Overview of HR Best & Practices for Small/Medium Nonprofits

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Introduction
Introduction – Nonprofit Webinar Series

- Sponsored by Indiana Philanthropy Alliance & Charitable Allies
  - IPA is a nonprofit membership association of and for the state’s philanthropic grantmaking community.
  - Charitable Allies is a 501(c)(3) public interest law firm that looks out for your charity’s operations so you can focus on the people you serve.
- The Nonprofit HR Series will use an examples based/case study method and will introduce you and your grantees to resources you can access and policies you can implement to effectively manage employees in a small (2-10 employees) nonprofit organization.

Introduction – How are Your HR Policies & Practices?

- Are you comfortable with your current HR policies?
- Have you had HR or personnel issues within the past 18 months?
- Have you updated your employee/personnel manual within the last 3-5 years?
- Do you require some or all employees to sign non-compete agreements? Confidentiality policies?
- Do you have a vacation policy? A combined PTO policy? Do you pay out vacation on separation?
- Do you have grantees with HR problems?

Why it Matters – Employment Law & Board Member Individual Liability
Employment Law & Board Member Individual Liability

- Case 1: No liability for individual board members for terminating ED due to who was an allegedly ineffective manager and also did not disclose a conflict of interest transaction.

- Case 2: Individual board members liable where the executive committee contrived a “study” and “report” of the ED that was critical and seemingly justified termination.

Employment Law & Board Member Individual Liability, cont’d

- Employment law cases:
  - account for half of all civil trials in federal court; and
  - tend to be more expensive civil matters.
  - This explains why EPL insurance is more expensive than D&O insurance.

- Employees with the most to lose are the most likely to litigate. Example – Junior Achievement

- Many D&O policies exclude intentional acts and require an additional “employment practices” rider for employment-related liability coverage.
Essential Policies

- Recruitment & Selection
- Discipline & Grievance
- Code of Conduct, incl. Harassment/Bullying
- Paid Time Off (Sick, Disability, Vacation, Leaves, etc.)
- Unpaid Time Off
- Pay & Pensions Info.

Advisable Policies
Advisable Policies

- Clear identification of who (Board or CEO) has authority to implement personnel policies
- Capability, performance & review policy
- Whistleblowing
- Diversity/Equal Opportunities
- Email & Internet use policy
- Expense incurrence and reimb.
- Data protection, confidentiality, non-compete
- Flex scheduling
- Child/elderly safety/protection; background checks

Implementing Policies

- Consult employees on the terms of the policy before it is finalized
- Make sure employees understand what the policy means, how it applies to them and what will happen if they do not comply
- Ensure employees confirm receipt
- Fairly and consistently carry out the rules
- Ensure that policies are live documents, have a date set for their review – and to which you adhere
- Establish where policies will be kept and how they can be accessed by staff, trustees and volunteers (methods can include paper copies in a folder or on an intranet, on notice boards etc.)
Hot Topics

- Employees running for political office
  - 501(c)(3) politicking prohibitions do not apply to employees in their individual capacity and on their own time.
  - Individuals (but not charities) may run for office, endorse candidates, or otherwise engage in politics. Beware of campaign finance rules.
  - Organizations should consider expanding unpaid time off policies to include politicking. Apply it evenly.
  - Organization may mention candidacy, but only to the extent it announces other events in the lives of other employees. Any mention should be neutral and evenhanded.
  - No use of organization’s facility, other than on same basis as everyone else.
  - Hatch Act – prohibitions on federally funded employees (i.e., Head Start or youth counseling services) of nonprofits from campaigning. Employees should beware.

Hot Topics, cont’d

- Health Reimbursement Arrangements (HRAs under 26 U.S.C. § 105)
  - Violate ACA if they provide medical expense reimbursement.
  - Violate ACA if they provide individual medical insurance premium reimbursement, other than as grossed up salary.
  - Each constitutes a “health plan” subject to the prohibition on caps in coverage.
  - $100 per day per employee excise tax.
Record Retention

- Have a general record retention & document destruction policy (see sample in materials).
- Employee Records Best Practices
  - Keep accurate and up to date records
  - Filing system is lockable, password and virus protected and only accessible by those people who need to use the data
  - Remember the employee’s right to look at or comment about his/her personnel file
  - Pension and payroll records
  - HRA/HSA/FSA records kept completely separate
  - Accurate employee files

Record Retention – Employee Files

- Employee file should contain the following documents:
  - a copy of the signed/dated contract of employment, terms & conditions, references, job description, CV/application form, essential checks, confirmation of right to work in the US etc.
  - a signed/dated copy of the employee’s agreement to any changes to their employment contract, i.e. hours of work, job description, etc.
  - copies of probation reviews, notes of supervision and appraisal meetings (dated)
  - signed copies of agreement(s) to policies & procedures
  - personal details i.e. home address, next of kin, contact details of person to contact in an emergency, diversity record, etc.
  - records relating to live discipline and grievance issues
Best Practices, Takeaways & Examples

- Keep policies updated & current; review & update at least once every 3 years. (See next 2 points.)
- Beware of wage claims, especially in PTO/vacation context and “asking” an employee to “volunteer”.
- Beware of non-compete, non-solicitation, and confidentiality agreements, which are construed narrowly.
- Check for employment practices with your D&O coverage.
- Policies should be evenly implemented.
Best Practices, Takeaways & Examples, cont’d

- Examples of what not to do:
  - For bereavement leave, is a “very close childhood friend” a “close relative”?
  - In the short-term disability context, the ED significantly expanded the policy for an illness for ED’s “favorite” employee while someone else was out on S-TD. Effect?

- HR disarray in grantee is a symptom of larger problems. Consider conditioning grants on addressing these issues, especially because increased grantor involvement can lead to increased liability.

Best Practices, Takeaways & Examples, cont’d

- Remember that “at will” is a contract and does not actually mean “fire for any reason or no reason at all.”

- When hiring, generally:
  - Avoid illegal discrimination
  - Respect privacy rights
  - Refrain from making promises you can’t or won’t keep.

- Background checks should be job related, with employee’s consent, and reasonable, and there are multiple other specific rules.

- Beware of specific rules for testing (i.e., skills, aptitude, psych, personality, lie detector, medical, drug).

Best Practices, Takeaways & Examples, cont’d

- When firing or disciplining,:
  - Timing is everything. Be careful about constricting policies without adequate notice.
  - Avoid making determinations based on:
    - Discrimination of a protected class, or being too sensitive about this category
    - Retaliation (for exercising rights)
    - Refusing to take a lie detector test
    - Alien status
    - Violations of public policy (i.e. for refusing to commit an illegal act, for complaining about employer’s illegal conduct)
  - Apply the rules consistently.
  - Generally use a severance agreement.
Public Policy Exceptions

to Employment At-Will Rule

Resources

- http://www.nonprofithr.com/advocacy/
- HRAs – DOL FAQ: http://www.dol.gov/ebri/benefits/HRAs.html and Care Plus Benefits Alert
- http://www.indiana.edu/health-benefits/FAQ/HRAs/FAQs/FAQ/FAQ042.html
- Politicking – Rev. Bic. 2017-3, IC § 3-4-1-5(c)(6) and Burke v. Bennett, 977 N.E.2d 128 (Ind. 2009)
- Indiana Philanthropy Alliance Website – Sample Policy Forms
- And, as always...
The next “Lunch & Learn” of the Nonprofit Webinar Series: Applications & Interviews

Tuesday, March 3, 2015
11:00 a.m. to 12:30 p.m. ET

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<tr>
<th>Date</th>
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<td>February 17, 2015</td>
<td>11:00 a.m. – 12:00 noon (12:30 ET)</td>
<td>Overview of HR and best practices</td>
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<tr>
<td>March 3, 2015</td>
<td>11:00 a.m. – 12:00 noon (12:30 ET)</td>
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<td>March 17, 2015</td>
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<td>April 28, 2015</td>
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Questions/Comments?