might assert that the organization failed to screen and select its drivers properly. Another plaintiff might allege that a nonprofit failed to train or to supervise its drivers and other personnel.

A second form of liability is *vicarious* liability where the actions of an organization's agents are transferred to the nonprofit. Vicarious liability becomes important when a nonprofit has employees or volunteers driving their cars or other vehicles not owned by the nonprofit on agency business. Under the theory of vicarious liability, a nonprofit could be responsible for the actions of its drivers and other personnel if three conditions are met. First, the driver or agent must be acting on behalf of the organization and with its authority. Second, the organization must have the right to control the driver's

actions. Finally, the incident must have occurred while the driver was acting within the scope of his or her duties.

## **Driver Screening**

Screening all drivers makes good sense. Since you are already screening your drivers, you know how important this step can be. However, an effective screening and selection process needs to be quite thorough. Some organizations are casual about screening and selecting their drivers, but if there's an accident involving an "unqualified" driver, the organization's lax attitude toward screening may come back to haunt it.

The establishment of a driver selection process should be a part of your usual employee or volunteer screening program. As a rule of thumb, the greater the transportation exposure, the more extensive the driver screening process should be. First, you should review each employee and volunteer position description to determine if driving is a part of the position. The extent of the transportation exposure will vary by the position. You can view the exposures and appropriate selection process as a continuum. On one end of the continuum are the positions that do not involve any driving. At the other end of the continuum are the most hazardous positions that involve activities such as the use of buses and vans to transport people, handling special materials or equipment, transporting people with special needs such as wheelchair lift vans, or driving large, heavy vehicles. The middle section includes positions with less hazardous exposures such as transporting people in private passenger vehicles or more frequent driving as an essential function of the position that doesn't require any special licenses or training.

A basic screening process might include an application, personal interview, reference checks, verification that the applicant has a valid driver's license, and proof of personal auto insurance. Additional items that might be considered in a more rigorous process include: a statement of driving history, statement of medical condition, motor vehicle record, and a driving test.

A description of some of the tools available for driver screening and selection is provided below:

- *Position Application* - Collect basic personal information and questions regarding the person's driving status.
- *Personal Interviews* - Have someone from your organization interview the applicant to determine their acceptability for the position. Consider requiring the applicant to bring their motor vehicle record (MVR) to the interview.
- *Reference Checks* - Contact non-family references to determine the person's suitability for the position.
- *Valid Driver's License* - Confirm that the applicant has a valid driver's license and note any restrictions or limitations placed on their ability to drive (i.e., no night driving, special equipment, corrective lenses, etc.).
- *Statement of Driving History* - For the occasional driver, it may be acceptable to ask the applicant to complete a statement of driving history instead of ordering a copy of his or her motor vehicle record.
- *Proof of Personal Insurance* - If the person will be driving his own vehicle, your organization may want to require proof of personal automobile insurance with stipulated limits.
- *Motor Vehicle Records (MVR) Check* - Look to your state guidelines for how to access DMV records.
- *Special Licenses or Certifications* - Certain sizes and types of vehicles require special driver's licenses such as the Commercial Driver's License. In some jurisdictions drivers who transport persons with developmental disabilities must obtain a special certificate. Determine if there are any special requirements applicable to the types of vehicles your organization operates or the types of passengers served.

- *Statement of Medical Conditions* - Some organizations require their drivers to submit a statement of their medical condition that includes any medications the person is taking.
- *Driving Test* - You may want to work with your local police department to have applicants take an "on-the-road" driving test.
- *Physical Examination* - Some driving positions may require that the person receive a physical medical examination prior to operating the vehicle.
- *Drug and Alcohol Testing* - An organization may decide to implement a drug and alcohol testing program for its drivers. Such a program is mandatory for any position that requires a Commercial Driver's License.

Additional screening tools are available, but this highlights the main methods used by nonprofit organizations.

## **Driver Applications and Supplements**

If a person is recruited as a driver or driving constitutes an important or major aspect of the person's position, a specific Driver Application should be used in conjunction with your organization's usual employment or volunteer application. When driving is not a major job function then you can either incorporate driving questions into your standard applications or use a supplemental application.

For positions requiring extensive driving, a Driver Application should request:

- Name
- Address
- Telephone Number
- Date of Birth
- Driver's License Number and State of Issue
- Emergency Contact Name and Telephone
- Current Employer (name and address)
- Position Held
- Dates of Employment
- Reason for Leaving
- Special Certificates: e.g., CPR, Medical Certificate, Defensive Driving, First Aid (indicate certificate(s) and expiration dates)
- Accident Record for the Past Five Years - Consider asking the applicants to list the dates of accidents, describe the nature of each accident (e.g. head-on, rear-end). Also indicate whether the applicant was found to be at fault, and if there were any fatalities or injuries.
- Traffic Violations for the Past Five Years - Moving violations only, but include any cases where the applicant received "probation before judgment." Request the city and state of each violation, date of the violation, and infraction and penalty.
- Have you ever been denied a license, a permit, or the privilege to operate a motor vehicle?
- Has any license, permit, or privilege ever been suspended or revoked?
- Personal Insurance - Do you have an insurance policy for your personal vehicle that meets or exceeds the limits required by state law? If yes, provide the name of your insurance carrier and your policy number.
- Agreement to Abide by the Nonprofit's Policies - The application should include a statement indicating that the applicant has read and agrees to abide by the nonprofit's policies, including its driving policies, will attend any courses or training required by the nonprofit, and will inform the nonprofit of any moving violations or at-fault accidents that occur during the applicant's tenure as a volunteer or staff member, whether or not they occur while working for the nonprofit.
- Seatbelt Warranty - Some nonprofits add language about seatbelt use as a warranty at the bottom

of the application. For example, "I also understand it is the policy of [Nonprofit] that all passengers and drivers must at all times wear seatbelts when riding in an organization vehicle. I agree to abide by this policy and will not transport a passenger who refuses to fasten or have his or her seatbelt fastened unless he or she is excused from this requirement by a physician's certificate."

- Truth Clause - Just above the applicant's signature should be a truth clause or false information warning. While there are many reasons for rejecting an applicant for a position at your nonprofit, dishonesty on the application is among the most defensible reasons for rejection. Every nonprofit application for volunteer or paid employment should include a truth clause. A sample is provided below:

"I certify that the answers given by me to all questions on this application and any attachments are, to the best of my knowledge and belief, true and correct and that I have not knowingly withheld any pertinent facts or circumstances. I understand that any omission or misrepresentation of fact in this application or on my resume may result in refusal of or separation from employment/volunteer service upon discovery thereof."

- Applicant's Signature, Date

For those positions with only incidental driving, the driving supplement might include the following:

- Driver's License Number and State of Issue
- Personal Insurance - Do you have an insurance policy for your personal vehicle that meets or exceeds the limits required by state law? If yes, provide the name of your insurance carrier and your policy number.
- Special Certificates - e.g., CPR, Medical Certificate, Defensive Driving, First Aid. Indicate certificate(s) and expiration dates.
- Accident Record for the Past Five Years - Ask the applicant to list the dates of accidents, describe the nature of each accident (e.g. head-on, rear-end), indicate whether the applicant was found to be at fault, and indicate if there were fatalities or injuries.
- Traffic Violations for the Past Five Years (moving violations only, include even if received "probation before judgment") - Request the city and state of each violation, date of the violation, and infraction and penalty.
- Agreement to Abide by the Nonprofit's Policies.

## **Verifying Licenses**

By making certain that all authorized drivers of the organization's vehicles have current, valid drivers' licenses, you are performing a very simple, but important, task. Make sure that each driver is legally licensed to drive the type of vehicle to be used and that no license restrictions affect the person's ability to perform his or her duties. Always make a copy of the license for your files.

It is also a good practice to check for valid driver's licenses for all employees or volunteers that might drive occasionally for the organization. This includes employees and volunteers that use their own vehicles, not just the people driving the organization's vehicles.

You might also consider checking drivers' records through your state Department of Motor Vehicles. Some nonprofits require applicants for volunteer positions to produce a copy of their current Motor Vehicle Record (MVR), while other organizations obtain the applicant's permission to check their motor vehicle records and do so later.

## **MVR Checks**

Checking the driving records of applicants for driver positions of agency vehicles is a reasonable and appropriate risk management procedure. You should consider also checking the records for personnel that may drive their cars on your behalf. Driving records are maintained by the Department of Motor Vehicles (DMV) in each state. These agencies track each licensed driver's traffic violations and vehicle accidents. Like other tools, however, you need to use the information gathered properly to achieve your desired results. Checking official agency records is *not* a panacea. *Do not be lulled into a false sense of security.* Conducting a motor vehicle record check is not a substitute for using other screening tools or risk reduction techniques such as closely supervising personnel (employees and volunteers) and monitoring their performance after placement. Moreover, conducting a record check should not lead you to disregard danger signs that appear during other parts of the screening process.

Here's a suggested approach for checking motor vehicle records:

#### Step 1 - *Determine if the position involves driving*

The decision to check official agency records - including motor vehicle records - should be based primarily upon the specific responsibilities of the position. If operating a motor vehicle is not part of the position description, then why check driving records?

#### Step 2 - *Decide if an MVR check is necessary*

Decide which positions require that each person's MVR needs to be checked. Consider checking the MVRs of persons authorized to drive your nonprofit's vehicles. Remember, it may still be a good idea to check a driver's MVR, even when they will be driving their own vehicle. If the position involves only incidental driving, you may want to consider using a Statement of Driving History as a screening tool.

Some proponents of record checks assert that a check encourages self-screening. They believe that individuals with disqualifying records will be discouraged from applying for driving positions. Using official records as a screening tool may also strengthen your position in litigation. Although the organization is responsible if its driver is at fault (negligent) it can avoid possible allegations of gross negligence by showing that it took proper care in screening its drivers. An organization with access to these records may be subject to criticism if it fails to use it especially if the information is readily accessible and affordable. Both of these reasons for using record checks may be valid. However, every nonprofit must balance its selection of screening tools against the factors of relevance to the position, availability, usefulness, cost, and legal permissibility.

#### Step 3 - *Establish criteria*

Before ordering motor vehicle records on applicants, you must first carefully define your selection criteria that will enable your organization to function while following its policies and procedures on a consistent basis. The selection process should identify traffic violations or accidents that will disqualify someone automatically, establish rating criteria, define judgment factors, and permit the information to be examined in the context of organizational requirements and other life experience factors of the applicants.

For example, what motor vehicle offenses would automatically disqualify an applicant? Would an applicant with a recent moving violation be automatically disqualified? Would an applicant with a moving violation five years ago be disqualified automatically? What was the nature of the moving violation - speeding, running a stop sign or red light or driving under the influence? We suggest starting with a list of offenses that would automatically disqualify any applicant, e.g. any arrest or conviction for driving under the influence or driving while intoxicated, vehicular manslaughter, or reckless driving.

Then develop more specific criteria: e.g. two moving violations in the past 5 years, for disqualifying an applicant.

#### *Step 4 - Obtain MVR checks on all applicants for designated positions*

If you decide that MVR checks are necessary for specific positions, you should obtain motor vehicle records for all candidates for those positions. Consistency is a key issue in any effective screening and selection process. The failure to conduct record checks on all candidates for a position may be viewed as discriminatory. In addition, it may be hard to explain if your organization placed a person not screened in accordance with your policies in such a position and that person caused an injury or perpetrated a crime.

#### *Step 5 - Provide applicants with disqualifying offenses an opportunity to respond*

Unfortunately, states can make errors in recording traffic violations. It is a good risk management practice to allow applicants with disqualifying offenses to confirm if the information is correct. If the information is incorrect, the applicant should have the opportunity to "correct the record."

At a minimum, all of your drivers should have an acceptable driving record as defined by your organization. Your insurance company and agent or broker can assist you in establishing effective guidelines. Remember that checking motor vehicle records must be an on-going process. Depending upon the extent of driving exposure, the MVRs can be reviewed annually. Also be prepared to take the appropriate action if a volunteer or employee develops an unacceptable driving record while working or volunteering for your organization.

NOTE: Under Federal law anyone driving a vehicle that holds sixteen or more people (including the driver), such as vans or buses, must have a valid Commercial Driver's License (CDL). The law also requires the driver of any vehicle over 26,000 pounds to have a Commercial Driver's License. Many states have adopted more stringent requirements for Commercial Driver's Licenses. For example, California requires that anyone driving a vehicle holding ten (10) or more passengers, including the driver, have a Commercial Driver's License (Class "B" License). Check with your state Department of Motor Vehicles or your insurance agent to determine your state's requirements.

The U.S. Department of Transportation's CDL regulations require prospective employers to check, within thirty days of the date the driver's employment begins, the motor vehicle records for the applicant's driving history. The organization must also conduct an investigation of the driver's employment record for the past three years.

## **Driver Training**

You indicated that you train your drivers. This is an important risk management step. Just be sure that you train all drivers - employees *and* volunteers. In fact, you should provide the same training and risk management procedures for any person holding a specific position whether they are volunteers or employees. One training tool is a driver's handbook that states your policies and expectations clearly.

An effective training program, like the selection process, should be developed based upon the nature and extent of the driving performed for each position. Not everyone needs to be trained to the same level unless they are performing the same tasks.

Consider reviewing your training program to make sure that the topics listed below have been covered.

### *New Employee/Volunteer Orientation*

- General Overview of transportation policies and procedures
- Transportation risk management statement including your organization's general driving rules
- Authorized drivers and vehicle use
- Mileage reimbursement policy
- Accident procedures

### *Position Specific*

- Any skill requirements or special training or licenses (first aid, CPR, special driver's license, etc.)
- Training on driving certain types of vehicles (i.e., panel trucks, large passenger vans, trucks, or buses)
- Defensive driving and other driver training programs
- Passenger assistance
- Vehicle inspection and maintenance procedures including documentation
- Use of trip logs
- Supervision - chain of command
- Transportation safety program - incentive awards, safety meetings, safety committee, review of transportation issues/problems

## **Supervising Drivers**

You indicated that you have someone responsible for overseeing your paid and volunteer drivers. Having a supervisor for driving activities is an important first step in managing transportation risks in your nonprofit. Make certain that this person has the authority to enforce the policies adopted by your organization. Also ensure that the supervisor is well versed on your transportation policies and procedures and can articulate them to all drivers in the program.

## **Monitoring Driver Performance**

Monitoring driver performance on an ongoing basis is another effective risk management tool. The proper supervision of drivers requires continuous performance monitoring and evaluation. You indicated that you do evaluate your drivers. This is an important practice that we encourage you to continue. Consider reviewing your process for drivers of agency vehicles to include the applicable following elements:

- Periodic review of each driver's motor vehicle record
- Periodic road test
- Confirmation of medical condition if applicable
- Written driver safety tests
- Review of accident and incident reports
- Regular performance reviews and conferences
- Review of complaint logs
- Review of transportation program logs and reports (inspections, maintenance reports, trip logs, etc.)
- Verification of position requirements - current and valid driver's license, certificates or special licenses, and personal automobile insurance

## **Commercial Driver's License Issues**

You indicated that your organization does not own any 16-passenger vehicles or vehicles weighing over 26,000 pounds or you do not know whether any agency vehicles meet this criteria. Under Federal law,

the drivers of these types of vehicles must have a Commercial Driver's License (CDL). The CDL program is a part of the Commercial Motor Vehicle Safety Act of 1986 that made it illegal for a driver of a commercial motor vehicle to hold more than one license. The act also requires states to make their testing and licensing programs conform to the Federal minimum standards. Anyone driving a vehicle designed to transport 16 or more passengers, including the driver, or is placarded for hazardous materials must hold a CDL. In addition, anyone driving a vehicle or combination of vehicles with a gross vehicle weight in excess of 26,000 pounds must hold a Commercial Driver's License.

Aside from the vehicle requirements, the Commercial Motor Vehicle Safety Act imposes many responsibilities on both the driver and the employer. The U.S. Department of Transportation's CDL regulations require prospective employers to check, within thirty days of the date the driver's employment begins, the motor vehicle records for the applicant's driving history. The organization must also conduct an investigation of the driver's employment record for the past three years. Also, anyone holding a CDL must report to his or her employer within 30 days of a conviction for any traffic violation (regardless of the type of violation, except parking tickets, or the vehicle being driven at the time). Employers cannot use a driver holding more than one license or whose license is suspended, revoked or cancelled. Additionally, drivers and employers are subject to stringent requirements for drug and alcohol testing and physical examinations.

For additional information on CDL requirements, contact the U.S. Department of Transportation ([www.dot.gov](http://www.dot.gov)) or your state Department of Motor Vehicles.

## **Owned or Leased Vehicles**

You indicated that your organization owns or leases one or more vehicles. Your organization either provides transportation for your clients or has enough employee or volunteer travel to have its own vehicles.

No matter what type of vehicles you own - private passenger cars, buses, trucks or vans or some combination - your organization is responsible not only for who drives the vehicles but their maintenance and upkeep. Every nonprofit that owns vehicles should have policies and procedures in place to manage the risks of owning and operating motor vehicles.

## **Vehicle Selection Policy**

You indicated that you have a vehicle selection and replacement policy. The following are some factors to consider in evaluating the adequacy of your policy:

- Do you have specific criteria for selecting the type of vehicle(s) your organization needs to fulfill its mission - private passenger cars, minivans, vans, different types of trucks, or buses? If you require buses, what passenger size is needed?
- Does the criteria include the type of safety equipment that must be installed such as airbags, side impact features, anti-lock brakes, four-wheel or all-wheel drive, head restraints, large side mirrors, backup alarms and mirrors, cargo holders and any special mechanical equipment such as lifts?
- How often will you replace your vehicles?
- Is replacement dependent upon the vehicles' age, mileage or obsolescence?

## **Trip Logs**

You indicated that you maintain trip logs for your vehicles. These logs can assist you in evaluating the need for and effectiveness of the various vehicles your organization owns. The logs also can reinforce to

personnel that they are driving an agency owned vehicle and that their actions have a direct effect on the organization.

## **Inspections**

You indicated that your nonprofit requires pre- and post-trip inspections of your vehicles. Some auto accidents are due to mechanical problems and poorly maintained vehicles. Spending a few minutes inspecting a vehicle before and after a trip can save time, money and energy later.

## **Documenting Vehicle Maintenance**

Ensuring proper maintenance and repairs is one of the primary reasons for the pre- and post-trip inspections. However, if a driver does not know how to inspect or how to report problems, the inspection procedures are meaningless. You indicated that your organization has established procedures including documentation for routine and special maintenance. This indicates that you recognize the critical connection between safe equipment and a safe transportation program.

## **Understanding the Exposures for Rented, Hired and Borrowed Vehicles**

You answered that neither your employees nor volunteers rent, hire or borrow vehicles from others. Have you considered all of the possible circumstances in which someone from your organization may rent, hire or borrow a vehicle? They may rent a car while on a business trip, rent a van to transport staff or clients to an event, or rent or borrow a vehicle from another organization, such as a school, church, local business, or other nonprofit to move equipment or materials. Even if none of this occurs now, is it possible in the future that your organization will rent, hire or borrow vehicles?

Another issue is whether or not your organization loans its vehicles to other groups. Many organizations are surprised to learn that when they loan a vehicle their insurance is the first and often only source of recovery for both liability and damage to the vehicle in the event of an "at-fault" accident. Your insurance policy will pay for both a liability loss as well as the physical damage to your vehicle. Therefore, it is important to evaluate when, if at all, your organization will loan its vehicles to another organization.

## **Contract for Transportation Services**

You indicated that your organization does not contract with transportation service providers such as limousine services, bus or shuttle services, or trucking firms that haul your equipment or materials.

## **Verifying Personal Auto Coverage**

You indicated that you do not require proof of personal auto insurance from personnel who drive their own vehicles for your organization's benefit. Requiring proof of coverage is an excellent risk management strategy when you have personnel driving their own vehicles on agency business. In the event of an at-fault auto accident, the vehicle owner's insurance policy is the first line of coverage for a liability loss. If the owner does not have auto insurance or the limits are very low, the responsibility for the financial consequences of the accident could be shifted to your organization. Therefore, your organization can protect itself by requiring your drivers to provide proof of personal auto insurance.

A related question is: what policy limits are appropriate for personnel using their own vehicles for the

agency's business? Many organizations require that each driver have the limits required to meet the state's financial responsibility law.

Some organizations require liability limits higher than the state minimum. Your agency should evaluate its needs and resources to determine what personal auto liability limit it will require of its drivers. We encourage you to remind your employees and volunteers that their personal auto insurance will respond to any loss first. You should also tell them that your organization does not have any insurance coverage that will reimburse them for any physical damage to their car.

## **Cargo Insurance**

You indicated that you transport cargo either in your own vehicles or through transportation companies. If you also have cargo insurance for these goods - well done! Few nonprofits recognize their potential exposure to loss from transporting goods and materials. Many organizations assume that a transportation company will assume responsibility. However, a company's liability for your cargo is usually very limited. Also, some larger nonprofits have their own trucks and tractor-trailers that they use to haul materials. No auto policy covers the cargo carried by, within or on the vehicle. For this exposure, you need an inland marine policy.

# Technology and Privacy Risk Management

## Introduction

This section of your report contains feedback and recommendations about managing technology risks based on your answers to the questions in the Technology and Privacy Risk Management module. The suggestions in this report follow the subtopic headings for the module: Technology Policies, Cybersecurity Assessment, Technology Vendors, Sensitive Information, and Cyber Liability Insurance.

## Comprehensive Policy

You indicated that your technology policy is comprehensive, and that it addresses all or virtually all of the possible categories of misuse you have experienced in the past or anticipate in the future. The use of technology policies in the nonprofit sector is still an emerging practice. So your use of a policy that you believe is comprehensive is both unusual and commendable from a risk management perspective. As with any risk management tool or employment policy, you have to walk a fine line between presenting a comprehensive policy and formulating policies that are so lengthy or complex that they beg for an "executive summary." You don't want employees to violate your policies because they were hard to understand or took too long to digest. Here are a few questions you might want to ask with respect to your comprehensive technology policy:

- What are the most critical prohibitions or rules outlined in the policy?
- Does the policy place the proper emphasis on the most critical issues?
- Is the policy sufficiently or overly strict?
- How have employees reacted to the policy? Does it enjoy widespread support? Do employees understand the rationale behind the policy?
- Is the policy stated in clear terms that every employee can understand? If not, can technical terms or concepts be rewritten to increase understanding?
- Have any employees been reluctant to agree to the terms of the policy? If so, why? Are changes warranted to ensure greater acceptance of the policy?
- Is there anything about the way in which the policy is disseminated that dissuades employees from reviewing it on a timely basis? (Some nonprofits find that it works more effectively to separate the technology policy from the employee handbook, in order to emphasize its importance.)

## Telework Agreements

You responded that your telecommuting employees are required to sign a "Telework Agreement" outlining the restrictions and requirements associated with your telecommuting program. A Telework Agreement can be an effective risk management tool, enabling a nonprofit to reduce the likelihood of surprise in the supervision of telecommuting employees. You might want to review your current Telework Agreement to make certain that it includes the following critical elements:

- An overview of the parameters of the program, and any special requirements that apply (e.g. that telework locations be within the state where the nonprofit operates, or that the nonprofit will be allowed to inspect the work site).
- Information on the nonprofit's systems security provisions and instructions.
- A restatement of the nonprofit's applicable code of conduct.
- Information about the required work schedule and means of communications between the employee and the "home office" as well as contact between the employee and the nonprofit's

clients and outside vendors.

- A signed statement that the employee agrees to establish and maintain a safe and secure home workstation and that the employee has read and understands the policy and agreed to abide by its provisions.

## **Monitoring Employee Use of Technology**

You indicated that your nonprofit monitors employee use of technology. Doing so is an important risk management strategy that backs-up any steps you have taken to dispel employees' expectation of privacy while using your systems. In addition, monitoring employee use of technology puts your organization in the best position to detect possible problems before they become catastrophic. As is true with other risk management techniques, it's important to strike a balance. You'll need to balance affordability of monitoring with the potential fallout and benefits of monitoring. You don't want monitoring to seem so invasive to employees that it damages morale in your organization. Nor do you want to spend a disproportionate amount of resources on monitoring compared to the threat of loss to your systems. It's also important to keep in mind that a significant percentage of system misuse is due to ignorance-an employee may not recognize that what he or she is doing violates your policies or poses some risk to your assets. Monitoring can provide a way to detect inadvertent missteps that happen despite the presence of a comprehensive technology policy. As with any risk management strategy, it's important to obtain a broad perspective on the "problem" you're trying to address as well as the "solution." So you might consider asking a group of employees to examine your existing monitoring practices and offer suggestions to improve the policy. This might be particularly important if your monitoring policy has been met with resistance, or you're encountering other difficulties implementing the policy.

## **Using Vendors**

You indicated that your nonprofit uses independent contractors and/or firms to perform various technology-related functions. Vendors can be the source of a variety of risks when implementing changes within your organization. New systems usually mean the involvement of new vendors - companies and individuals with whom you may not have longstanding relationships.

When looking for a new vendor, whether for software, service or a fully outsourced technology operation, the best way to identify prospective providers is through word-of-mouth referrals. Minimize your risk of receiving poor service by asking around at local meetings, conferences, and user groups. People are usually willing to share horror and success stories, so all you have to do is ask. Check the service record of the vendor by requesting a list of references from current nonprofit customers. If the vendor is hesitant to supply references, consider moving on to another provider.

## **Technology Contracts**

You indicated that it is your practice to always use a written contract when hiring technology firms or contractors for specific projects. A contract is beneficial for various reasons. Most importantly, it spells out the expectations and requirements of each party and reduces the risk of surprise and disappointment. It can also provide a helpful roadmap in the event things turn out differently than expected and some deviation in the original plan is required. But a contract is only useful in this regard if it contains a sufficient degree of details and anticipates various contingencies.

Consider reviewing any pending or future technology contracts to make certain that they:

- Are written in language that is understood by both parties. When a technology firm presents a proposed contract for your review, you can expect that it will contain technical language. Make

certain you understand the terms and language in the contract, or that they are specifically defined in the contract. Keep in mind that your definition of "database" or "system" may differ from the perspective of the contractor.

- Are explicit about the work the contractor will be performing and your expectations about the final product or system.
- Anticipate changes in technology that may occur during the life of the contract, helping you avoid receiving a product at the end of the process that is obsolete or inappropriate given the availability of newer technology.
- Include appropriate checkpoints in the process. You may require the vendor to provide periodic status reports, or you may agree to a timetable and have your staff responsible for determining if it has been met.
- Clearly and explicitly address the issue of ownership. Who owns what? Will the nonprofit "own" the software it is purchasing or only a license to use the software for a period of years? How will individual contributions of owned material be returned if the contractual parties decide to split? Vague statements about the vendor's obligation to return the nonprofit's property in the event the contract is cancelled are probably insufficient.
- Include a well-defined "exit strategy" in the event either party seeks to end the relationship. Some of the issues that should be addressed include: the length and form of notice required to cancel the contract, how the parting of company will be announced, and what equipment, documentation or other assets will be returned to the parties.

## Data Breach Plan

You indicated that your agency does not have a data breach plan in place. We recommend that you address this gap as soon as possible.

Include the following topics in your plan:

- ***What constitutes a data breach?*** State security breach laws generally define what constitutes sensitive information. But no two state laws are identical. Familiarize yourself with the applicable state laws in the states where your organization operates.
- ***Who must we notify?*** Most states require organizations to notify all consumers affected by the data breach. Some states also require you to notify the state attorney general or consumer reporting agencies.
- ***How should we contact those affected?*** Some states require that specific communication methods be used to notify consumers of a data breach.
- ***How quickly must we contact those affected?*** Every state notification law includes a timeframe for data breach notification. If you fail to notify your consumers within the appropriate timeframe, your nonprofit could face litigation and harsh fines. In some cases, however, law enforcement that require that an agency delay notification if the law enforcement agency believes that disclosure will impede an ongoing investigation.
- ***What resources are available from our insurance providers?*** A growing number of insurers provide proactive risk management help, and have experts on call to either answer or help you determine the answers to the questions that follow.

For information on the breach notification laws in states, see the [Security Breach Notification Laws page](#) of the National Conference of State Legislatures.

# Special Events

## Introduction

This section of your report contains recommendations about managing special event risks. The suggestions in this report follow the subtopic headings for the module: Planning Safe Special Events; Key Personnel; Partners, Sponsors and Vendors; Facilities; People; Special Features; Accident and Crisis Management; and Insurance for Special Events.

Most nonprofits conduct special events from time to time. Yet risk management issues are often omitted from the planning process. In the excitement that surrounds various planning and fundraising activities, the possibility of someone getting injured may not be on the radar screen. The risk that the event will generate less than the event goal may be acknowledged, but not addressed.

While most events are delivered without serious harm or injury, an unanticipated accident at an event could be disastrous for your nonprofit. Every nonprofit that conducts special events should integrate risk management into the event planning process.

## Hosting Special Events

You indicated that your nonprofit hosts special events. Special events are increasingly popular in the nonprofit sector as organizations look for ways to generate support for programs, raise funds for educational and service delivery initiatives, and raise public awareness about societal problems and issues. For many nonprofits special events are a cornerstone of program and service delivery. While special events can help an organization achieve its goals, they may be undertaken with little thought about the potential downsides or risks. Effective nonprofits cannot operate without risk, nor should they try to do so. However, a critical component of any special event is to identify and manage the risks related to the specific activity.

## Documenting Risk Management Activities

You indicated that your nonprofit does not document its risk management and safety plans for special events. Proper analysis and documentation are good business practices. Written plans can assist with training and supervising personnel as well as help ensure that certain actions are taken. The documentation can also be useful if an accident occurs and your nonprofit must defend its actions. We recommend that you begin documenting risk management activities for your special events as soon as possible.

## Partnership Risks

You answered that your organization establishes partnerships or collaborations with other nonprofits, businesses, and governmental agencies for special events. Establishing a partnership has its own set of risks that you need to manage before, during, and after you begin the relationship. The first issue is selecting the right partner. This can be accomplished through appropriate research and due diligence. An improper relationship in the eyes of the public can have a devastating public relations effect on your organization. Additionally, the roles and responsibilities of each party must be clear and understood by both parties. Many organizations formalize their relationships with contracts or memoranda of understanding.

## **Recruitment/Selection Process**

You indicated that your nonprofit has a process for recruiting and selecting partners. Well done! Recruiting and selecting partners can be a treacherous endeavor. You need to find another organization that is reflective of your nonprofit's values and mission. The arrangement should make good business sense for all parties. One substantial risk is the public's reaction to the disclosure of inappropriate actions by one of your partners. The partner may use foreign "sweatshops," manufacture a dangerous product, or distribute a product that you do not want associated with your nonprofit (alcohol, guns, cigarettes, etc.). Adverse publicity affecting your partner can influence the public's perception of your organization. Choose your partners and sponsors wisely.

## **Selecting Appropriate Facilities**

You indicated that your organization does not use a *Facilities Selection Checklist* when evaluating the possible locations for a special event. A Facilities Checklist is a valuable risk management and planning tool that enables you to identify and evaluate the features needed to hold a successful and safe special event at that facility. Some items that you may want to consider in selecting a facility are listed below. You may need to add specific criteria depending upon your organization's requirements and the nature of the event.

- Are the premises adequately maintained?
- Is the facility appropriate for the intended/designated use (size, equipment, accessibility)?
- Is the facility accessible for people with disabilities?
- Does the location have adequate restroom facilities?
- Are there any special hazards on or next to the premises?
- Is there proper lighting - inside and outside?
- Does the facility have adequate seating?
- Are there a sufficient number of well-marked exits?
- Can adequate security be provided at the facility?
- For outdoor events:
  - Is there adequate shelter from sun, heat, cold, and other weather?
  - Does the terrain pose any special risks?
  - Is the property accessible for emergency vehicles?

## **Security**

You answered that your nonprofit provides security services at its special events. Security personnel may be needed to keep unwanted people out as well as deal with the people attending or participating in your special event. However, security measures have their risks, too. The key to an effective security force is the selection, training and supervision of the security personnel, whether they are independent contractors or volunteers. When using independent contractors, don't forget to request a Certificate of Insurance and have your organization added as an additional insured to the security firm's general liability policy.

## **Spectators**

You indicated that you have special events that include spectators. Large events with a lot of spectators can be a challenge to your event organizers. Crowd control is the main concern with spectators. The organizers need to assess and design the flow of people into, throughout, and exiting the event. Road traffic and parking is another concern. Large crowds also require medical or first aid facilities plus the ability to evacuate people safely if needed.

Another challenge is to limit the spectators' access to event participants or their opportunity to interfere with the actual event. A concert with a very popular group or individual can create serious crowd control problems. Also, an event held on public streets or public property (e.g., bike ride, road race, or rally) presents challenges in limiting spectators' access and minimizing the chance for someone to get hurt.

Some special events may place the spectators in danger such as athletic competitions or amusement rides. Your organization can transfer some of the financial risk to the vendors that provide these services, but you still retain the risk of a public relations disaster if an accident occurs. Also, if your event includes the serving of alcoholic beverages, the organizers need to plan to limit consumption, avoid serving minors, and handle intoxicated people.

## **Food and Beverages**

You responded that food and beverages are furnished at your special events. The first risk management concern is who is providing and serving the food - a vendor or your employees and volunteers. If you are using vendors, you can transfer most of the financial risk associated with food to the vendor. However, if your organization is providing food and beverages there are few things to consider.

- *Facilities* - Does the premises have adequate preparation, storage, and refrigeration facilities for the type of food served?
- *Health Regulations* - Do you need a health department permit or are you subject to any other health department regulations?
- *Food Spoilage and Contamination* - Are the food handlers trained in the proper handling of the food to be served?

## **Entertainment**

You indicated that your organization provides entertainment during some of your special events. Entertainment is a broad term and can include street performers (juggler, clown, mime, etc.), musicians, speakers, athletic events (rodeo, boxing, tennis, etc.), dances, games, and amusement rides. Each type of entertainment may have unique risks that you need to manage. The most significant exposures are bodily injury and damage to property.

Entertainment involving "name" personalities can place extraordinary stress on security and crowd control. The entertainment may also require stages with elaborate (and expensive) sound and light systems and special effects. Stages and bleachers can be extremely hazardous if not properly constructed and maintained.

The financial aspects of many entertainment risks can be transferred to another party. At a minimum, you should require that each entertainer provide you with proof of insurance. However, be aware that many entertainers (bands, street performers, etc.) do not have insurance. Without insurance, the financial consequences for any losses caused by these performers can become the responsibility of your organization. You can decide to assume that risk, or, for a larger event, you may be able to make arrangements for the entertainers to purchase a special event liability policy.

Require a certificate of insurance from each performer, vendor and contractor involved with the special event. Also, ask to have your organization added as an additional insured to their general liability policy. Ideally, each entity should also have workers' compensation insurance. However, many states do not require sole proprietors to purchase workers' compensation coverage.

## **Parking**

You responded that your organization offers parking at your special events. The risks associated with event parking depend upon who is running the parking operation. Often the parking lots are a part of the facility you are using and facility personnel handle the parking for the event. If this is the case, you have transferred the risk to the facility; however, review carefully the rental contract to ensure that the facility is responsible for all aspects of the parking operation. If your organization is responsible for operating the parking lot, be careful to whom you assign those tasks. You should train and supervise the parking aides and provide them with the appropriate safety equipment (reflective vests, flashlights, whistles, and radios). Consider posting notices and disclaimers that your organization is not responsible for any damage or loss of property while on the parking lots. If the event is at night or in a dangerous neighborhood, consider hiring a security firm to patrol the lot and assist your guests as needed.

Check the parking lots for smooth, even surfaces and mark any hazardous conditions. Often guests are parking in fields and other unpaved surfaces so be aware of the hazards of uneven surfaces and the possible consequences of inclement weather on the parking area. Also, consider the traffic flow and work with the local law enforcement agencies to minimize disruptions to traffic.

## **Transportation**

You indicated that you provide transportation services as a part of your special events. One form of transportation service can be a shuttle service between the location and another, such as from the parking lots, airport, hotel, or from venue to venue. Another type of service is transporting people for the event such as a bus trip to a resort area or camp, or a tour to another city or country. There are two risk management strategies for this transportation risk: transfer the risk to another entity or provide appropriate vehicles and suitable drivers.

If you choose to transfer the risk, you need to be diligent in selecting a transportation service provider. If you are chartering the service, request certificates of insurance. When your organization provides the transportation you should take additional precautions. Your transportation service may involve the use of cars, boats or airplanes. In all cases you need to know who is "driving" and whether they are acceptable "drivers." Also, and unless the drivers are using vehicles owned by your agency, confirm that they have the proper insurance. Finally, your organization should purchase insurance coverage for non-owned automobiles. In special circumstances when you may be using non-commercial watercraft and aircraft, make certain that you are properly insured for these special transportation activities.

## **Cash**

You indicated that you handle a significant amount of cash, checks or credit card receipts during your special events. The sources of funds are as varied as the activities. You may collect admission or registration fees, parking charges, or payments for the sale of merchandise, food, and beverages. Other sources are bingo proceeds, auction receipts, pledges and donations, raffles or opportunity drawings, and the money from a casino night. The proper safeguarding of money, especially cash, is difficult and often overlooked when planning a special event. Some activities generate large sums of cash and checks that, if lost or stolen, can create a financial hardship for your organization.

The principal risk of handling cash or cash equivalents is that the funds will be stolen either by an outsider or an employee, client, or volunteer. Here are some techniques for protecting these resources:

- *Segregate money handling duties*- A different person should be responsible for each step - receiving the funds, depositing, recording, disbursing funds, recording disbursements, and reconciling your accounts. There is a significant chance for fraud if only one or two people handle all of these transactions. The more eyes overseeing the handling of your funds the better.

Segregation of duties is difficult for many small nonprofits but can be accomplished with the use of employees and volunteers.

- *Safeguard undeposited receipts*- First, do not forget to stamp checks with a restrictive notice when they are first received. Make deposits frequently and safely. Vary the time of day and routes taken to the bank. If the funds are not deposited on a particular day, take the necessary steps to store the money and checks safely, especially when you are away from your office.
- *Count twice, deposit once* - Money should be collected and counted independently by two people. Many organizations establish a guarded "money room" where all of the cash is taken and counted with several witnesses. Also, when handling cash, use either a cash register or other system for recording all cash transactions. The register tape or other receipts should then be reconciled with the amount of cash collected.

## Accident Reporting Form

You answered that your nonprofit uses a standard Accident or Incident Report form during its special events. As you are no doubt aware, it is important for your organization to gather information regarding the accident. The information collected will be critically important in any subsequent investigation of the accident. You can also use the information to learn from the incident and implement changes.

Contact your insurance professional for any recommended or required forms. Train your employees and key volunteers on the proper techniques for completing these forms. The documentation should only include an *objective description* of the accident and the injuries. The person completing the form should avoid personal opinions and any editorializing. Never admit liability to anyone and do not include an admission of liability in the report. Unless your insurance professional or carrier requires that you use a specific form, review the form that is in use at your organization to make sure that it contains the following information:

- *General Information* - Your organization's name and address plus the name, date and location of the special event.
- *Injured Person(s)* - This section should identify the injured person(s) and provide basic information on the accident. Include the person's name, address, telephone number, age and gender. Note the date, time and location of the accident and a brief description of what happened. Describe the nature of the injury. Indicate how the injured person left the scene (e.g. on foot, in personal vehicle, in an ambulance)
- *Witnesses* - Record the name, address and telephone numbers of any witnesses. Ask each witness for a brief statement or description of the accident. The witnesses' statements should be recorded accurately, reviewed, and signed.
- *Medical Treatment* - Note if any first aid treatment was administered and by whom. Many organizations have their medical volunteers complete this section of the report. Also, document if any professional treatment was performed such as the person being transported to the local hospital.
- *Accident Documentation* - Describe how the accident/injury occurred. Draw a diagram of the accident scene. Many organizations take photographs or use a video camera to document the accident scene. These pictures and diagrams will be helpful in investigating and settling any claim made against your organization.
- *Preparer's Signature* - The person that prepared the form should sign and date the form and include his or her address and telephone number.

It's always a good idea to talk to your insurance professional before you're facing an accident to discuss how your insurance company wants you to report claims. Some insurance companies want you to report every incident so they at least have a file in the event the injured party submits a claim. Other insurers

do not want a claims notification form until the injured party seeks compensation. Even if your insurance company does not want immediate notification of any incidents it is prudent for your nonprofit to establish and retain incident report files. After talking with your insurance professional, establish the appropriate accident reporting procedures.

### **Notifying Victims' Families**

You responded that you have a procedure for notifying the family or caregiver of an injured person. Depending upon the relationship of the person to your organization (employee, volunteer or client), you may have difficulty identifying the people to contact. In some cases you may have to rely on the local authorities to proceed. Whoever notifies the family-organization or the police-compassion is important while conveying your nonprofit's concern for the injured person and his or her family. This is especially true for any follow-up contact with the injured person or their family. While your representative should never make promises to compensate the victim or accept fault, you may avert legal action simply by demonstrating concern for the individual and their family.

# **Crisis Management and Business Continuity Planning**

## **Introduction**

This section of your report contains feedback and recommendations based on your answers to questions in the Crisis Management and Business Continuity Planning module.

## **Business Continuity Plan**

You indicated that you have an up-to-date business continuity plan (BCP) for your organization. It is important to identify mission-critical functions and providing for their continuation during an interruption in normal operations. Be sure to review the BCP on a regular basis to ensure that it is current. In addition, revisit the BCP whenever significant changes occur in your business operations warrant an update.

# **Volunteer Risk Management**

## **Introduction**

This section of your report offers feedback and recommendations based on your answers to questions about volunteer service at your agency.

## **Volunteer Position Descriptions**

You indicated that your nonprofit uses volunteer agreements, but not volunteer position descriptions. It's useful to have a volunteer agreement to help supervise individuals who act as volunteers with your organization. A volunteer agreement helps to identify the guidelines around volunteer service. However, volunteer agreements are typically used once a volunteer has come on board with your organization. By developing and using volunteer position descriptions, you are providing advance notice of the expectations of various volunteer roles. Position descriptions also enable prospective volunteers to self screen--decide for themselves whether the role possibly suits their interests and skills. Position descriptions shared during the recruitment process and volunteer agreements executed with new volunteers work hand-in-hand to communicate expectations to your prospective and newly assigned volunteers.

## **Consistent Screening and Selection of Volunteers**

You indicated that your organization doesn't necessarily follow a consistent screening process when it screens volunteers. Perhaps the screening process differs slightly or more substantially depending on specific volunteer roles. For example, short-term volunteers that are working a single day for an event may not face the same level of rigor in the screening process as someone who is volunteering for an extended period of time in a position with critical responsibilities. However, it is important to apply the same process consistently to each volunteer within a particular category. In the former example, you may use a position description, simple application, and a brief interview as the primary screening tools for short-term volunteers. Whereas for longer-term, sensitive volunteer roles you may use a longer application, reference checks, multiple interviews, and background check. An important risk consideration is to use the same process for each and every volunteer of that type. This consistency will help ensure that your nonprofit selects the volunteers most suited for specific roles in your organization, regardless of who is doing the selection and screening. Also remember that adopting a clear, written process is just the first step. Holding hiring managers accountable is essential to achieving the goals of your volunteer screening and selection process.

## **Paid Staff Can't / Don't Volunteer**

You answered that paid staff either can't volunteer for your organization or that it doesn't currently happen. If this situation changes, be sure to follow the guidelines that might apply to staff who volunteer. Although exempt staff typically do not have any restrictions, non-exempt staff have specific guidelines about time and responsibilities that must be followed in order to volunteer their time.

## **Volunteer Orientation**

Orientation is an important part of the onboarding process for your volunteers. Inconsistent participation in your orientation can create gaps in your volunteers' knowledge of your organization and its procedures. Take steps to ensure that all of your volunteers take part in your orientation in your

program.

In some cases, a volunteer may not be able to participate in orientation. If this is the case, you could use on-the-job training or other supervisory opportunities to cover the material that would normally be offered in the orientation session. Be sure to document that the volunteer has reviewed the material.

## **Terminating Volunteers**

Inconsistent use of an established termination procedure for volunteers can create risks during or after a volunteer's departure from your organization. Verify that your organization has a process for terminating volunteers and ensure that it is utilized in a consistent process each time a volunteer is let go.

## **Exit Interviews**

Exit interviews are an important part of closure for both the volunteer and the organization. By not conducting exit interviews consistently for your volunteers, you miss the chance to collect valuable information about each volunteer's experience with the organization. You also miss an opportunity to express thanks for each volunteer's service and unique contributions to your mission.

Letting a volunteer leave without conducting an exit interview is similar to letting a volunteer leave while still in possession of keys or equipment. An exit interview should be a key step in the exit process for your organization. If your exit interviews are conducted inconsistently, look for factors that may be causing this. Is it because there is no written policy indicating that exit interviews must be conducted, or no document describing key steps or interview questions? Or is it because the responsibility for exit interviews hasn't been assigned, or assigned staff aren't held accountable? Lack of consistency or accountability can both be addressed by identifying a specific person to coordinate and track volunteer departures.

Ensuring that volunteers leave on a positive note can have a lasting impact on your organization. Exit interviews provide an opportunity to reinforce a volunteer's positive experience and address any negative ones they might have encountered. This strengthens the organization and wraps up the period of service in a positive fashion.

# Fundraising and Resource Development

## Introduction

This section of your report contains feedback and recommendations based on your answers to questions in the Fundraising and Resource Development module.

## Loss of a Major Donor

The potential loss of an individual donor is a risk facing all nonprofits that solicit and receive individual donations. If you have a large donor base and lose a single, small dollar donor, the financial impact of that loss may be small. But if your donor base is small or you lose a donor who contributes a substantial amount, the loss could significantly and negatively impact your organization's mission and programs.

Some of the possible reasons an individual donor may cease supporting your mission include:

- the donor has decided to support another cause or causes
- the donor took offense to something it learned or believes about the nonprofit
- the donor felt unappreciated
- the donor has died
- the donor is facing financial challenges and is unable to provide support

For some of these reasons, especially the final two, the loss is unavoidable. But for the remaining reasons, there are steps you can take and plans you can make to reduce the likelihood and potential impact of a walk-away individual donor. These include:

- *Strive to be proactive in maintaining your connection to all individual donors.* Keep your donors informed of what's happening at your organization and actively seek their feedback on your work. Respond thoughtfully and carefully to any complaints about customer service. Reflect on and take action on recommendations from your donor community! Also remember to encourage various forms of interaction with your organization, such as by inviting donors to sign up for an electronic bulletin on a project in which they have an interest.
- *Carefully guard the privacy of your donors* and adopt policies and practices to protect their information, especially [personally identifiable information](#) (PII).
- *Keep open lines of communication about how the funding is being utilized and respond quickly to reasonable requests from the donor.* Remember to clearly articulate the difference that support from individual donors makes to your work.
- *Plan for the eventual loss of any major donor.* This may mean actively working on cultivating relationships with other possible donors who may step in to fill the financial gap. It may also mean having contingency plans that would address how you would modify your operations in the wake of the loss of a major individual donor. Contingency plans are one of the most valuable assets in your risk management toolkit!

See "[Donor Retention: What Do We Know & What Can We Do about it?](#)" from NonProfit Quarterly for a thoughtful analysis of the 'drivers of customer loyalty' and implications for nonprofits that raise funds from individuals.

## Compliance with the CAN-SPAM Act

You indicated that your nonprofit does not have practices in place to manage the risk of non-compliance with the CAN-SPAM Act. According to the Federal Trade Commission (FTC), the Act is a federal law that "establishes requirements for commercial messages, gives recipients the right to have you stop emailing them, and spells out tough penalties for violations."

- The CAN-SPAM Act applies to all commercial messages, not just bulk email.
- A commercial message is: "any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service."
- The law does not prohibit nonprofits from sending unsolicited bulk emails, but such emails must follow certain requirements. For example, they must be from a legitimate, active email address, provide accurate header and mailing information, contain an accurate subject line, and provide recipients with an opt-out path.
- Each separate email in violation of the law is subject to penalties of up to \$40,654, and more than one person may be held responsible for violations.
- Although the FTC does not have jurisdiction over nonprofits, state attorneys general are empowered to enforce the law.

For more information on the CAN-SPAM Act, see this [webpage](#) from FTC, and also the CAN-SPAM checklist featured in this [article](#) from GuideStar.

## **Government Contracts**

Many nonprofits look to government contracts as a principal source of funding. According to the National Center for Charitable Statistics, "Fees for Services & Goods from Government" represented 23.1% of nonprofit revenues in 2014, second only to "fees for services and goods from private sources" (50%). (Source: Nonprofit Sector in Brief 2014 - National Center for Charitable Statistics).

Government grants and contracts come with a set of challenges that may differ from the risks associated with other funding sources. If you are relying on government financial support, remember to consider:

- *Underfunding for infrastructure* - Government contracts may not fully cover these costs, but weak infrastructure may make it difficult or impossible to meet the program and service expectations of your funders.
- *Risk of late payment* - Many government contracts are structured on a reimbursement basis, which means that your nonprofit will have to cover costs up front and wait to be reimbursed.
- *Complex reporting requirements* - These requirements will likely put an additional administrative burden on your organization. Try to learn as much as possible about reporting requirements before you bid on or apply for a government contract. Ensure that your organization is in position to comply before you apply.

# **Service Delivery Risks**

**No action warranted**

This report was created by the National Association of Community Action Agencies – Community Action Partnership, in the performance of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Grant Number, 90ET0469. Any opinion, findings, and conclusions, or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Health and Human Services, Administration for Children and Families.

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