

The Road to Safety



By

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New Book Explores Practical, Legal, and Effective Employment Policies

The following text is excerpted from the introduction of NRMC's new book: [Taking the High Road: A Guide to Effective and Legal Employment Practices for Nonprofits](#). To order a copy, call (703) 777-3504 or [click here to order online](#).

Revisiting the "Golden Rule"

Volunteer spirit, giving back, occupying the moral high ground — these are phrases we often encounter in the nonprofit world. Our organizations exist not to make a profit for the owners or the share-holders but to return a dividend to the local, national, and global communities we inhabit. Our job is not to make individuals richer but to make the world better.

Traveling the High Road

Taking the High Road, the brand new book on effective employment practices from the Nonprofit Risk Management Center, features state-by-state comparisons of key employment laws in addition to many sample policies and helpful checklists. A sample is featured below and a summary of these items is presented at right.

State Employment Law Summaries

- Summary of State Anti-Discrimination Laws
- State Laws Requirements for Background Checks
- State Laws Governing Final Pay Practices
- State Laws Governing Payment for Meal and Rest Breaks
- Special State Overtime Rules
- State Jury Service Laws
- State Witness Laws
- Time Off to Vote Laws
- Special State Law Considerations Concerning Employee Handbooks
- State Laws Concerning Sexual Harassment
- State Specific Restrictions on Drug Testing
- Synopsis of State Family Leave Laws

Sample Forms and Checklists

- Disclaimers of Employment Contracts
- False Information Warning
- Consent to Check References
- Reference Form
- Consent to Conduct Criminal or Consumer Credit Checks
- Hiring Checklist
- Bonus Policy
- Acknowledgment of Policy Changes
- Fundamental Fairness Formula Self Test
- NOTICE Checklist
- Performance Appraisal Form
- Performance Appraisal Do's and Don'ts
- How to Document
- Termination Checklist
- Ten-Step Formal Investigation of Employee Wrongdoing
- Exit Interview Form
- Termination Agreement and Release in Full
- What to Do if an Allegation of Illegal Harassment is Made
- Managing the Risk of Sexual Harassment: A Checklist
- Prohibition of Harassment Policy
- Procedures for Employees Requesting an Accommodation
- Office Technology Policy
- Investigation & Search Policy
- Common Family Leave Questions
- Policy Prohibiting Workplace Threats and Violence
- Twenty Factor Test
- Employment Practices Insurance Checklist

Call (202) 785-3891 to order a copy of *Taking the High Road*.

Many who now find themselves in nonprofit management positions were once wide-eyed idealists who gladly leapt into the nonprofit sector because they wanted to make a difference. They wanted to contribute to their communities and knew that they would be working closely with others who shared their hopes and ideals.

But as one progresses in the management ranks it can be difficult to maintain those ideals. Even the best intentioned manager can be waylaid by the stress of managing an organization, meeting deadlines, stretching tight resources, and managing employees.

A beleaguered nonprofit executive may find that his or her idealistic outlook toward colleagues and coworkers has been colored by cynicism and distrust. It can be difficult to take the high road when one is fighting traffic in the fast lane. We can get so caught up in protecting ourselves, preserving an organization, and defending the world against mediocrity that we may forget the golden rule. We may assume the worst about people instead of the best. We may forget to treat others as we would like to be treated and as a result lose our moral footing, causing more problems than if we had walked the straight and narrow.

In addition to anticipating an informal workplace, many applicants for nonprofit positions expect that nonprofit employers will care deeply about their employees' success on the job and will provide all of the tools and support necessary to ensure a successful experience in the workplace.

The reality is that as nonprofit managers and executives have focused their attention on the "business" of running nonprofit charities or associations, many have either ignored the importance of legally prudent employment practices or have adopted employment practices inconsistent with the organization's charitable mission.

Ten Rules of Effective Employment Practices

Taking the High Road explores literally dozens of topics that arise in the development and administration of employment practices. The authors begin by urging readers to adopt the following ten rules of appropriate employment practices.

1. **Put your policies and procedures in writing.**

Written policies and procedures are the starting point for defensible, consistently applied, and ultimately effective employment practices in every nonprofit. Written employment policies serve

several important purposes, including: *Written policies ensure consistency.* They represent an effective way to communicate a common message to all employees. *Written policies provide admissible evidence* of the organization's policies, should the organization need to defend its practices in court or at an administrative hearing. The absence of written policies leaves a nonprofit needlessly vulnerable to legal challenge. *Written policies establish the business-related reason for an employment action,* reducing the possibility that the employer's conduct will be challenged as subjective and discriminatory.

2. **Involve the board.**

A second fundamental tenet of safe and effective employment practices is appropriate board involvement. At one end of the spectrum is very limited board involvement whereby a committee of the board — such as a personnel or employment committee — is charged with responsibility for reviewing and adopting employment policies. The policies are implemented by paid staff. A contrasting view suggests that board involvement in employment matters should be more hands-on due to the significant risks posed by the employment of paid staff.

Common Family Leave Questions

Q. *What if the employee is on workers' compensation leave simultaneously with family leave and is unable to work after 12 weeks?*

A. After the 12 weeks of family leave have expired the employee loses the protections and benefits of the FMLA. Once FMLA leave is exhausted the nonprofit is free to terminate the employee.

Q. *What if the employee can come back to work after FMLA leave, but is no longer able to perform the essential functions of her former position? Do we still have to reinstate her?*

A. No. The FMLA does not require the employer to reinstate the employee to another position. However, if the employee is disabled under the meaning of the ADA, and can perform the essential functions of her former position with "reasonable accommodations," then the employer must reinstate the employee if it can accommodate the employee without undue hardship.

Q. *Does an employee accrue seniority or benefits while on FMLA leave?*

A. An employee is not entitled to accrue seniority, but an employee does not lose accrued benefits. Benefits accrued at the time of the commencement of leave must be available to the employee upon reinstatement.

Q. *How does FMLA leave affect pension plans?*

A. FMLA leave is not treated as a break in service for purposes of vesting or eligibility for participation in pension or other retirement plans. Moreover, if the terms of the pension plan require an employee to be employed on a certain date to be credited with a year of service, any employees on FMLA leave on that date are deemed to be employed on that date. However, FMLA leave need not be treated as a period of employment service for other retirement plan purposes, such as benefit accrual.

Q. *What can the employer require the employee to provide in terms of documentation of fitness for duty upon return to work after FMLA leave?*

A. An employer may not request any information other than a simple statement of an employee's ability to return to work performing the essential functions of his or her position. Fitness for duty certifications may not be required of employees taking FMLA leave on an intermittent basis.

1. **Strive for fairness.**

Fairness in the application of employment policies is an admirable and appropriate goal for every employer. Employers who dishonor the commitment to fairness discredit the nonprofit sector and foster cynicism. Defining fairness means affording employees respect, courtesy, equal treatment and opportunities, a forum to seek redress of grievances, and, except when a serious violation of workplace rules or ethics has occurred, notice of poor performance and an opportunity to improve prior to discharge.

2. **Be aware of contractual obligations and don't make promises you don't intend to honor.**

Contractual or contract-like obligations are created when an employer makes a promise to its employees. Every nonprofit employer should exercise caution in adopting policies or making promises that it may not be able to live with. Minor alterations in many employment policies can remove or minimize the contract trap. For example, an appropriate progressive discipline policy should give management the *discretion* to place a poor performer on a time-based probation, but not *require* that management do so.

3. **Strive for consistency.**

Just as sound risk management requires that every activity be viewed through a "lens of safety," safe employment practices require that the application of a policy in a particular instance be subject to a

“consistent treatment” test. This can be achieved by asking, “How have other employees in this situation been treated?” The “consistent treatment” test can help a nonprofit manager who is caught up in the emotionally-charged atmosphere of a termination avoid missteps and resulting litigation.

4. **Stay mission-focused and strive for efficiency.**

By focusing on the preventive medicine of sound, defensible employment practices, you will be reducing the risk of employment litigation and its accompanying expense, heartache, worry, and distraction. Think of sound employment practices as a flu shot, or, like checking your car before a long trip: filling up with gas, checking vital fluids, and obtaining a detailed map before leaving home.

5. **Honesty is always the best policy.**

Always be honest and tell the truth in dealing with prospective and current employees. Never exaggerate a position’s duties or responsibilities in order to attract a desirable candidate, or give someone a false reason for an adverse employment action (such as telling them that they are being laid off due to budgetary constraints when they are being terminated for incompetence).

6. **Don’t hurry — allow enough time.**

Just as increasing your ground speed to 20 mph above the speed limit is not guaranteed to get you to your destination quicker (an accident would add hours to the trip or perhaps derail your plans altogether), sound employment practices require patience and respect for timing. Resolve to administer your employment practices with deliberation.

7. **Manage transitions carefully.**

Revisions to personnel policies can appear to threaten employees. While a nonprofit may be changing personnel policies to reduce risks, the nonprofit may be perceived as taking away benefits from the staff. Always explain the rationale for policy changes and communicate to staff well in advance when policy changes are contemplated. Allow enough time for the idea of a policy change to sink in, and permit employees the opportunity to ask questions and feel in sync with the administrative changes taking place.

8. **Seek expert help.**

No nonprofit of any size should establish employment policies and procedures without first securing the assistance of an employment lawyer licensed in the state where the nonprofit does business. Your mission and services are too important to jeopardize by a misstep in this risky area of operations.

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