



Community
Underwriting

MANAGING EMPLOYMENT PRACTICES RISK

A Resource to Help Not for Profits Manage Employment Practices Risk in their Organisation

Many Not for Profit organisations succeed due to the ongoing efforts of their passionate employees and volunteers.

It is becoming increasingly common however for employees or volunteers to consider bringing an action against an organisation where they feel that they have been treated poorly or unfairly. The types of alleged incidents that can be faced by an organisation can include:

- Discrimination based on gender, age, race, disability, religion, pregnancy, country of origin, sexual orientation or preference;
- Breach of employment contract, negligent supervision, failure to enforce policies and procedures;
- Harassment, bullying;
- Wrongful dismissal or termination;
- Demotion or failure to promote;
- Whistle blower mistreatment or retaliation;
- Defamation, libel or slander;
- Mental anguish, humiliation, invasion or breach of privacy, emotional distress.

The immediate impacts from such allegations include legal costs, any settlements awarded and even fines and penalties.

Even if an allegation of mistreatment can be refuted successfully, defence costs frequently run into tens of thousands or even higher.

There are also the hidden impacts that are often intangible but have a significant effect on the organisation:



- Diversion / distraction of resources and loss of productivity;
- Damage to external brand and reputation - clients, donors, future volunteers and funding providers;
- Damage to internal brand - employee and volunteer morale.

The pervasiveness / speed of social media exacerbates the potential fallout from any allegation.

Managing Employment Practices Risk

The Board and senior management are responsible for creating and maintaining a safe and fair environment for their employees and volunteers, yet often lack the skills or time to implement effective measures to achieve this. Smaller organisations in particular lack the resources to create, implement and maintain all of the procedures, policies and records that are an important tool to help them successfully defend an action taken against them.

The following provides a guide to some of the controls and risk mitigation areas that might be considered. It is by no means exhaustive, but serves as a starting point for organisations to consider the specific risk exposures relevant to them.

Consider	Key Exposure Areas	Example Controls / Risk Mitigation
Employee and Volunteer Recruitment	<ul style="list-style-type: none"> The Recruitment Process Job Descriptions Posting and Advertising the Position Application Reviews and Screening Background Investigations Formal Interviews 	<ul style="list-style-type: none"> • Formal recruitment / hiring processes and ongoing training
Workplace Policies and Procedures	<ul style="list-style-type: none"> Workflow Management Position Reviews Salary and Compensation Reviews Performance Management / Discipline Promotion and Role Changes Leave Accommodating Disabilities Workplace Functions and Entertainment 	<ul style="list-style-type: none"> • Formal policies, procedures and standards that managers, employees and volunteers understand • Employee handbooks and orientation • Formal documented training • Managers, employees and volunteers held accountable if there is any deviation from the required standards of behaviour • Effective reporting mechanisms for complaints of workplace wrongdoing • Formal and consistent dispute resolution processes
Internet and Social Media	<ul style="list-style-type: none"> Access to Web Sites Discriminatory ““Friending” or Linking of Networks Defamatory Information or Remarks Misuse of Information 	<ul style="list-style-type: none"> • Formal policies and procedures on use of the internet and social media • Clear direction on the activities permissible whilst engaged on the organisations behalf / using the organisations facilities / accessing information of the organisation or its clients

Employment Practices Liability Insurance is another risk mitigation tool to be considered in the management of employment practices risk.

Managing employment practices claims can be complex, claims are usually emotionally charged and need to be handled with a high degree of sensitivity. Not only does the EPL policy provide funds to defend against any action and/or any settlement awarded against you, it gives you access to specialist employment practices claims expertise.

The information provided in this Not for Profit resource is general in nature and needs to be considered against your organisations own risk profile and particular circumstances. For more specific advice you should contact your broker or Community Underwriting.

Policies differ greatly between insurance companies. Many Not For Profit organisations are insured under an Association Liability policy which combine a range of professional exposures to officials and the entity under a single package and often a combined policy limit.

It is important that you work with your broker to understand your requirements and the scope of coverage being provided under your policy. The following highlights some of the major areas to be considered:

Who is Insured	<ul style="list-style-type: none">• The organisation and any subsidiaries• Board members and other office bearers• Senior executives and members of management committees• Full time, part time temporary or casual employees• Any volunteers• Nominated consultants or sub contractors
Definition of a Claim	<ul style="list-style-type: none">• Written demand for damages or other compensatory relief• Civil or criminal proceeding• Any administrative, regulatory or tribunal proceeding
Definition of Loss	<ul style="list-style-type: none">• Includes punitive or exemplary damages
Definition of Employment Practices Wrongful Act	<ul style="list-style-type: none">• Failure to employ or promote, deprivation of career opportunity• Breach of oral or implied employment terms• Negligent evaluation• Employment related misrepresentation, false advertising• Failure to adopt adequate workplace policies or procedures• Retaliation for a persons exercise of rights under law or support of others including whistle blowers• Infliction of mental anguish or emotional distress
Policy Limit	<ul style="list-style-type: none">• Sub limited for EPL or access to full policy limit• Automatic reinstatement of policy limit
Policy Extensions	<ul style="list-style-type: none">• Claims preparation costs• Public relations and crisis management expenses• Inquiry and investigation costs• Severability and non-imputation• Run off cover for retired persons• Includes actions by employment applicants, clients, service provider, supplier or invitee• Extended discovery period if policy is terminated or not renewed

Late notification of claim circumstances can create disputes between insured and their insurers. The organisation has an obligation to notify insurers immediately they become aware of a circumstance that may give rise to a claim.

It is important that HR and legal resources are made aware of the reporting requirements under the employment practices liability policy so as not to prejudice cover. No admissions or settlement discussions should be undertaken without involving the insurers claims management resources.

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Making a real difference to the way insurance is provided to the Not for Profit sector



Community Underwriting are specialists in charity insurance, Not For Profit insurance and insurance for community organisations. We offer a range of insurance solutions customised to meet the needs of community organisations.

Call us: 02 8045 2580 Email us: enquiries@communityunderwriting.com.au

www.communityunderwriting.com.au

AFS No 448274 ABN: 60 166 234 715