

# Human Resources or Risks? Managing Employment Practices

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Nonprofit staff members bring the missions of their organizations to life each day. The mistreatment of staff is not only unethical, but it sets an organization up for failure by exploiting its greatest asset, often resulting in expensive, enduring, and emotionally draining insurance claims and lawsuits. Explore these five common challenges of effective and ethical employment practices, and vow to respect your staff while upholding your nonprofit's reputation as an honorable employer.

## Shady Screening

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The Equal Employment Opportunity Commission sets forth various [prohibited employment policies and practices](#) that prevent employers from discriminating and retaliating against their employees. Employers must fully understand their ethics and compliance obligations especially in regards to staff screening and selection. Even inadvertent errors or inconsistencies in screening and hiring practices could result in illegal discrimination, potentially exposing an organization to litigation and reputational damage.

Follow these tips to deter discriminatory staff screening practices:

- Resolve to comply with laws and establish and apply fair, consistent, and transparent decision-making practices for staff screening and hiring
- Instead of [falling short](#), live by the EEOC statements that grace your job postings and wall posters
- Use a digital applicant tracking system to help you follow [blind hiring techniques](#), obscuring candidate identities to reduce the risk of discrimination
- Ensure that job applications honor state [ban-the-box laws](#)
- Understand which [interview questions present legal risk](#), and design alternative questions that provide actionable information about candidates while preventing discrimination
- Conduct criminal history background checks fairly, in accordance with federal [anti-discrimination laws](#) and FCRA; learn about using criminal history background checks effectively and ethically by exploring these Nonprofit Risk Management Center (NRMCC) articles:
  - [There's No Mystery to Your History: Using Background Checks in the Screening Process](#)
  - [Background Checks, Screening, and Your Nonprofit](#)
- Avoid reviewing the social media accounts of job seekers, or you'll run the risk of discriminating against a candidate after viewing content that you cannot legally use to make hiring decisions (e.g., content about a candidate's health conditions, religious affiliation, sexual orientation, etc.)

Continue exploring best practices for [screening and selecting staff](#), and important considerations for [screening international staff](#) and complying with [international employment laws](#).

## Damaging Departures

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Another point in the employee life cycle when discrimination lawsuits might arise is at the individual's departure from the organization. Wrongful termination claims are relatively common and costly, and bring an organization's ethics into question.

Adopt these practices to discontinue discriminatory disciplinary action:

- Understand the protected classes that are illegal to consider when making discipline and termination decisions; do not discriminate against employees on the basis of:
  - Race
  - Color
  - National origin
  - Religion
  - Sex (including pregnancy, childbirth, and medical conditions)
  - Disability
  - Age (40 and older)
  - Citizenship status
  - Genetic information
  - Any additional protected classes that [your state law](#) prohibits discrimination based on
- Conduct structured performance reviews and maintain clear, accurate records of individual performance; reflect on these records when making termination decisions, and ensure that records are robust enough to guide any decisions about discipline or termination
- Never retaliate against an employee, for example, never discipline or terminate an employee for engaging in protected activity under the law (e.g., filing a workers compensation claim, requesting a medical leave under FMLA,
- Discipline team members fairly and consistently; adopt policies defining prohibited behaviors and disciplinary actions, and communicate them to staff
- When appropriate, institute performance improvement plans for employees before termination; document performance improvement efforts
- Avoid using vague language like “not a good fit” to describe reasons for employee termination; when appropriate, provide specific, clear reasons for termination, such as reasons documented in the employee's performance records
- Terminate team members professionally and compassionately; remember that a disgruntled former employee is far more likely to take action against your organization—or smear its reputation—than an employee who is terminated with care and respect

Also, learn how to effectively and fairly [discipline and terminate volunteers](#).

# Classification Confusion

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Confusion about the classification of employee, independent contractor, or volunteer roles—as well as exempt versus non-exempt employee roles—can endanger your organization. Misclassifying an individual’s role in the wrong type or exemption class could result in your organization violating the Department of Labor wage-and-hour regulations. Organizations found violating these rules could be responsible for rectifying their wrongs, owing any applicable overtime, tax withholdings, employer contributions, and tax penalties.

- Distinguish employees from independent contractors by using the [three-factor test and risk management tips](#)
- Determine whether an employee should be exempt or non-exempt by applying [tests of duties, salary level, and salary basis](#)
- Clarify employee, volunteer, and independent contractor roles at the outset when engaging any new staff member or consultant; also ensure that employees understand their exemption statuses
- Ensure that employee handbooks clearly explain the employment relationship, for example, by using language that infers an employment-at-will relationship rather than a contractual relationship; review more guidance about employee handbooks:
  - [Creating an Effective Employee Handbook for Your Nonprofit](#)
  - [Lend a Helping Handbook: Employment Policies Worthy of Your Mission](#)
- Clearly communicate to unpaid staff [what constitutes a volunteer role](#)
- Maintain specific handbooks and role descriptions for volunteers
- Be careful to [reward volunteers appropriately](#)

# Harassment

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[Illegal harassment](#) is a form of discrimination that violates federal and state laws and results in harm to individual employees, corporate culture, staff morale, and an organization’s reputation. Sexual harassment also constitutes illegal harassment at the [federal level](#) and in [certain states](#).

To better protect your workforce and prevent harassment—review NRM’s article, “[Not Here: Zero Tolerance for Inappropriate Workplace Conduct](#),” and follow these best practices:

- Adopt a formal policy that prohibits illegal harassment and inappropriate behavior, and provides clear examples of prohibited behaviors
- Enforce policies consistently, and for everyone; do not tolerate harassment of or by any team member
- Recognize that anyone could potentially perpetrate illegal harassment, and ensure that no team members are above the rules
- Train staff to recognize and report both illegal harassment and inappropriate behavior; determine whether [your state mandates staff training](#) to prevent sexual harassment
- Teach staff members how they can report complaints about harassment and inappropriate behavior; never retaliate against an employee for reporting harassment
- Commit to thoroughly and immediately investigating all allegations of workplace misconduct—even behavior that is inappropriate but not illegal
- Educate employees about the response they can expect from the organization should anti-harassment policies be breached, and follow through with that response (e.g., investigation processes, disciplinary actions, etc.)

# Invasion of Privacy

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According to the [American Civil Liberties Union \(ACLU\)](#), electronic surveillance in private sector workplaces is largely unregulated. In many circumstances, employers can legally monitor their employees without employees' knowledge or permission—whether by reading emails sent through the organization's servers, recording and listening to calls made on employer-owned devices, or filming in workplace facilities with hidden cameras.

Some exceptions protect employee privacy, for example, the Electronics Communications Privacy Act (ECPA) prohibits employers from accessing employees' private emails or from intercepting or monitoring telephone calls. Still, according to the [Electronic Privacy Information Center](#), "if consent is given in the form of an employment contract that explicitly authorizes the employer to access e-mails, it may be lawful under ECPA..."

Employers who wish to track and monitor their employees—perhaps to ensure productivity, prevent theft, or for other legitimate business reasons—should minimize their own liability while also striving to prevent the exploitation of staff. Start by disclosing your surveillance activities to staff, which will reduce their expectations of privacy while fortifying your defense against invasion-of-privacy lawsuits. Also ensure that:

- [Employee privacy rights](#) are well-understood by personnel involved in surveillance activities
- Monitoring addresses a legitimate business need—ideally, a business need that is compelling and reasonable in the eyes of staff
- A formal policy clearly communicates the organization's surveillance practices and the privacy rights of employees
- Surveillance does not violate any laws or collective bargaining agreements (or create an [atmosphere of surveillance](#) during a union organizing campaign)
- Special considerations are made for [electronically stored communications](#) (e.g., emails, texts, blogs, social media accounts, etc.)

ACLU recommends protecting the privacy of staff by enacting ethical surveillance standards and adopting a formal policy that provides for:

- "Notice to employees of the company's electronic monitoring practices
- Use of a signal to let an employee know when he or she is being monitored
- Employee access to all personal electronic data collected through monitoring
- No monitoring of areas designed for the health or comfort of employees
- The right to dispute and delete inaccurate data
- A ban on the collection of data unrelated to work performance
- Restrictions on the disclosure of personal data to others without the employee's consent"

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