Sexual Misconduct: Abuse and Molestation Guidance

While the effects of sexual misconduct can devastate the victim and the victim's family, the damage does not stop there. Just one incident of sexual misconduct can destroy the trust, credibility and reputation of an organization for years. Adding further pain to an incident of abuse or molestation are the legal costs of a lawsuit, which can ruin an organization financially.

This document provides recommendations for how to prevent and respond to sexual misconduct, but in no way is it intended to be legal or risk management advice. State and local law should always be considered, and you are encouraged to retain your own expert consultants and legal advisors to develop practices specific to your own activities and location.

This material does not constitute legal, accounting, or risk management advice. You are encouraged to retain your own expert consultants and legal advisors to develop a risk management plan specific to your own activities.

Record retention

One of the challenges GuideOne faces as an insurance carrier is defending organizations in suits involving alleged abuse. These claims are typically brought years or even decades after the alleged activity. The defense of these claims is often dependent on reconstructing the personnel records such as background checks and training records as well as the policies and procedures that were in place at the time. Having and abiding by a record retention policy that balances long-tern defense needs against privacy, employment, consumer-reporting, and records-destruction considerations allows the claims team and litigation counsel the best chance to defend the organization.

Screening

The first step in preventing sexual misconduct is to thoroughly screen the backgrounds of employees and volunteers. Legitimate workers will not be offended, and the process often scares off unwanted individuals. To screen staff members and volunteers, organizations should take the following actions:

1. Six-Month Tenure– Volunteers working with children or youth in your organization should attend

your church for at least six months, go through a membership process, or be well known to leadership in another way. Sex offenders look for easy opportunities to get access to children and youth. By requiring a longer commitment to the church, those who are looking for easy access to children will move on to other opportunities and those who truly wish to serve your organization will get to know your ministry better.

2. Written Application – All persons seeking to work with children should complete and sign a written application. The application should request basic information from the applicant and inquire into previous experience with children, previous affiliation with organizations, reference and employment information and disclosure of any previous criminal convictions. The application form should be kept confidential and maintained consistent with the organization's record retention policy.

3. Personal Interview – Upon completion of the application, a face-to-face interview should be scheduled with the applicant to discuss not just the ability to accomplish the task, but his or her suitability for the position.

4. Reference Checks – Before an applicant is permitted to work with children or vulnerable individuals, at least two of the applicant's references should be checked. Ideally these should be professional references, preferably from organizations where the applicant has worked with children or vulnerable individuals in the past.

5. Criminal Background Check – After securing the proper permissions, a check of the public National Sex Offender Public Website (NSOPW) as well as a criminal history for any county in which the applicant has lived for the previous seven years should be conducted for all employees, regardless of position, and for multiple categories of volunteers, including:

    a. Those who will be involved in a school/preschool/daycare center

    b. Those who will be involved in overnight activities with children or vulnerable individuals

    c. Those counseling children or vulnerable individuals

    d. Those involved in one-on-one mentoring of children or vulnerable individuals

    e. Those having occasional one-on-one contact with children, such as sponsored athletic team coaches and vehicle drivers

State requirements vary and may include FBI/fingerprint checks, state criminal records, sex-offender registries, child-abuse/neglect registries, and recurring checks. Individuals with a criminal history that includes any of the items listed in the appendix of this document should be excluded from contact with minors or vulnerable adults.

Training

All employees and volunteers should complete training on how to properly work with youth and vulnerable individuals.

1. The organization should provide training on abuse identification and prevention policies to all new employees and volunteers.
2. Employees and volunteers should be trained on mandatory reporting requirements for the appropriate jurisdiction.
3. Employees and volunteers should be trained on organizational policies and procedures.
4. Require training before covered access and thereafter at the frequency required by applicable law, licensing/accreditation, and any expressly adopted GuideOne underwriting standard. Retain completion date, curriculum/version, trainer/provider, and attendee acknowledgement.
5. Training should be documented through written attendance records.
6. The organization provides training to all employees and volunteers subject to state mandated reporting training requirements
7. A person who is not current on required training may not have covered/unsupervised access until training is completed, with any employment discipline should be handled under the organization's normal HR policy and applicable law.

Prevention

There are detailed ways to minimize occurrences of sexual misconduct, which include:

1. Observable Actions – Ensure all interactions are observable and interruptible, with defined and clear exceptions for one-on-one interactions.
2. Open Door Policy – Interior doors should remain open unless there is a window in the door or right beside it. Doors should never be locked while people are inside the room.
3. Teenage Workers - The following guidelines should apply to teenage workers:
    a. Must be at least 14 years of age.
    b. Must be screened as specified above.
    c. Must be under the supervision of an adult and must never be left alone with children.
4. Restroom Guidelines - For the safety of the children and the organization, all employees and volunteers should follow the standard guidelines when taking children to the restroom.
    a. Children five years of age and younger should use a single stall bathroom if one is available. If a single stall bathroom is not available, workers should escort a group of children to the hallway bathroom. They should always go in a group – never take a child to the bathroom alone.
    b. For children over five years of age, at least one adult of the same gender should take children to the restroom. When an adult of the same gender is not available, the core control

should be privacy plus no secluded one-on-one contact. Again, the standards is observable/ interruptible assistance.

c. The workers should check the bathroom first to make sure that it is empty and then allow the children inside.

d. The workers should remain outside the bathroom door and escort the children back to the room. If a child requires assistance, the workers should prop open the bathroom door and leave the stall door open as they assist the child.

e. For the protection of all, workers should never be alone with a child in a bathroom with the door closed and never be in a closed bathroom stall with a child.

Identification

Employees and volunteers should know the events, patterns and trends that indicate abuse. The goal is to be able to identify the patterns of grooming behavior.

1. Training should be provided on identification of potential abuse as well as behavior of potential abusers keeping in mind that more than 30% of claims come from peer-to peer abuse.
2. Any individual with access to children should be trained to identify patterns of potential abusers and be alert for potential misconduct.
3. All employees and volunteers should have training on “see something; say something.”

Reporting

Ensure that your staff, volunteers and any visitors not only understand the importance of reporting even low-level concerns but also have a reporting avenue they are comfortable using.

1. Training should be provided to all employees and volunteers on reporting procedures, including mandatory reporting according to state requirements.
2. Suspected abuse should be reported to a minimum of two designated individuals within the organization. All suspected abuse must be reported to authorities according to state requirements.

Investigation

In a case of sexual misconduct, your organization must identify the responsibilities of all parties, which include reporting to police and any relevant external agencies, as required by state law.

1. The organization should fully cooperate with the investigation of the incident by any criminal or

civil authorities.

2. A neutral third party – most often legal counsel – should investigate the claims presented by the reporting person. This is especially important if the alleged offender is an employee.

Protection

During an investigation, alleged victims should be protected from further harm.

1. Procedures should be enacted that protect the alleged victim during the investigation process.
2. Ensure that those who come forward to report abuse are received with dignity and compassion.
3. The accused abuser should be removed from any interaction with the alleged victim.

Response

The organization should conduct an analysis of occurrences to determine what changes are needed, if any, to policies and procedures to prevent further incidences.

In the event that an incident of abuse or neglect is alleged to have occurred at or during sponsored programs or activities, the following steps should be followed:

1. The parent or guardian of the child should be notified, so long as the notification does not put the alleged victim in harm's way, consistent with applicable law and agency direction.
2. The individual alleged to be the perpetrator of the abuse or misconduct should immediately be removed from working with children or vulnerable individuals pending an investigation and instructed to remain away from the premises pending the results of the investigation.
3. Your insurance company should be notified and an incident report completed. Any documents received relating to the incident and/or allegations should immediately be forwarded to your insurance company.
4. One individual should be designated as a spokesperson to the media concerning incidents of abuse or neglect, unless he or she is alleged to be involved. The organization should seek the advice of legal counsel before responding to media inquiries or releasing information to members of your organization or the general public. All other employees and volunteers of the organization should refrain from speaking to the media.
5. Any person who is found guilty of the alleged abuse or misconduct will be removed or restricted from their position working with children or youth.

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