

Board Training Kits: Association Personnel The Executive Director

#4



Southern Early Childhood Association

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Employment Contracts for the Executive Director

The Executive Director is the person ordinarily responsible for management of the day-to-day affairs of the nonprofit corporation and for the implementation of policies set by the Board of Directors. The existence of a clearly written employment agreement between an association and its chief executive tends to allow for better understanding between the two parties and helps to minimize the possibility of future disagreement over topics discussed in the contract.

Advantages of Executive Employment Contracts

- A contract serves as a quality control mechanism for association programs and policies by clearly placing responsibility for them with the chief executive.
- Contracts establish criteria, procedures, and timetables for reviewing and evaluating the performance of association executives.
- Contracts minimize misunderstandings that may arise from unwritten agreements.
- Contracts enhance the images of associations by demonstrating their commitment to professionalism.
- Contracts help associations attract and retain the most qualified executives.

Provisions Typically Covered in Chief Executive Employment Contracts

- Names of both contracting parties (the association and chief executive)
- A statement that the agreement is based on mutual consideration and that both parties acknowledge receipt of consideration
- An indication of the type of association involved (i.e., “an educational association of early childhood education professionals”)
- The title of the position for which the executive is being contracted
- The term of the agreement, including the executive’s starting date
- The general or specific duties of the executive
- Authority of the chief executive over other employees of the association
- Any benefits available to the executive, such as relocation expenses, travel expenses, vacation time, sick leave, insurance, etc.
- Provision for termination of the contract, including the right of termination by the association without notice in circumstances of gross negligence or dishonesty by the executive, the period and method of notice of termination by the association or the executive in other circumstances, and the effects on the agreement in the event of illness or death of the executive
- The results for the executive in the event of merger or consolidation of the association
- Indemnification of the executive by the association to the extent allowed by state law
- Renewal provision
- Nonassignability of the rights and obligations of the executive and the association
- Provisions for the arbitration of differences
- Relinquishment by the executive of all rights or claims in files, publications, marketing material, and other material developed during the employment and agreement by the executive not to remove association documents from the control of the association during or after employment
- Specification of which state’s laws govern interpretation of the agreement
- Signatures of all parties and dates of signing

Other Compensation Options

Smaller associations may not be able to afford high-paying salaries for chief executives, but may be able to compensate with other attractive aspects of the employment package, to be included in the contract. Examples include bonuses, deferred compensation plans, pension plans, savings plans, life and disability insurance, continuing education benefits, professional association memberships, etc.

All of these compensation options have their own sets of legal and financial considerations, and none should be instituted without the assistance of experienced professional advisors. In addition, all compensation options must be reviewed carefully to ensure the association's compliance with IRS codes and other federal and state regulations, especially where they result in taxable income to the executive.

Source: Jerald Jacobs. Association Law Handbook. Washington, DC: American Society of Association Executives, 1996, pp. 46-54.

Accountability of the Executive Director

In most non-profit organizations, the Board of Directors has the responsibility to provide the association with a competent chief executive, and in return to provide that executive with the support and feedback necessary to succeed. In most associations, the chief executive is the only staff person who is directly accountable to the Board or voluntary side of the organization. The chief executive is accountable to the Board of Directors through the Chair of the Board, and therefore authority passes from the Board to the Board Chair to the chief executive. All association staff members are accountable to the chief executive directly, or through an orderly chain of command. This arrangement helps to avoid multiple lines of accountability and confusion among all involved. The most successful associations are characterized by trust and open communication between the chief executive and Board of Directors.

Source: William Glenn. "Board and Staff Relations," in The Nonprofit Board Book: Strategies for Organizational Success. Revised Edition. West Memphis, Arkansas: Independent Community Consultants, 1985, p. 94.

Assessment of the Executive Director

Evaluating the Executive Director is a primary responsibility of a non-profit association's Board of Directors. The Board not only performs the evaluation, but also sets the standards by which the Executive is evaluated. The goal of this assessment is to gain the ability to recognize problems in the Executive's management of the association, and to initiate corrective action.

Benefits of Evaluating the Executive:

- The evaluation process makes it necessary for the Executive to have a clearly defined job description, thereby clarifying the boundaries for his or her responsibilities.
- Ensures the Board is meeting its duty to effectively lead the organization
- Ensures organizational goals are being met
- Ensures continued development of the Executive to more effectively conduct his or her role
- Ensures a formal and documented evaluation process that meets standards of fairness and practicality
- Ensures the Executive values his or her role, is benefiting from it, and therefore is more likely to stay
- Leaves written record of the Board's impression of the Executive's performance in case this record is needed for future verification, such as for salary increases, termination, etc.
- The evaluation establishes annual expectations that assist the Executive in focusing on Board priorities for the upcoming year.
- If the Board is satisfied with the Executive's performance, it has the opportunity to express its satisfaction by approving a salary increase.

Tips for Conducting Evaluations of the Executive Director:

- The actual specifics of the evaluation are less important than ensuring that the evaluation is conducted regularly, usually annually.
- The process should be fully documented as an association procedure so that the process is well understood and carried out consistently year-to-year.
- If staff members are involved in the evaluation of the Executive Director, be sure this procedure is clearly specified and understood by the Executive.
- A Board committee rather than a single Board member should carry out the evaluation.
- If the Board perceives the Executive to have performance issues, Board members can initiate an evaluation; however, it is wise to be sure these perceptions are based on seen behaviors rather than on personality characteristics.

Sources: Carter McNamara. *Field Guide to Developing and Operating Your Nonprofit Board of Directors*. Minneapolis, MN: Authenticity Consulting, 2000, and www.BoardSource.org 2005.

Steps for Developing an Assessment System

- Establish criteria for performance appraisal
- Design an appraisal form that reflects the performance categories to be assessed
- Break each main category into specific tasks on which the Executive's performance can be rated
- Determine who will make the assessment
- Determine how the assessment forms will be compiled into a report for the Board of Directors
- Determine how the assessment outcomes will be reported to the Executive

The Contents of Executive Assessments

If an association's evaluation system works well, it should provide the Board with information which answers three questions:

1. What are the special or unique strengths that this person has demonstrated in this position?
2. What are the areas for which improvement is indicated?
3. What are the kinds of management and/or organizational development activities that should be carried out in the future?

Designing the assessment system involves establishing criteria for performance appraisal. The Board must decide what competencies are necessary for an administrator to be effective in the Executive position. It may be helpful to design an appraisal form that reflects the performance categories or areas of the job that are to be assessed, and then break each of these categories down into specific responsibilities and duties and develop a scale on which to rate the Executive. For example, most Executives must demonstrate competency in the following areas:

- Basics in Management and Leadership – managing yourself and the Board of Directors
- Planning – business planning (plan a new business organization, product, business department, etc); strategic planning (establish organizational goals and how to reach them)
- Organizing – human resources management; organizing staff; organizing volunteer groups; re-organizing a current business
- Leading – leading other individuals, groups and organizations
- Coordinating Activities and Resources – ethics management systems; finances; fundraising; employee performance management; policies and procedures; marketing, promotions, and public relations

Once the assessment form is devised, the next task is to determine who will perform the assessment and how the assessment forms will be compiled into a report for use by the Board. The decisions about whom and how many people will participate in the appraisal are critical if there are to be constructive outcomes from this process. How a Board designs the appraisal process will often be specific to that organization, dependent on the size and availability of the Board. It is always important to remember that it is impossible to have an unbiased evaluation of human performance, and that any appraisal system involves judgment that may or may not be valid indicators of actual performance.

Source: Richard First. "Overseeing Organizational Operations," in The Nonprofit Board Book: Strategies for Organizational Success. Revised Edition. West Memphis, Arkansas: Independent Community Consultants, 1985, pp 112-115.

The Role of the Executive Director in Their Own Evaluation

Including the input of the Executive in the appraisal process is a key aspect of any evaluation of their performance, and ample opportunity should be given to the Executive to contribute to the process. Some suggestions for encouraging this participation include:

- Having the Executive initiate definition of the activities to be assessed
- Building on an existing system for employee performance appraisal, as developed by the Executive
- Using self-rating as an additional source of data
- Including reports and external indicators of output and outcomes for the organization
- Contracting with a firm or individual with management expertise for assistance with the appraisal

Source: Richard First. "Overseeing Organizational Operations," in The Nonprofit Board Book: Strategies for Organizational Success. Revised Edition. West Memphis, Arkansas: Independent Community Consultants, 1985, pp 115-116.

The Relationship between the Board and the Executive Director

Ultimately, the ideas and actions of the Executive Director, perhaps more than the will of the Board, will influence the nature of the dynamic that characterizes this important relationship. Because it falls to the Executive Director to help determine which issues the board will address and to assemble the information that shapes the discussion, this individual can guide the Board towards a true governance role. The following are three specific methods that the Executive Director can take to help the Board govern more and manage less:

1. Use a comprehensive strategic plan that has been developed in conjunction with the Board, and supplement it with regular progress reports. This can be a useful tool for the Board as it develops its own annual work plans, and will keep the Board's sights focused on the long-term goals and mission of the organization. Regular reports based on this plan will keep Board members apprised of progress toward organizational goals, and provide part of the basis for evaluation of the Executive Director.
2. Provide the Board with relevant materials before Board meetings, and explain why the materials are coming to the attention of the Board. Let Board members know how specific agenda items relate to the organization's larger mission, and what kind of action or discussion is desired of the Board on each item.
3. Facilitate Board and Board committee discussions so that the Board stays focused on the larger issues. Refer to set policies that define the limits of the Board's decision-making power, and strive to engage the board in a dialogue among themselves that leads to consensus-building.

Source: Minnesota Council of Nonprofits www.mncn.org 2006

Another Executive Option: Association Management Firms

In industries and professional fields that represent a relatively small number of members, it may be economical for an association to agree to share the services of its paid executive and administrative staff with at least one other association. This is especially attractive to associations that cannot afford the size or type of staff considered necessary or desirable. Management sharing is also attractive to several associations that represent interests in the same profession, or have overlapping constituencies.

Potential problems involved with using a shared executive include confusion of financial records between that executive's association clients, personnel conflicts, and conflict-of-interest issues. However, most of these can be dealt with early on through the adoption of a written contract that clearly stipulates the boundaries between the executive's responsibilities with the associations under his or her care.

Source: Jerald Jacobs. Association Law Handbook. Washington, DC: American Society of Association Executives, 1996, pp. 97-99.

Questions for Discussion

1. How does your organization choose or hire its Executive Director? What are the specific job responsibilities of your association's Executive Director position?
2. Does your association have a written employment contract with its Executive Director? If so, what stipulations are included in this contract? If your association does not maintain such a contract, draft a sample one now based on the criteria discussed in this presentation.
3. What does your association's chain of command look like? Draw it as a diagram, and clearly indicate the lines of accountability in your organization.
4. What is the evaluation process for your association's assessment of its Executive Director? Who performs the evaluation, on what standards is it based, and how is the information presented to both the Executive and the Board of Directors after the evaluation?
5. Based on all of the standards and criteria for Executive assessments just presented, how would you revise your assessment procedures to provide a more thorough and helpful evaluation of the Executive Director for your association?
6. Does your organization function in the manner that is most effective at allowing your Board of Directors to govern and your Executive Director to manage? What could be done to improve this relationship for the future?

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