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## Top 10 HR Risks

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## Top 10 HR Risks Facing Nonprofit Organizations



**Audio Dial-In Information:**  
U.S. & Canada: 866.740.1260  
Access Code: 7853891  
**September 15, 2011**

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## #1

### Social Media

- Business disparagement versus interfering with employee rights
  - "protected concerted activity"
  - Section 7 of the National Labor Relations Act (NLRA)



(Hispanics United of Buffalo Inc., NLRB ALJ, No. 3-CA-27872, Sept. 2, 2011 (released Sept. 6, 2011)).

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## Understanding the Risk

**Unlawful:**

- Discharging five employees for responding to a co-worker's Facebook posting regarding working conditions, despite fact that original poster regarded comments as cyber-bullying and harassment.
- Policy prohibiting staff from posting pictures of themselves with organization logos is overbroad because it can be interpreted to prohibit employees from posting pictures of themselves engaged in concerted protected activity, such as picketing or other protests against their employer.
- Policy prohibiting employees from making disparaging comments when discussing the organization or its supervisors because the policy did not make clear that it did not prohibit protected concerted activity.

Source: [venable.com](http://venable.com)

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## Understanding the Risk

**Lawful:**

- Discharging an employee at a residential facility serving the homeless individuals when she posted demeaning comments about the agency's clients. Why? No evidence of protected concerted activity... comments did not mention any terms or conditions of employment, posting was not discussed with any co-workers, and comments were not for the purpose of inducing group activity or an outgrowth of collective concerns of the employee or her co-workers.
- Terminating a bartender who complained on Facebook to his stepsister, a non employee, that he had not had a raise in five years, was doing "waitress" work without tips, referred to customers as rednecks, and expressed his "hope" that customers would "choke on glass as they drove home drunk".
- Firing an employee who posted profane comments on Facebook critical of management. Posts were an expression of individual gripes as opposed to protected concerted activity. Although two co-workers responded to the posting, their messages reflected that the posting was individual and not group activity.

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## Managing Risk #1

- Keep in mind:
  - Protecting your reputation is an important goal
  - Employees can bolster or damage your reputation
- Issues to consider:
  - Blanket prohibitions on "talking about the nonprofit" on personal time are likely to be unenforceable
  - Exercise caution and care when reacting to social media posts by employees or others
  - Remember that Section 7 of the NLRA applies to unionized AND nonunionized workplaces
  - Keep in mind that the line between harassing speech and protected conversation is blurry (duty to protect employee from bullying)

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## Managing Risk #1

- Review your social media policy and make certain it isn't overly broad.
- Keep in mind that work rules that have a *chilling effect* on employees (with regard to NLRA rights) are likely to be found unlawful by the NLRB if challenged.  
*A chilling\* effect may be found when/if:*
  - a social media rule explicitly restricts protected activities,
  - employees might reasonably construe a rule to prohibit protected activity,
  - the rule was adopted in response to union activity, or
  - the rule has been applied to restrict protected activity.

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## #2

### Reasonable Accommodations under the ADA

- **Post ADA Amendments Act** (eff. 1/1/09) – courts are focusing on whether employers are providing reasonable accommodations. How was employee treated? Is there a disability bias have in the workplace?
- **Issues potpourri:** part-time status, telecommuting option, regular schedule, requests for additional leave beyond FMLA or employer-set leave cap

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## Managing Risk #2

“Where a reasonable accommodation will enable a person with a disability to perform the essential functions of her job, an employer must provide it.” – David Lopez

- Stool for cashier at drug store chain - Eckard (GA)
- Denial of request for part-time status during cancer treatment (MI)
- Telecommuting - Ford (MI)
- Regular schedule - Kohl's (ME)
- Request for temporary leave – Scooter Store (NY)

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- Whether permitting part-time work as an accommodation is “reasonable” depends on the nature of job... TIP: never deny a request outright... think it through. If PT status doesn’t work, consider unpaid leave as an accommodation.
- Consider a “conversation” (interactive process) as an alternative to requesting documentation.
  - Focus: helping employee articulate the need for an accommodation, not ruling out the need to provide an accommodation

Reminder: making a reasonable accommodation may require modifying your policies!

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#3

### Employees vs. Volunteers: Which is Which?

- To employ – “suffer or permit to work”
- Volunteer – donates time without financial or material gain
  - Nonprofit and public sector volunteers are “exempt” from the FLSA when they:
    - (1) work toward public service, religious, or humanitarian objectives; (2) do not expect or receive compensation for services; and (3) do not displace any genuine employees.

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### Managing Risk #3

- Take the issue seriously!
  - Never permit non-exempt employees to work off the clock
- Develop and use job descriptions for employees and position descriptions for volunteers
- Proceed with caution when permitting employees to volunteer
  - Clarify the circumstances in writing

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#4

### Mass Exodus

- Is your nonprofit ready for an economic upturn?
- What % of your staff would leave for “greener pastures” if the opportunity arose?
- Recognize the myths



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### Supervision Myths and Realities

- 89% of managers believe employees leave *for more money*.
- Fact Check: 88% of employees actually leave for reasons having to do with the job, the culture, the manager or the work environment. Only 12% of employees leave for compensation issues.
- 43% of workers report that they do not feel valued by their employers.
- 71% of U.S. workers rate themselves as either “Not Engaged” or “Actively Disengaged.”

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- 66% of workers do not identify with or feel motivated to drive their employer’s goals and objectives.
- **The #1 reason employees leave jobs is a poor relationship with their immediate supervisor.**



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### Managing Risk #4

- Work to understand what motivates your staff;  
*don't make assumptions*
- Focus on communication:  
*be generous*
- Invite complaints;  
*make your open door "policy" real*



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### #5

### Stayed Tuned: Ban the Box

- MA and HI (and City of Philadelphia) prohibit questions about criminal history on the initial application....
  - The stigma of a criminal record may unnecessarily limit employment opportunities
- Growing list of states adopting laws that restrict use of credit histories to evaluate applicants

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### Managing Risk #5

- Tailor your screening process to the risks of the position
  - A one-size fits all approach is unlikely to "work" and may be unlawful in the coming years

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#6

### Inadequate Preparation for "What if"

- 76% of employees had a disaster plan in place in 2011, according to a recent SHRM survey (compared to 51% in 2001). 58% of employers with fewer than 99 employees have a plan...
- Only 33% of employers feel prepared to a great extent

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### Managing Risk #6

- Revisit your crisis management, disaster response or BCP plans to determine:
  - If the plan is sufficiently flexible
  - If you've incorporated "lessons learned" from past crisis or emergency events
  - If you have the right teams on the planning and response side – the right skill sets, perspectives, etc.
  - Whether additional training/support is needed

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#7

### Subterranean Threats



- What lies beneath the surface at your nonprofit?
  - Concern about ethical conduct
  - Employee discontent
  - Non-compliance with HR policies
  - Poorly screening, oriented or supervised employees (or volunteers)

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### Managing Risk #7

- Encourage employees, volunteers, and clients to step forward
  - Be sincere!
- Remove barriers from the reporting process
  - Hard to reach supervisors, written complaint process, etc.
- Follow-up on all complaints
  - Don't rush to judgment or make assumptions
- Do not retaliate or ostracize employees, volunteers or clients who complain

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### #8

### The Misunderstood Multigenerational Workforce

- **Baby Boomers** - 1946-1964 (73.2 million people; 42% of the workforce)
- **Generation X** - 1965-1977 (70.1 million people; 30% of the workforce)
- **Generation Y** - 1978 -1990 (69.7 million people; 23% of the workforce)
- **Millennials** - 1991-Present.

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### Defining Events:

- **Boomers:** Prosperity, Children in the spotlight, Television, Suburbia, Assassinations of JFK & MLK, Jr., Vietnam, Civil Rights Movement, Cold War, Women's Liberation
- **GEN Xers:** Watergate, Nixon Resigns, Latchkey Kids, Single-parent homes, MTV, AIDS, Computers, Challenger Disaster, Fall of Berlin Wall, Persian Gulf War
- **Gen Yers & Millennials:** Facebook, Global Instant information, *Decade of the Child*, Over-supervised Generation, Helicopter parents, Multiculturalism, We are all winners, Customize everything

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### Managing Risk #8

- In many cases generational differences aren't the real cause of conflict... we need to look for deeper causes
- Learning from experience results in "knowledge" and has little to do with age
- There are more similarities in terms of what we think, believe and want from work

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#9

### Giving Up on References



- Missed opportunity to learn about an applicant's past performance
- Many applicants describe themselves as they "wish to be" rather than as they are

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### Tips for Safe Reference Getting

- **Get permission to check references:** Use an authorization form on or at the time the applicant applies for a paid or volunteer position
- **Ask applicants if there is anyone they do not want you to contact...** and if so, WHY?

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### More Tips

- Always check references and verify information about education or past experience **before** making a final job offer
- **Follow up any discrepancies** in information provided by the applicant
- Obtain as many references as feasible
- Be skeptical of silence or evasiveness by someone providing a reference. Investigate further.

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### Insist on Relevant References

- **Insist that the candidate provide relevant references.** If none are provided, either disqualify the candidate or *check references that haven't been provided by tracking down the applicant's most recent supervisors.*



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### Telephone Reference Checking Tips

- Listen "aggressively" – pay attention to **what** is being said plus **how** it is being said
- Use silence to your advantage
- Ask for other references to verify info provided
- Remember two steps:
  - (1) verify information, then
  - (2) inquire about performance and developmental issues
- Don't "fill in the blanks" with assumptions
- If you don't understand... say so

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### Sample Reference Checking Questions

- What is your business relationship with the candidate and how long have you known her?
- How did the applicant react in stressful situations?
- Are there any roles or situations in which you would avoid placing the applicant?
- If you could re-hire the applicant today, would you?
- What comments or suggestions would you have for the applicant's new supervisor?

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### More Sample Questions

- How did the applicant's last performance review go? What strengths were noted? What areas were identified as needing improvement?
- How effectively did the applicant supervise others?
- What other people in your organization can I call about the applicant?



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## #10

### Ignoring Conflict in the Workplace

- **Did you know...**
  - Men are more likely to handle conflict on their own... 13% seek help, while 19% of women seek help resolving conflicts
  - Women are more likely than men to go out of their way to avoid a colleague because of a work disagreement (71% versus 64%)
  - Women are twice as likely to feel ill or lose sleep as a result of a workplace conflict

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### Common Types of Workplace Conflict

- **Unmet or un-clarified needs** —such as someone who did not get what he or she needed in order to do the job.
- **Mismanagement of organizational change and transition.**
- **Competing job duties** or poor implementation of a job description. For example, an employee in a non-supervisory position who is put in the unofficial role of “supervising” a new employee.
- **Systemic conflict**, such as a workforce slowdown.
- **Personality conflict.**

Source: [www.shrm.org](http://www.shrm.org)

[www.nonprofitrisk.org](http://www.nonprofitrisk.org)

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### Workplace “Interpersonal” Conflicts

**EXAMPLES:**

- Publicly faulting the performance of a co-worker.
- Constant bickering between two employees.
- Coolness or an avoidance whenever possible between employees.
- Verbally abusing or making demeaning remarks to a co-worker.
- REAL... or perceived

Source: [www.shrm.org](http://www.shrm.org)

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### Causes of Interpersonal Conflict:

- Differences and diversity among employees, potentially leading to misunderstandings based on age, race or culture, prejudices, intolerances, rumors about an individual or group.
- Excessive and uncontrolled competition between employees, comparison of performance ratings and bonuses, perceived inequities, fear of not receiving a promotion or losing a job.
- Internal conflicts within an employee such as bigotry, tendency to hold grudges, false pride, blaming others for one’s own problems.
- Romantic personal relationships or sexual tensions and harassment.
- Drug- or alcohol-related behavior.

Source: [www.shrm.org](http://www.shrm.org)

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### Tips for Managing Risk #10

- Emphasize that employees must, despite their differences, treat each other with respect, dignity and fairness.
- Don't adopt organization-wide rules to address isolated problems.
- Take steps to change a defensive climate in which employees judge and criticize each other, have hidden agendas and are close-minded to new ideas and changes. Work on creating a supportive climate where employees openly discuss and understand each other's ideas and concerns, are willing to listen to each other, and focus on accomplishing their work and group goals.
- Address employee conflicts without delay (e.g., by hosting a solution-focused conversation between the employees in conflict).

Source: [www.shrm.org](http://www.shrm.org)

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### Addressing Interpersonal Conflict

Obtain agreement from all parties that they will:

- Work to resolve the conflict.
- Treat each other with respect, dignity and fairness.
- Be clear and truthful about what is really bothering them and what they want to change.
- Listen to other participants and make an effort to understand their views.
- Be willing to take responsibility for their behavior.
- Be willing to compromise.

Source: [www.shrm.org](http://www.shrm.org)

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Arrange for a meeting to discuss the conflict.

- Select a time as soon as all parties have cooled down.
- Meet at a place that is neutral for all parties.

Ask participants to describe their interpersonal conflict in clear terms and describe behaviors, feelings and desired changes.

- Direct participants to use "I," not "you," and to focus on specific behaviors and problems, not on people.

Ask participants to restate what the others have said.

Summarize the conflict based on what you've heard and obtain agreement.

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Brainstorm to find solutions:

- Ask each party to offer a solution.
- List all of the options presented (either verbally or on a flip chart).
- Discuss all options in a positive manner.
- Rule out any options that parties agree are unworkable.

Summarize all possible options for a solution.  
Assign further analysis of each option to a participant.  
Obtain agreement on next steps.  
Close the meeting by having all parties shake hands, apologize and thank each other for working to resolve their conflict.

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### Conflict Management Reminders

- Address the real issues.
- Speak openly and honestly.
- Listen.
- Express strong feelings appropriately.
- Remain rational.
- Review what has been said.
- Learn to take as well as to give.
- Identify the specific behavior in which the conflict is rooted.
- Identify how the behavior is causing a roadblock to a good working relationship.

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**Oct 19**—Planning & Conducting Effective Interviews  
**Nov 17**—Managing Workplace Safety Risks  
**Dec 15**—Background Checking: What You Need to Know

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Thank you!

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