

SHINE BRIGHT NATURE CENTER

Specialty Insurance Program

We Help Safe Nature Center Organizations Thrive!

Welcome to the Shine Bright Nature Center Risk Management newsletter! As leaders and directors of nature centers you have one of the most important jobs on the planet: connecting people and nature. How each center interprets her nature mission can vary greatly. Our mission is to help you achieve yours, safely and in compliance. This issue is packed with information to help you do your job well.

Using social media is a smart way to promote your nature center. I included an article on the legal considerations of social media which can help you draft or revamp a social media policy so that your online image supports your mission and your policy meets compliance standards.

As administrators, best management practices are key to keeping your operation running well. The article on disciplining and terminating employees provides information to help you with two challenging staffing areas.

It is hard to believe that a [wildlife refuge building was taken over by an armed militia](#), but it's true. However, workplace violence from disgruntled employees and domestic disputes is more common. I have included an article on encountering a hostile intruder that you can review with your staff so you can respond safely in an emergency.

Each issue will include a vlog on a safety or insurance issue and a link to [one of my favorite nature sites](#). Like you, I value nature. And, I appreciate your professional dedication to environmental conservation and education. Enjoy the newsletter.

Shine Bright!



P.S. Contact me today to see how you can get great rates!



Click to Watch this month's Vlog!

What to Expect When Conducting An Insurance Review

Irene Jones takes a few minutes to discuss the things you should look out for when conducting an insurance review.

This Month's Nature Link:

<http://www.spaceweather.com/>

Latest information on auroras, meteors and comets.



Legal Considerations With Social Media

The Web is full of legal concerns, and social media is no exception. Even if your Nature Center does not participate in social media, your employees undoubtedly use it on their own time, creating potential liabilities. For Nature Centers that do engage in social media, various risks should be considered—from who owns a Twitter™ handle and followers (company or employee) to privacy breaches, to what happens when an employee bad-mouths a superior on Facebook.

The law is still developing, so companies should proactively protect themselves. One option is additional insurance coverage. There are various types of cyber risk policies available, and some include social media liabilities. Talk to Marshall & Sterling, Inc. about insuring this risk.

National Labor Relations Board Considerations

In 2012, the National Labor Relations Board (NLRB) released a report focusing on employer social media policies. In reviewing various cases that were brought before it, the NLRB made it clear that it considers overly broad policies pertaining to employee social media use to be in violation of the National Labor Relations Act (NLRA) and, therefore, unlawful.

The NLRB is chiefly concerned with policies that overreach employer authority and impinge on an employee's right to free speech and the right to organize. The NLRB holds that a social media policy is unlawful if it is ambiguous enough to lead employees to reasonably interpret that they are prohibited from participating in protected concerted activity.

The best way to avoid instituting an unlawful social media policy is to make sure it doesn't contain overly broad terms. Terms that are not specific enough could be misinterpreted by employees as more restrictive than they are intended to be.



“The best way to protect your company is to have a comprehensive, clear social media policy.”



The NLRB considers a social media policy to be overbroad if:

- Employees could construe the language of a rule to restrict activities protected by the NLRA, such as free speech or the right to organize;
- A rule was created in response to union activity; or
- A rule has been applied in a way that restricts protected activities.

Though the NLRB's guidelines have yet to be tested in a court of law, employers should attempt to adhere to them when creating a social media policy. The best way to protect your company is to have a comprehensive policy specifically addressing all relevant social media concerns for employees and providing clear examples of unfit behavior.

Drafting a Social Media Policy

When you start thinking about your social media policy, don't think of it as a punitive document that outlines a framework for disciplining various infractions. Instead, think of it as a set of guidelines to help employees understand the issues and risks, and stay out of trouble—thereby keeping the company out of trouble. Consider including the following components in your policy:

- **Employee bill of rights.** This is a good way to start, so that employees feel that their personal rights are valued by the company.
 - Emphasize that all employees have the right to use social media for self-expression on their own time.
 - Include a right to digital privacy—that the Nature Center will not bypass the security or privacy settings of a social site to see employee content that is not publicly available.
 - Explain what online harassment and bullying is, and that it is not considered acceptable by the company.

- **Internal usage guidelines.** This clearly defines use rights during work hours.
 - Specify whether social media is allowed during work hours and whether employees can access it using company equipment. A compromise could be reached to allow employees to use social media during lunch and break times.
 - If personal use is not allowed during work hours, specify what constitutes acceptable use for business purposes only.
 - Include security rules and protocols for downloading files, videos, third-party software, etc.
- **External usage guidelines.** This can be a complicated issue, as is any issue regarding employee conduct outside of work hours. The law is still developing, but there have already been several high-profile lawsuits about whether a company can punish an employee for what is posted online. Because this area is especially problematic, be sure to have legal counsel review any language you select to implement an external usage policy for social media. Below are a few guidelines to consider: The line can easily blur for employees that use social media accounts for personal use and their Nature Center roles. Tell employees to use their best judgment and exercise personal responsibility as an ambassador of your organization, as there is a chance a colleague, manager or client may see information they post online. Offer specific examples of what should be considered inappropriate so that employees are unable to misinterpret this rule as restricting their rights under the NLRA.
 - Include a clause that forbids employees from impersonating your organization, making statements on behalf of your organization without authorization or making statements that can be construed as establishing your organization's official position or policy on any particular issue.
- **Social media confidentiality and nondisclosure guidelines.**
 - Revealing any trade secret, confidential or client information online should be prohibited, even in a "private" forum or message, as the security of the site could be compromised.
 - Emphasize that your company policies related to confidentiality and nondisclosure apply to social media as well.
- **Official communication guidelines.**
 - Have a policy in place regarding ownership of accounts and followers for all employees using social media for business purposes. Lawsuits have arisen from this issue, as employees leaving companies have tried to take their account and followers with them, causing the companies to sue. Develop a policy now so it is easier to enforce later.
 - Discuss what is expected of employees when they represent the company on social networks—and be specific. Include policies, procedures, do's and don'ts, so that employees know their expectations and responsibilities in their social media role.
 - Point out to employees that they can lose NLRA protection for their social media postings if their comments are opprobrious or if they participate in disloyal, reckless or maliciously untrue communications about your organization.
- **Savings clause.** Conclude the policy with a statement of intent that outlines the policy's purpose of protecting the company's brand and protecting against the unwanted disclosure of confidential information. Emphasize that the intent of the policy is not to interfere with any rights bestowed on employees by the NLRA (particularly Section 7) and note that, in the case of contradiction between the policy and the NLRA, the NLRA has precedence. Specifically state that the subject of working conditions, their right to communicate with other employees or the terms and conditions of their employment are by no means off limits, as this would violate the NLRA.

After your policy is developed, make sure it is distributed to all employees, and have employees sign a form verifying that they received and understand the policy. You may also consider requiring social media employee training to supplement this policy.

As with all employee policies, be sure to have legal counsel review your social media policy in full before finalizing and implementing it.

Preventing Claims While Disciplining & Terminating Employees

Disciplining and terminating employees is an unpleasant task that brings high-risk exposures for employers. If you're not careful, disciplining or terminating a difficult employee could end up costing you. Employee lawsuits can be expensive—even catastrophic for smaller firms—to litigate. They are also time-consuming and emotionally draining, and they can create tension in your workplace.

What can you do to prevent lawsuits that result from this process? Gaining an awareness of the different types of employee claims and having objective company policies and procedures in place are key. Although you may not be able to prevent all claims, maintaining accurate documentation about all incidents related to the employee's disciplinary and termination action will bolster your case, whether the claim is handled at the company level or in court.

First Line of Defense: Objective Company Systems

Establishing a foundation of objective company systems can quell a claim before it happens. Employees are less likely to file claims if they feel they are treated consistently and fairly. This includes the following:

- **Well-defined Company Policies.** Well-defined employee policies are the backbone to a company culture where employees are treated fairly. Policies should cover topics such as harassment, retaliation and a company's code of conduct. An outline of procedures for company actions such as performance evaluations, performance improvement plans and the disciplinary process is also essential.
- **Employee Handbook.** Once a foundation of fair and impartial company policies is established, employers should communicate the policies to employees through an employee handbook. If written properly, the handbook could prevent a lawsuit from happening or it could be a solid piece of evidence in the case of litigation.

Necessary for organizations of all sizes, the handbook outlines your expectations of employees and what they can expect from you.



Topics such as family medical leave, dress code, work schedules, compensation, harassment policy and an employment-at-will disclaimer should be included and reviewed by an attorney or human resources department. An "employment-at-will" disclaimer gives the employer the discretion to terminate an employee at any time for a just cause. When you give new employees the handbook, have them sign an agreement to confirm receipt of the handbook, and keep copies in each employee's personnel file.

The handbook should be reviewed and revised regularly, especially when company policies change. Not only is it important to have a handbook, but it's critical to enforce the policies consistently and fairly among all employees.

- **Accurate Employee Files.** Maintaining up to date employee files, including copies of all performance evaluations and detailed reports of employee incidents, is imperative in the event of a lawsuit. All documents in the files should be truthful, accurate and written using plain, non-technical language.

If an employee disputes a disciplinary or termination action, he or she will be less likely to sue if there's a detailed paper trail to back up your decision.

Preventative Measures for the Disciplinary Process

Disciplining employees may be an unpleasant task, but avoiding it could exacerbate the situation and lower the efficiency and morale of your workforce. Employees should be disciplined or terminated only for legitimate, job-related reasons. Under a disciplinary system, employers usually want employees to correct their problematic behaviors and continue on as productive members of the workforce.

Before disciplining an employee, conduct an unbiased investigation of the incident or problematic behavior. In some cases, the employee should be suspended to prevent further misconduct. After the investigation, follow these steps:

- Set a meeting with the employee to discuss the problematic behavior.
- Listen to the employee's side of the story.
- Inform the employee of future consequences if he or she does not improve.
- Provide written documentation of the disciplinary action. Have the employee sign the documentation, or make note if he or she refuses to sign. Provide a copy to the employee.
- Follow up by acknowledging the employee's improvements. If the employee continues to violate company policies, consider subsequent disciplinary action or termination.

Preventative Measures for the Termination Process

Similar to the disciplinary process, the termination process should be objective and based on well-documented facts and details, including statements from the employee and other witnesses. It's usually not a good practice to fire someone on the spot; a comprehensive investigation should be conducted first. After a thorough investigation, if you determine an employee must be terminated, you should follow a fair protocol to avoid a lawsuit.

Some sources say the best time to terminate employees is mid-week, as opposed to a Friday afternoon. Timing is key; whatever day you choose to terminate an employee, make sure it will minimize the risk of humiliation to all parties involved and will cause the least disruption to company operations.

Use these steps to prepare for the termination meeting:

- Gather copies of documentation, including information about COBRA and severance packages, for the employee.
- Compile a list of company equipment that the employee must return.
- Assess potential security issues.
- Keep these points in mind during the meeting:
- Meet in a neutral location.
- Have one or two others present, including a representative from your HR department.

- Give a clear and consistent explanation as to why you are terminating the employee.
- Avoid talking too much during the meeting or making promises you can't deliver on, such as helping the employee look for another job.
- Treat the employee with dignity and respect during the entire process.
- Allow the employee to vent if he or she gets angry, but refrain from arguing about the decision.

After the meeting is finished, do the following:

- Collect company property from the employee before he or she leaves.
- Unless the employee was terminated for stealing or a violent offense, don't embarrass the employee by having them escorted out by security.
- Don't belittle the employee to other staff members after he or she leaves.

Be wary of statements that your company makes to the media and on social media sites, such as Facebook, about the terminated employee. You are not legally protected for statements that are not true or are made with intent to damage someone's reputation.

To avoid post-termination claims, it's also important to avoid impinging on the employee's future employment. Direct all reference checks from other employers to your human resources department, or simply confirm the dates of employment and the last position the employee held.

Another Line of Defense: EPL Insurance

Even when you think you've done everything to mitigate the risks, employee claims can still happen. Lawsuits—even if you aren't found liable—can be time-consuming and costly. Employment practices liability (EPL) insurance protects your company from costs associated with employee lawsuits.

Depending on the limits negotiated with the insurance carrier, EPL insurance provides coverage for defense expenses associated with the types of employee claims highlighted in this article.

Contact Marshall & Sterling, Inc. today to learn more about preventing employment-related claims and EPL insurance.

Encountering a Hostile Intruder - Responding in a Way that Keeps Everyone Safe

Recent incidents, like the Oregon Wildlife Refuge building takeover and the San Bernadino massacre, are in the forefront of everyone's mind. Workplace violence – whether from a terrorist, a disgruntled employee or domestic situation – is on the rise in America. While it is less likely that a Nature Center would be targeted as an organization, workplace violence due to interpersonal issues is increasing. Here is some basic information that can help your nature center and your staff respond effectively in event there is a hostile intruder.

Your reaction and ability to communicate well in the event that you encounter a hostile intruder at the facility can mean saving lives. There are a few things you should consider carefully now so that if an incident does arise, you are fully prepared to protect yourself and your visitors.

Escape or Hide

If you know the hostile intruder's location and you can confidently escape the area, this is your safest option. If you run, do not run in a straight line; instead hide behind trees or other objects that might block the intruder's view of you. When this is not possible, immediately gather other faculty and students into a classroom or office, lock the door and cover the windows.

Above all, do not try to be a hero. Protect your visitors as best you can and always put the safety of minors ahead of yours.

Alert Authorities

Call 9-1-1 from an office phone or a cell phone. If the operators are overwhelmed with other calls, try calling local police or other emergency numbers, as well. Report:

- Your specific location
- The number of people you have with you
- Any injuries
- Any information you might have about the intruder



If you know what the assailant looks like, give the most accurate description possible. Try to stay as quiet as possible while doing this: silence all cell phones and keep everyone calm and out of sight, away from windows and doors.

Don't Risk It!

Don't risk your life to stop an armed intruder. Seek cover as quickly as possible and care for those faculty members and students that are around you. If you are forced to engage an armed intruder, look him or her directly in the eyes.

Cooperate with Police

Do not leave your locked room until the police release you, and never enter into a hallway or open area. Before trying to rescue someone outside of the room, consider whether you might endanger the others in your group by doing so. When the first authorities arrive, they may not be able to tend immediately to any injured individuals – be patient and when you are able to speak with authorities, give them as much information about the situation as you can.

Be Prepared

Memorize the phone numbers of local authorities in your phone so that they are easily accessible should an incident occur. Visualize the specific actions you would take in the event of an emergency so that you are able to react quickly and without hesitation when lives are on the line.

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