

Grievance Procedures and Internal Dispute Resolution

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Practical Tips for Resolving Internal Disputes Peaceably

The following text is excerpted from Section 3 of NRMC's book: [*Taking the High Road: A Guide to Effective and Legal Employment Practices for Nonprofits*](#).

Having an internal mechanism for resolving disputes is like wearing a seat belt — the internal restraint can help a nonprofit avoid harm from a civil lawsuit. Providing an outlet for employees' frustrations at the workplace is a proven safety valve. Rather than turning a deaf ear to complaints, nonprofits need to provide employees with a credible listener who will also provide an objective review of their grievance. Employees will feel fairly treated if they have had an opportunity to tell their story, and the nonprofit has the benefit of learning, outside of litigation, the details of the employee's concerns. Insurance carriers and defense lawyers recommend that every employer have some sort of internal procedure for resolving complaints.

Past decisions by the U.S. Supreme Court concerning sexual harassment decreed that when there was a complaint mechanism at the workplace that the victim did not take advantage of, the employer has an affirmative defense to a lawsuit. Courts reason that if a plaintiff truly felt harassed, she would have taken advantage of the employer's grievance procedures. This same reasoning is often used to challenge the credibility of plaintiffs' complaints in other types of employment law actions. Therefore, not only is having an internal grievance mechanism effective from an employee relations perspective, but it is a basic risk management strategy which every nonprofit should implement.

There are various types of internal dispute resolution options, ranging from a very formal, binding mandatory arbitration procedure (not permitted in some states, such as Kentucky), to the informal open door policy favored by most mid-sized and small nonprofits. Some options are:

1. mandatory binding arbitration,
2. a commitment to bring disputes to alternative dispute resolution (ADR), using non-binding arbitration,
3. a formal two- or three-step grievance procedure, with a review committee comprised of various board and staff members,
4. referral of the dispute to an impartial party, who may or may not be connected with the nonprofit, to serve as the arbiter of disputes,
5. an open door policy, and
6. a peer review committee.

Whatever the mechanism, an internal dispute resolution procedure is helpful because it provides an outlet for employees' concerns. A grievance or complaint procedure gives the employee his "day in court" and can be helpful for the nonprofit's management because misunderstandings or unhealthy disputes between staff may be uncovered and addressed before the conflicts spin out of control. Serious concerns, such as sexual harassment between co-workers, can be uncovered and addressed by the nonprofit before a lawsuit is filed. The goal of internal dispute resolution is to solve the problems at the lowest level possible, so that workplace disputes don't

escalate into legal actions. It is important that whatever internal dispute resolution procedures the nonprofit uses provide that employees who use the process will not be retaliated against.

Alternative Dispute Resolution

Increasingly employers, including those in the nonprofit sector, are using agreements to require employees to resolve any future dispute using alternative dispute resolution methods (ADR) rather than proceed directly to court. This requirement is an effort to avoid the large expenses involved with litigating employment law cases. There are alternative dispute resolution firms that provide mediation and arbitration services to address employment related disputes. The advantage of agreements to go to a mediator or arbitrator is that the nonprofit and employee agree, through a written commitment, to submit any future disputes to alternative dispute resolution proceedings. Generally the agreement also addresses who will pay the costs for such proceedings. Before setting a policy for mediation or arbitration, check with your insurance agent. It is likely that alternative dispute resolution costs will be covered under your employment practices liability coverage. However, due to the variation in policy forms, confirm the coverage with your insurance agent. If the policy does not provide coverage for alternative dispute resolution, it may be available by purchasing an endorsement.

Formal Written Grievance Procedure

Another way to increase the likelihood that workplace disputes will be raised internally in a timely fashion is to implement a formal grievance policy. The basic elements of a written grievance procedure are:

- A requirement that employees utilize the grievance procedure by submitting their disputes or complaints to the nonprofit in a timely fashion;
- A statement of how complaints are submitted (usually in writing) and to whom (usually there is a choice of two people so that if one of the identified persons makes the complainant uncomfortable, the other is still an option);
- Identification of who will review the complaints and make the determination;
- A statement that retaliation against any employee who brings a complaint is prohibited and will subject the retaliator to discipline up to and including discharge; and
- A statement that the nonprofit will report back to the complaining party, and that the nonprofit's decision is final.

The resolution of an internal grievance procedure is not binding in most cases. Therefore, if an employee is dissatisfied with the final determination of the internal grievance procedure, the employee can still hire a lawyer and file a lawsuit. However, this risk is greatly reduced in cases where the employee already had "his day in court" internally. Moreover, the nonprofit will be aware of the concerns by that point, and should have all its ducks in order to effectively defend the claims.

Advantages of an "Ombudsperson"

In order for internal grievance procedures to be a success, the panel or individuals who review the grievance must have the respect of the staff and must be perceived as neutral, unbiased, and credible. Sometimes hiring an outside person to serve as "ombudsperson"* is an effective method of preserving credibility and objectivity. Appointing an internal ombudsperson from a different division or department might also be an option. The ombudsperson could be selected on a permanent basis, or case by case, as the need arises. The ombudsperson reviews the concern(s), interviews the complainant(s), and issues a determination to the nonprofit's management or board. When confidentiality is a major concern, an outside consultant or alternative dispute resolution firm is particularly effective serving as the ombudsperson. If well-executed, employees will respect the results, which are not binding on the employee or the nonprofit.

**The term ombudsperson has various meanings in different workplace settings. We use it here to connote an objective third party charged with hearing and resolving internal disputes.*

Open Door Policy

An open door policy implies that when employees have a concern they should first approach their supervisor for an informal discussion and attempt at resolution, and if not satisfied, should write a formal complaint which

their supervisor is obligated to take to the next level of management. Often a policy will spell out the time frames for employee complaints and for the nonprofit's responses.

Generally it is best to stay flexible with timeframes. Unforeseen circumstances may prevent the nonprofit from responding within the given time frame. Nevertheless, it is best to respond as quickly as possible to any employee complaint. To cover situations when the employee is not satisfied with the response of a supervisor to a stated concern, many nonprofits permit an appeal to a progressively higher level of management, sometimes including the board of directors in the dispute resolution process.

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Alternatively, if the nonprofit does not wish to involve board members in internal squabbles, the executive director can serve as the final arbiter. The advantage of an open door policy is that the nonprofit has numerous opportunities to self-check, to ensure that its policies were followed, and to correct any deficiencies before a potentially hostile review by external eyes.

Peer Review Boards

Another method of internal dispute resolution is referral of the dispute to a peer review board comprised of a panel of employees who consider the dispute or complaint and determine the outcome. Often the panel will need to be trained by an outside consultant. Those on the panel need to respect the confidentiality of all employees who come before the review board. The nonprofit can limit the authority of the panel to disputes involving only certain types of discipline or particular policy violations and in this way can combine a peer review panel with other methods of internal dispute resolution. In certain workplaces where there is already a great deal of trust, a peer review panel can be extremely effective.

Employee Complaint?

Whatever the method used, the secret to success is to respond immediately to an employee's complaint. While the nonprofit's written policy should require employees to put their complaints in writing, if a supervisor merely hears about an employee's complaint, the supervisor should remind the employee that no retaliation may be taken against the employee and encourage the employee to put the complaint in writing for further review and investigation.

Red Flag! No Retaliation!

Nonprofits need to be aware that in many instances it is illegal for an employer to retaliate against an employee who files a complaint with either government offices or internally.

In some states, notably New Jersey, employees are protected by state "whistleblowing" laws for reporting that a co-worker was engaging in illegal or unethical practices, although generally such laws only cover the employer's actions.

Therefore, make sure that if an employee has filed a complaint that disciplinary action taken by the employer against that employee is clearly documented to show that the reason for the discipline is unrelated to the complaint filed by the employee.

For more information, order [*Taking the High Road: A Guide to Effective and Legal Employment Practices for Nonprofits*](#).