

LAW WEEK COLORADO

How to Protect Your Business from Sexual Assault Claims

Six tips for the outdoor recreation industry

DOUG STEVENS
CAPLAN & EARNEST

One of the most challenging issues currently facing the outdoor recreation industry, which may not be obvious to most people, is addressing allegations of sexual assault and misconduct appropriately. In the #MeToo era of increased reporting and accountability across all industries, it should be no surprise that companies and organizations in the outdoor recreation industry also find themselves needing to properly document, investigate and address these allegations.

To give a sense of the scale of the issue, a recent survey of 5,000 outdoor climbers found that 47% of women and 15% of men reported experiencing some form of sexual assault or sexual harassment related to their participation in the sport:

“Misconduct included catcalling, verbal harassment, unwanted following from the crag, flashing, unwanted touching, forcible kissing, and unwanted sex acts. Fifty-four respondents (11 men, 42 women, 1 unidentified) reported being raped, such as on an expedition at camp. “The alleged perpetrators include famous climbers or sponsored athletes, brand ambassadors, friends, acquaintances, climbing partners, customers of gyms and expeditions, coworkers and complete strangers.

“And those who reported said their complaints were either dismissed or ignored by some leaders in the industry. When action is taken, it amounts to a slap on the wrist.”

As incidents (and reports) of sexual misconduct become more prevalent, it is imperative for organizations to understand not just the personal impact on the victims, but also the legal and operational challenges these incidents present.

The most important thing an outdoor recreation business can do is take steps on the front end to minimize the potential for sexual misconduct to happen in the first place. The following six tips may allow you to better protect your employees, customers and business:

Screen All Employees: Use a screening company such as Sterling (or one of the other companies with enhanced technology to fa-

cilitate searches) to conduct a thorough background check on current and prospective employees. Your background check should include thorough criminal and sex offender searches on federal, state and county levels. In addition, check references of previous employers and other contacts you may have who are familiar with the individuals, and scan their social media platforms. While performing your employment screening, it is a good practice to discuss any past incidents or allegations involving the applicant, in addition to identifying other conduct that may have violated company policy or even the law. If the employee was terminated, try to obtain the reasons for this assuming the past employer is able to share that information.

Vet All Vendors: It is critical that you vet all outside entities you work with that will interact with your customers. This includes all activity vendors or schools with whom you contract. It also includes any hotels or home stays where students may spend time during a program. It is good practice to obtain appropriate information about the home stay hosts' criminal/sex offender history and past incidents to minimize the chance they are potential risks to your participants. You also want to take reasonable steps to ensure the hotels where your groups will stay are in a safe location and that the facility itself is secure.

Secure Sexual Assault & Molestation Insurance: It is essential that you affiliate with an insurance broker knowledgeable about the outdoor recreation industry. Such an expert can work with you to identify your insurance needs, including coverage for potential sexual-related incidents on one of your programs. While such coverage may be expensive, particularly for international programs, it is critical and ultimately a cost-savings for you if an incident is alleged. Depending on the scope of your coverage, your insurance carrier will likely provide you with an attorney and satisfy any judgment or settlement if a covered claim arises.

Liability Waivers: Consult with your legal counsel to ensure that your waiver protects you from liability for sexual-related incidents consistent with your state's laws.

Mandatory Reporting: Become familiar with applicable mandatory reporting guide-



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lines. While each state's laws vary as to who is a mandatory reporter and which state/county has jurisdiction if a sexual-related incident occurs, try to familiarize yourself with the laws in the state where you are based and where you otherwise operate.

Company Policies: Create child protection and code of conduct policies for your company. Make sure you and your staff follow them.

While it's impossible to predict when a sexual assault will occur, the likelihood of it happening is a reality that outdoor recreation companies need to prepare for. It is critical to review

your preventative strategies and response plans with your legal counsel to ensure that you are as prepared as you can be to handle any situation and protect your employees, customers and ultimately, the business you've worked so hard to build. •

— Doug Stevens is special counsel with Caplan & Earnest. He recently presented on this topic at the annual Wilderness Risk Management Conference with Dave Dennis, the global safety and risk management director with Rustic Pathways and the owner of the risk management consulting firm, Resilient Solutions, LLC.