

Marshall & Sterling

HUMAN SERVICES & SCHOOLS
SPECIALTY INSURANCE PROGRAM



The **Human Services & Schools Specialty Insurance Program** from Marshall & Sterling provides a risk management path for you to follow, including resources on safety, operations and regulatory compliance. Each Month, we send you articles with helpful information to use in your everyday operations. We hope these tips will help pave the way for a safe and prosperous year at your organization!

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View our Risk Management video collection from Marshall & Sterling



Active Shooter Protocols to Enact At Your Organization

Irene Jones from Marshall & Sterling Insurance discusses the many issues and risks in dealing with an active shooter at your health or human services organization or school. [Click to watch!](#)



Risk Insights

Employment Practice Liability & Donated Funds

No employer wants to believe that their employees or volunteers would take legal action against them, especially in a nonprofit organization. Unfortunately, over the past decade, employment practice liability (EPL) has become one of the largest risks faced by organizations in both the nonprofit and for-profit sectors. According to the most recent U.S. Equal Employment Opportunity Commission (EEOC) Performance and Accountability Report, the number of private sector charges of discrimination filed with the agency was just under \$100,000.

While these types of claims hurt any organization's bottom line, they can be especially detrimental to nonprofits that rely on donations to make up a large portion of their revenue stream. Donors want their money to be used to help your organization's cause, not to pay off mistreated employees. In some cases, donors have actually sued nonprofits over how their donations were used. To protect your organization against potential liability, it is important that you minimize EPL claims while accurately documenting the use of donated funds.



Donated Funds

A large number of nonprofits rely heavily on donations to support their mission. To continue to receive this kind of support, nonprofits need to be careful how they spend donated funds, as donors have become more and more scrutinizing of the organizations they give to. Recently, there has been an increasing trend of donors taking legal action against nonprofits for misusing donations. Not only is the legal aspect of this expensive, but it also can hamper the ability to build relationships with new donors in the future, further costing an organization. It is extremely important that you record how donated funds are used in case your spending practices are ever called into questions.

In situations involving EPL claims, donated funds must be properly managed to avoid backlash from donors. It should come as no surprise that donors may not be happy if their donations are used to cover part of a payout that results from your organizations poor internal practices. The last thing you want is for a given employee's legal action to spark litigation from donors. The problem is, nonprofits that rely heavily on donations may have no other means to cover damages awarded to an employee. To avoid these complications, it is important to stop EPL claims with good employee practices before they have the chance to turn into lawsuits.

Employment Practices

More and more employees are taking legal action against their employers for what they see as discriminatory practices in the workplace. With the potential costs they may bring, an EPL claim can be incredibly damaging to a nonprofit organization, especially a small one. Implementing appropriate employment practice standards to stop harassment and discrimination will reduce the chances that an employee can make a successful claim, while also creating a positive atmosphere throughout your organization.

Start by outlining the kinds of behaviors that will not be tolerated so they are clear to all employees. Define what will constitute harassment and discrimination so it cannot be left up to interpretation after the fact. The standards you develop should apply to every level of employee no matter what position he or she holds. Equal enforcement means that every employee will be treated the same way, reducing the chance that an individual can claim they were singled out.

The program should also encourage communication. Many times, employees who are having problems take legal action because they do not know what other routes to take. Having a program in place to handle employee concerns can help rectify a situation before it becomes a legal issue. Most importantly, make sure the guidelines you establish are followed. If they are in place but it is widely known that they are not enforced, they will be less effective in preventing claims.

It's important to extend these same policies to any volunteers you have working at your organization. EPL claims made by volunteers exist in a legal gray area largely defined by the extent of the volunteer's involvement with the organization. While most of the time volunteers have no legal base for a claim, it is still important to treat them with the same respect as any other employee. This not only protects your organization, but it also provides a positive work environment for those donating their time.

Retaliation

It is also important to note that retaliation comes into play in more than 25 percent of EPL claims. Retaliation can enter when an employee who has brought a claim against their employer then feels that they have been punished in the workplace for their actions. This could take the form of position reassignment, failure to promote or even termination. An employee who originally may not have had a strong case could gain ground by showing that their employer retaliated against their initial claim. The addition of a retaliatory claim can increase both the potential payout to the employee and their chance for success.

To protect yourself from further legal action, you must be very careful when dealing with employees who have filed EPL claims. Do not make any rash decisions regarding the employee's state in your organization. If the employee must receive disciplinary action for other work issues that are not related to their EPL claim, make sure to accurately document the reasons for the discipline. It is important you can prove that you were not acting in retaliation for their earlier claim. When in doubt, contact your legal counsel so they can help you handle the situation in a way that does not invite additional liability.