Third-Party Harassment
Is Your Nonprofit at Risk?

A Risk Management Webinar

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Overview

- What is third-party harassment?
- Scenarios… possible in your nonprofit?
- Risk management lessons and strategies

What is Third-Party Harassment?

- Nonprofit employee harassed by a non-employee
- Nonprofit employee harasses a non-employee
- Employee believes that relationship involving others has created a hostile environment.
What is Third-Party Harassment?

- Two major categories:
  - Harassment involving someone outside your nonprofit
  - Harassment whose negative effects are felt by someone who is not the target of the alleged harasser...

Taking a Closer Look at Category #1

- Society for Human Resource Management:
  - "harassment of an employee by someone other than another employee, such as a client, customer, vendor or service provider."

Taking a Closer Look at Category #2

- Some, but not all harassment is sexual in nature.

According to Workforce.com:

- Third-party sexual harassment =
  - "Unwelcome sexual behavior that is directed toward one person, but negatively affects another individual’s work environment."
Taking a Closer Look at Category #2

**U.S. EEOC**
- Third-party harassment = harassment of employees who are not themselves the target of the harassment
- May be either quid pro quo or hostile environment
- Men or women may bring claims

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Quid Pro Quo Third-Party Harassment

- Employee loses potential job benefits to less qualified employee who submits to harassment.

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Hostile Environment Third-Party Harassment

- Employees who are not themselves harassed must work in an environment where harassment is pervasive.
What is Employer’s Obligation?
Category #1 (non-employee)

- EEOC Guidelines:
  - Employer may be responsible for acts of non-employees if...
  - Employer, agents or supervisors know or should of known of conduct, UNLESS
  - Management takes immediate the appropriate corrective action

What is Corrective Action?

- Immediate separation of alleged victim from alleged harasser
- Investigate
- Determine appropriate action
- Document all steps taken

Immediate Steps
(non-employee is perpetrator)

- Vendors
  - File complaint
  - Determine vendor’s procedures
- Board members
  - Contact chair to enlist help
- Clients
  - Reassign alleged victim
  - Check guidelines for client contact
Investigate

- Purpose: test credibility of complaining party
- Interview alleged victim
- Interview alleged harasser
- Interview others who might have knowledge of matter
- Don’t promise complete confidentiality
- Document steps taken

Determine Appropriate Action

- When investigation confirms allegations:
  - Employee
  - Board member
  - Vendor
- Range of options based on severity of policy violation

Case Study #1

- The Unwelcome Vendor
  - Food delivery person assaults assistant cook in walk-in freezer
  - What should the Director do?
  - What can the Center do to limit its risks?
Case Study #2

- Board Member Out of Bounds:
  - Late nights around the committee table
  - Development Director refuses to attend
  - Chair demands staff termination

- What should the ED do?
- What can the nonprofit do to limit its risks?

Case Study #3

- Work Environment Precludes Religious Observance
  - Group home for teens
  - Staff member complains of harassment and requests transfer
  - Terminated after performance declines and alleges retaliation in suit

- What could the nonprofit have done differently to avoid this result?

What is Employer’s Obligation?
Category #2 (negative effects)

- Non-victims can successfully bring sexual harassment claims

- Harassment is potentially prohibited workplace discrimination
Risk Management Strategy

Three-pronged approach serves to prevent and mitigate:

1. Clear policy
2. Training in the policy
3. Clearly defined reporting procedures

Risk Management Steps to Reduce Liability

- Communicate a clear policy that the nonprofit will not tolerate harassment.
- Have a clear reporting procedure.
- Take all complaints of harassment or discrimination very seriously.
- Investigate allegations.
- Determine appropriate action and take action.
- Report back to the complaining party.
- Do not retaliate against anyone for filing a complaint of harassment.

Liability Exposure

- Most courts—employer may be liable when victim-employee forced to interact with harasser
- Supervisor as harasser (including board member)—automatic liability
  - Subject to affirmative defense
- Co-worker as harasser (liability for negligence—knowledge + failure to act)
Liability Exposure

- What about Third Parties?
  - Federal courts have applied co-worker standard...

- “Level of Control” is key
  - EEOC considers when reviewing complaints

Protecting Your Nonprofit

- Start at the top
- Policies and procedures
- Commit policies to writing
- Spread the word
- Supervise for compliance
- Make changes as necessary

About Us

- Nonprofit Risk Management Center
  - Free technical assistance to nonprofit leaders, staff and advisors
  - www.nonprofitrisk.org

- Free tutorials and fact sheets on the Web site, plus affordable books, conferences, software and consulting help

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Our Resources

- **FREE**
  - Workplace Safety Tool Kit
  - Business Continuity Planning Tutorial
  - Pillars of Accountability
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  - www.RiskManagementClassroom.org
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