

Employment Practices *Update*

Bringing important information to emergency service organizations

VOLUME 12 • NUMBER 1

Lessons on risk management

By Michael J. McCall, J.D.

News headlines of sexual abuse cases remind emergency service organizations (ESOs) to learn risk management lessons from those reported situations. The following lessons may be helpful to uphold moral and legal obligations and take reasonable measures to prevent, discover and stop occurrences of wrongdoing while putting forth a diligent effort to prevent and manage such risks as sexual abuse, misconduct, harassment, discrimination, retaliation and hazing.

Lesson #1: Protect the most vulnerable persons –There are special risk management considerations to make for ESOs with junior firefighters or other programs designed to introduce community youth to the emergency services industry. It's important to protect the most vulnerable employees, volunteers and others associated with the organization.

Victims of wrongdoing are often persons without power, authority or tenure and may fear lodging a complaint against a long-term and well respected member of the organization. Often victims, witnesses or others made aware of wrongdoing may not trust the neutrality and transparency of the organization's internal investigation or response processes because the offender is a prominent figure in the organization.

Lesson #2: Neutral third-party involvement

–Consider an ongoing engagement of an outside risk

management consultant or group in order to refute the perception of an internal cover-up or lack of transparency. External risk managers can periodically review internal policies, procedures and practices for employees, volunteers and others affiliated with the organization to help seek protection from wrongdoing.



Photocopying or transferring this document is a violation of federal copyright law and is prohibited without the express written consent of VFIS.

VFIS does not offer legal advice. Readers should seek the advice of an employment attorney regarding any legal questions.

We welcome comments, suggestions and questions from our readers.

E-mail: epupdate.opinion@vfis.com



Published by the
Glatfelter Insurance Group
York, Pennsylvania

Continued on page 2

Lessons on risk management

Continued from page 1

Outside professionals could also deliver prevention training but there are several factors to consider when determining whether utilization of a third-party investigator would be beneficial in responding to an allegation of wrongdoing:

- Nature and severity of the offense.
- High ranking official accused of wrongdoing.
- Real or perceived conflict of interest with facilitation of an in-house investigation.
- Insufficient or no internal investigation was conducted.
- Multiple complainants.
- Law enforcement has been contacted, complainant(s) retained legal counsel or claim has been filed with a state or federal agency.
- Media has been alerted.

Lack of knowledge

Victims and witnesses of wrongdoing might not complain because of a lack of knowledge and trust of internal reporting and investigative and resolution processes. A perpetrator may be less likely to abuse, harass, haze, discriminate or retaliate if he or she knows the victim(s) and witnesses have received periodic prevention training, have a clear understanding of the available avenues of complaint and the organization takes decisive actions to stop wrongdoing.

Lesson #3: Training for all groups – Train employees, volunteers and others affiliated with the ESO (e.g. junior ESO members) on the prevention of harassment, discrimination, retaliation, sexual abuse and misconduct. Annual training sends the ESO's strong message that wrongdoing is not tolerated and immediate response processes are in place.

Include the opportunity for questions to be answered during and after training sessions. A victim, witness or other person that learns of wrongdoing may feel most comfortable asking a trainer questions in confidence after a group session because of the sensitive nature of the subject matter.

Lesson #4: Signed acknowledgement forms – Persons affiliated with the ESO can acknowledge their understanding of the multiple avenues of internal complaint for allegations of sexual abuse, misconduct, harassment, discrimination, retaliation and hazing by signing acknowledgment forms. These often include statements that the ESO will perform a prompt and thorough internal investigation and conduct a conflict of interest check so persons named in a complaint will not be part of the investigative team or efforts. Also note that an outside third-party investigator may be utilized to resolve allegations of wrongdoing.

Lesson #5: Leaders to follow up aggressively – It is the responsibility of organizational leaders to promptly report and / or investigate allegations of sexual abuse, misconduct, harassment, discrimination, retaliation, hazing or other wrongdoing.

There is also a responsibility to forward information on to those within the organization that are designated to investigate allegations of wrongdoing or otherwise have a "need to know." However, it is not recommended that one with supervisory authority just "pass a complaint on" to a superior and take no further action.

Victims and witnesses of wrongdoing might not complain because of lack of knowledge and trust of internal reporting ...

Seek follow through for risk management solutions. Consider it a serious "red flag" if a complaint of wrongdoing is passed on and there is little to no evidence thereafter of a thorough investigation, problem resolution or any other identifiable change in the work environment.

The following risk management questions might help supply a diligent response to allegations of wrongdoing:

- Is someone, if not multiple persons, at risk of imminent threat of bodily injury or harm? If so, what emergency measures could be taken to prevent such harm?
- If required or necessary, have appropriate law enforcement authorities or other regulatory agencies been contacted?
- Have alleged victims of wrongdoing been identified as well as other potential victims?
- Have protective measures been taken to stop wrongdoing and prevent future occurrences?
- What non-retaliation measures can be taken to protect the alleged victim of wrongdoing, the accused, witnesses or other interested parties?
- What is the current status of the investigation?
- What are the remaining steps of the investigation process?
- Who should be interviewed as part of the investigation?
- How long is the investigation expected to take?

Conclusion

The most basic duty for an ESO is to provide a safe and productive environment for employees, volunteers and others (e.g. junior members) associating with the organization. Protecting its own personnel is crucial before ESOs can be expected to protect and serve the public.