



Higher Ed: Manage Critical Risk Areas



In recent years, the rising cost of claims has highlighted the importance of managing the most critical risks in education. However, resource constraints force institutions to prioritize the most critical risks when developing a risk management strategy.

This report — based on quantitative and qualitative data as well as United Educators' (UE's) risk management and claims experience — highlights common risk management vulnerabilities and opportunities for **six liability risks** that represent some of UE higher education members' largest loss areas. It includes leadership-level questions to help monitor risk mitigation performance and identify additional risk mitigation opportunities.

Navigating This Report

This report examines **six** risk areas:

- [Contracting Practices](#)
- [Sexual Misconduct](#)
- [Slips, Trips, and Falls](#)
- [Student Mental Health and Related Disability Discrimination](#)
- [Vehicles](#)
- [Workplace Discrimination](#)

Each area includes:

- **Definition** — An explanation of the risk area and examples of related incidents. Where relevant, this includes the relative frequency and severity of this risk area.
- **Key Vulnerabilities and Risk Management Opportunities** — An explanation of common vulnerabilities and tips for mitigating them.
- **Questions Your Institution's Leaders Should Ask** — These questions can help your institution's leadership understand ongoing risk management, monitor long-term success, and hold colleagues accountable for managing risks. These questions should lead to deeper questions specific to your institution.
- **UE Resources** — Resources to help you understand and manage the risk in greater depth.

Technical Terms

- **Frequency** — Number of claims reported.
- **Severity** — Average amount of loss and expense per claim.

Methodology

These risk areas help drive some of the largest claim losses from UE's CGL and ELL policies, including total indemnity and defense paid from June 30, 2016 – June 30, 2021. Claims data in this report comes from claims with losses exceeding the member's self-insured retention.

This report discusses risks holistically and lists them in alphabetical order. It does not rank UE's largest or most frequent losses.

Contracting Practices

Sound contracting practices are critical for ensuring institutions do not inadvertently assume responsibility for losses they do not cause or control. In particular, the failure to properly allocate risks between the institution and its contracting partners is a common source of UE claims across many areas of risks.

Key Vulnerabilities and Risk Management Opportunities

Vulnerabilities

Opportunities

Indemnification and risk transfer

Inexperienced contract signors may not know to look for risk transfer clauses, such as indemnification, additional insured endorsements, liability limits set at the value of the contract, and proof of insurance. Even trained contract approvers can overlook the absence of risk transfer in the contract or fail to maintain certificates of insurance.

Create a contract review checklist — or use UE's contract checklist — that asks signors and reviewers to identify where they found risk allocation language, how it distributes responsibility, and what insurance requirements it imposes to ensure the parties can pay for the losses they have assumed under the agreement. Risk allocation language can be signaled by many terms, such as indemnification, hold-harmless, waiver, release, or limitation of liability. When a draft contract lacks these clauses, escalate to an expert contract reviewer or attorney.

Decentralized contract signing and storage

Some institutions actively choose to decentralize contract review, approval, and storage, while others have a decentralized contracting system that developed organically.

In either case, decentralization yields contracting authority to staff who might not be trained on the institution's centralized contracting practices, including its risk allocation and insurance requirements.

Develop and enforce a centralized contracting process that involves legal counsel and is easy for employees to engage in, regardless of their job function. To ensure consistency in the contracting process, develop model or form agreements that have been vetted by counsel. Ensure these form agreements contain favorable risk allocation language and insurance requirements and use them for common institution contracts, such as facility use, construction, or purchase orders.

Minimum insurance limits

With recent changes to the liability insurance market, old standards for third parties' minimum insurance coverage may no longer be sufficient. For example, a previously common liability limit was \$1 million. Yet in today's environment, this amount is often inadequate.

Work with legal counsel and your brokerage to determine what minimum insurance requirements are sufficient to protect your institution and include that standard in your contract review process and any model or form agreements your institution uses.

Contracting Practices

Questions Your Institution's Leaders Should Ask

- How are our staff trained on contracts, including unwritten contracts, and our contracting policy so they don't inadvertently bind our institution to an agreement?
- Do contracting practices require the use of specific favorable risk allocation language or form agreements, where possible, and the review of risk allocation language in institution contracts?
- Do contracting policies require our institution to verify that our contracting partners have appropriate insurance with adequate limits to cover potential losses arising out of their contracts? Does legal counsel handle exceptions?
- Are there bottlenecks in the contract approval process that could incentivize employees to avoid or subvert the process?

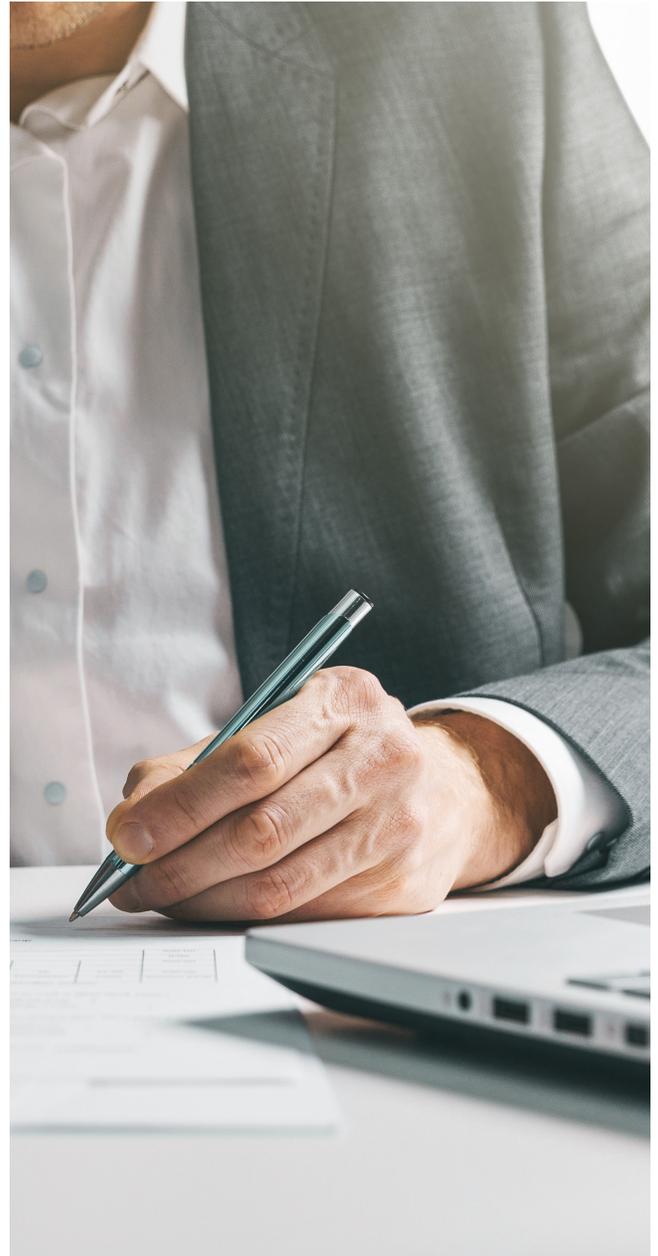
UE Resources

[Checklist: A Guide for Reviewing Contracts](#)

[Contracting Fundamentals](#)

[Avoid Unfavorable Indemnity Provisions in Institution Contracts](#)

[Improving Contracting on Campus: Allocating Risks Between Parties](#)



Sexual Misconduct

Sexual misconduct is a broad category of risk. In this report, “sexual misconduct” includes all forms of sexual misbehavior resulting in a claim, including student-on-student misconduct, educator-on-student misconduct, and the abuse of minors.

Institutions also can face liability for errors during the Title IX process. Alleged perpetrators bring many of these claims, which can include breach-of-contract claims.

Key Vulnerabilities and Risk Management Opportunities

Vulnerabilities	Opportunities
Employees in the Title IX Process	
Inexperienced participants in the Title IX process fail to follow institutional policies or appear to introduce bias — often but not exclusively against alleged perpetrators — during the investigation, hearing, and sanctioning processes.	Hire an experienced Title IX coordinator and consider appropriate compensation to retain a strong coordinator. Include funding in each year’s budget to train participants on the Title IX process and maintaining objectivity throughout investigations and hearings.
Employee reporting obligations and processes	
Employees unaccustomed to fielding sexual misconduct reports may not know their obligation to notify the appropriate colleague. Staff may feel pressure to quickly hide or resolve investigations into reported sexual misconduct by a prominent member of the campus community.	Train all staff on their obligation to report sexual misconduct. Create a feedback loop so the reporter, involved staff members, and supervisors of investigating staff can check a report’s status.
Misconduct reporting channels	
The complexity and size of campus can make it difficult for students, especially first-generation and international students, to know whether or where to report an incident.	Repeatedly publicize sexual misconduct reporting channels through email, social media, on-campus posters, training, and other relevant outlets. Even consider creative communication channels such as pre-class announcements, dining hall displays, ads in athletic programs, and the student newspaper.
Programs for minors	
Programs with minors, such as camps and research, often are proposed and operated by employees with little central oversight. Employees running these programs and their volunteers may be unaware of the institution’s protection of minors policies and practices.	Strengthen centralized oversight of programs with minors. Consider a registry for all programs with minors or adding oversight of youth safety to an employee’s responsibilities.

Sexual Misconduct

197%

increase in frequency of sexual misconduct claims at bachelors and masters institutions

40%

of student-perpetrator losses are **greater than \$200,000**

* When comparing the following two five-year claims periods: 2008-12 and 2013-17.

Since claims can take years to resolve, we exclude recent years to make time periods more directly comparable.

Questions Your Institution's Leaders Should Ask

- What is our established process for a sexual misconduct report to reach the appropriate office to investigate and resolve the incident? Do most employees know and follow the process?
- Once someone makes or forwards a report, is there feedback that notifies the reporter of its progress? How is confidential information protected in this feedback?
- Do all programs with minors follow a single set of policies and procedures?
- How does our institution hire, retain, and train employees involved in the Title IX process? Do those employees feel prepared to execute their roles? If not, what additional support do they need?

UE Resources

[Title IX and VAWA-Campus SaVE Act Resource Collection](#)

[Employee Sexual Misconduct: Higher Ed Resource Collection](#)

[Review of Student-Perpetrator Sexual Assault Claims With Losses](#)

[Review of Student-Victim Sexual Assault Claims With Losses](#)

[Safeguarding Communities From Sexual Predators: What College Presidents and Trustees Should Ask](#)



Slips, Trips, and Falls

Slip, trip, and fall claims include any incident where a person falls and suffers an injury. Common incident locations include icy sidewalks, parking lots, bleachers at special events, stairwells, and storage rooms, but an incident can occur practically anywhere.

Slips, trips, and falls are frequent, with campus guests and distracted walkers at particular risk. Most incidents result in a small financial loss, but some can lead to significant financial settlements, awards, and defense costs.

Key Vulnerabilities and Risk Management Opportunities

Vulnerabilities

Opportunities

Special events

Uncommon events, such as convocation and commencement, combine temporary facilities and guests distracted by the festivities. Staff untrained in event management can overlook hazards like forgotten boxes, wrinkled rugs, faulty chairs, and loose wires.

Assign staff to conduct safety walkthroughs before and during special events. Require event hosts to identify and monitor common walking routes for guests, like from the parking lot to seating and from seating to the restroom, as well as unplanned routes like paths between the event and campus landmarks, dorms, and academic buildings.

Unmonitored property

Many institutions own lightly maintained property distant from the campus' core. Even if there are no formal activities on the property, institutions still can be held liable when someone falls.

Keep an inventory of all institution-owned properties, set a routine walkthrough schedule to seek hazards, document completed walkthroughs, and remedy hazards. Close access to unused campus areas. Someone will eventually visit the area, so continue to conduct occasional walkthroughs despite access restrictions.

Hazard reporting

Someone on campus often knows about a faulty staircase, sidewalk, or walkway. However, many employees see these hazards as outside their job description or simply forget, so the issue persists until someone falls.

Implement an easy-to-use system to report hazards and provide repair feedback to the reporter. Then train faculty and staff on how to use the system.

Parking lots

Pedestrians in parking lots are often distracted by vehicles, conversations, or cell phones, leading them into potholes and other hazards. Further, parking lots can be an afterthought for maintenance crews focused on the core of campus.

Include parking lots on routine safety walkthroughs. Allocate time to inspect the entire lot, including areas between parking spaces. Assume people will take unexpected routes from their car to their destination. Conduct walkthroughs at different times, such as at night and in the rain to identify hazards such as dark spots and puddles that might not be apparent at other times.

Slips, Trips, and Falls

65%

increase in slip, trip, and fall severity

\$2
million

approximate total cost of
UE's largest fall-related loss

* When comparing the following two five-year claims periods: 2008-12 and 2013-17.

Since claims can take years to resolve, we exclude recent years to make time periods more directly comparable.

Questions Your Institution's Leaders Should Ask

- How often does our institution review slip, trip, and fall incident reports? Are there themes in the reports that suggest locations that need more attention or practices that could improve safety?
- Do we know how people use 100% of our institution's owned and leased property? Are all sites inspected regularly? Who is contractually responsible for slip, trip, and fall incidents in our leased and rented properties?
- Roughly what proportion of employees know how to report a hazard? How does our Facilities team respond to promptly inspect and remedy each report?
- Does our institution have a consistent process for responding after someone is injured? How do we care for the injured person without expressing fault?

UE Resources

[Slips, Trips, and Falls Course Collection](#)

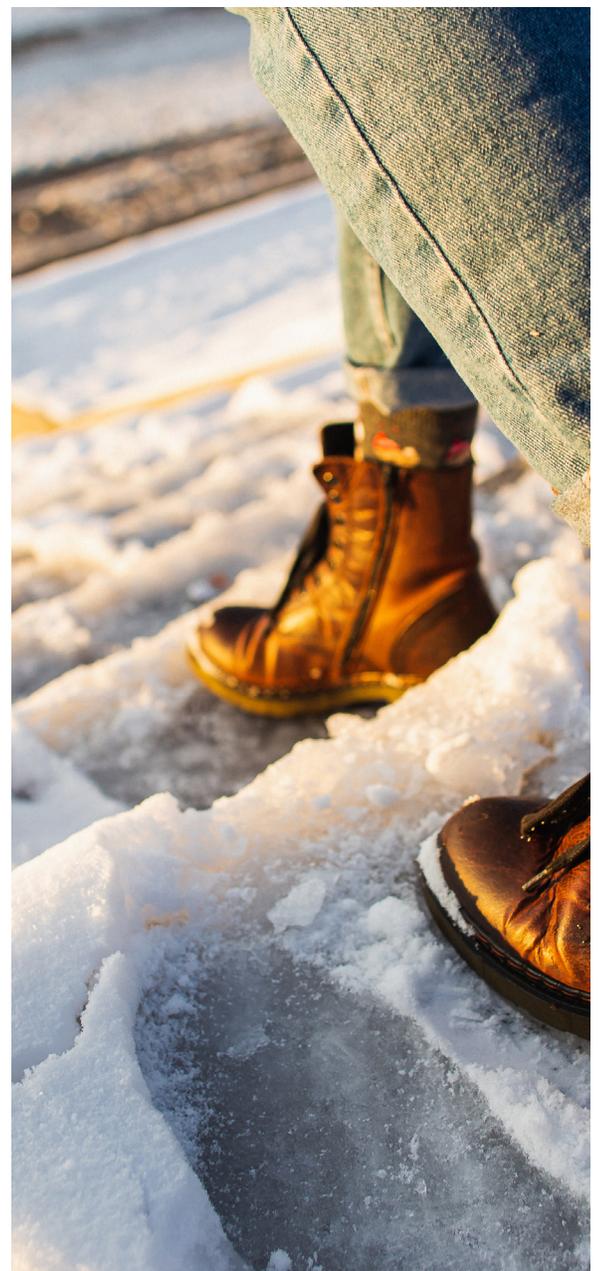
[Help Prevent and Respond to Slips and Falls: Lessons From Claims](#)

[Checklist: Safety at Commencement and Other Special Events](#)

[Take Inventory of Your Off-Campus Real Estate](#)

[Checklist: Investigating Accidents Causing Personal Injury](#)

[Campus Parking Lots: Common But Risky Locations](#)



Student Mental Health and Related Disability Discrimination

These incidents stem from a student's mental health condition, including suicide attempts, deaths by suicide, and alleged improper action — such as disability discrimination — against a student by the institution. Student mental health claims are among the fastest growing in frequency and severity.

Key Vulnerabilities and Risk Management Opportunities

Vulnerabilities

Opportunities

Accommodation processes and limits

Many students are unaware of accommodation policies and their applicability to mental health conditions. Those that are aware may not know how to engage in the process or understand limits to accommodations, particularly in professional programs.

Publicize your institution's accommodations policy and process during undergraduate and graduate orientations and continually throughout each year. In addition to the policy, explain the accommodation process in a student-friendly manner, highlighting students' responsibilities.

Medical leave and return policies

Voluntary or involuntary medical leave might be appropriate for a student's treatment of a mental health condition. However, vague, unpublicized, or missing medical leave policies can cause an institution to respond inconsistently or against the student's best interest when evaluating conditions for when and how the student returns.

Review your institution's voluntary and involuntary medical leave policies — including return policies — for their applicability to mental health conditions. Policies should stipulate documentation requirements for staff to follow. These policies and processes should be easy for a student with a mental health condition to find and understand.

Suicide warning sign intervention

Many students considering suicide display one or more warning signs around faculty, staff, or friends. Unless trained, observers might not notice the signs or know how to help. From a liability perspective, perceived indifference from employees could lead to a claim following a suicide attempt.

Train employees and students on suicide warning signs, including how to request intervention. Reinforce training through campus communications or additional training methods and modules. Practice your institution's response to a report of a potentially suicidal student.

Family notification

In a health or safety emergency, institutions may disclose information otherwise protected under FERPA to a student's parent or guardian. Employees may not be aware of that exception and fail to contact parents even when it could help prevent a student from self-harm. Following an incident, parents have alleged the institution didn't contact them to intervene.

Ensure that all employees who lead response to mental health crises understand exceptions to FERPA and are empowered to contact parents or others who could prevent or mitigate a self-harm incident, when appropriate.

Student Mental Health and Related Disability Discrimination



increase in frequency



increase in severity

* When comparing the following two five-year claims periods: 2008-12 and 2013-17.

Since claims can take years to resolve, we exclude recent years to make time periods more directly comparable.

Questions Your Institution's Leaders Should Ask

- What data does our institution use to monitor students' mental health and determine whether our student mental health initiatives have the intended impact?
- Have we surveyed our students and employees on their awareness of mental health resources? Should we do more to educate our community on how to seek help?
- How do our health and accommodations policies explicitly apply to mental health? Do they consider the full lifecycle of a mental health condition and require appropriate documentation? Are they easy for a student to understand?
- How does our institution train our community to act when our institution notices warning signs of suicide? Is training evidence-based, specific to the person's role, and connected to our policies and resources?

UE Resources

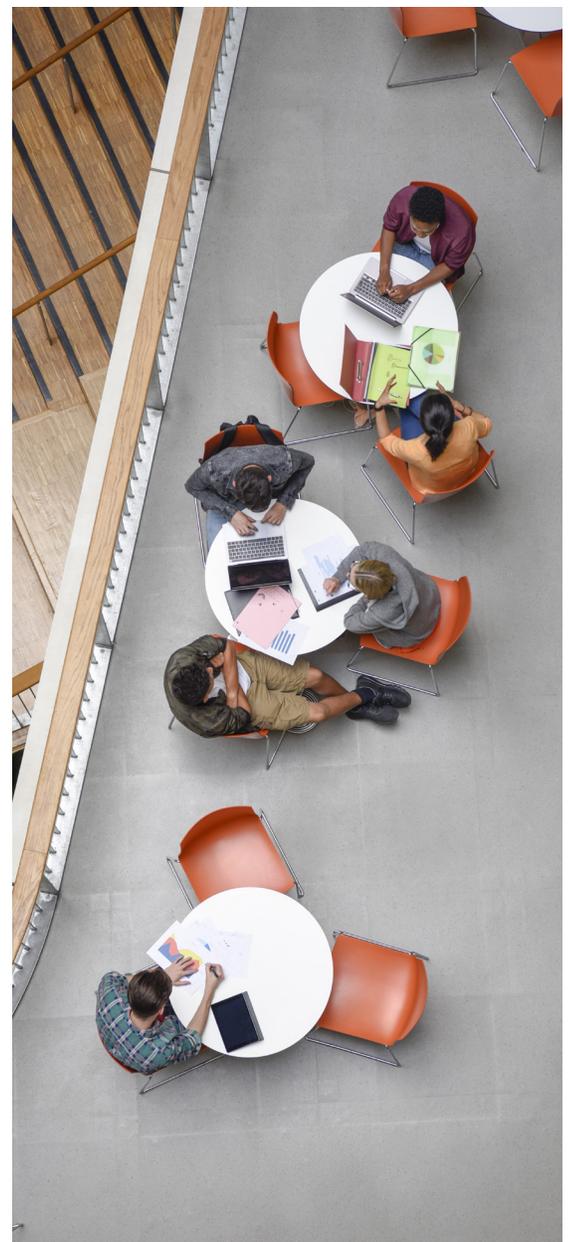
[Student Mental Health on Campus: A Review of Claims](#)

[Student Mental Health on Campus: Claims Involving Suicidal Students](#)

[Checklist: Evaluating Your Mental Health Policies](#)

[Fostering Student Mental Health](#)

[Manage Faculty Who Resist Disability Accommodations Requests](#)



Vehicles

These incidents involve a person driving a vehicle on the institution's behalf and causing damages. Vehicles include cars, passenger vans, golf carts, and other utility vehicles.

Vehicle incidents are somewhat frequent, and serious injuries and deaths can lead to substantial financial losses.

Key Vulnerabilities and Risk Management Opportunities

Vulnerabilities

Opportunities

Repeat motor vehicle record (MVR) checks

Most institutions conduct MVR checks before allowing someone to drive on institution business. However, many institutions don't re-check in following years. Employees' driving records can change throughout their careers.

Re-run MVR checks every few years to consider whether employees and volunteers with recent safety violations may continue driving for your institution.

Golf carts

Golf carts tend to operate on pedestrian paths, increasing the likelihood of a collision with a person relative to on-road vehicles. While top speeds are far lower than other vehicles, they still are fast enough to cause serious injury on collision or rollover. Yet, golf cart safety is an afterthought at many institutions.

Apply similar safety standards to golf cart drivers as automobile drivers. For occasional drivers who use golf carts during events, such as admission staff during an open house, consider training specific to the event's circumstances or providing expert golf cart drivers.

Shifting risk to third parties

Urgently hiring third-party transportation in moments of need leaves little time for vetting, weakening institutions' ability to negotiate for proper risk transfer. Even in times with less urgency, some institutions fail to consider indemnification and insurance requirements in their contracts.

Pre-vet a few providers and their contracts so your institution can quickly turn to a trusted partner. When long-term contracts are up for renewal, vet the provider again and determine whether changes need to be made to the contract, including indemnification and insurance requirements.

Vehicles

21%

of UE vehicle claims involve
golf carts or utility vehicles

28%

increase in confidence in
planning and preparing for safe
trips after driver safety training

* When comparing the following two five-year claims periods: 2008-12 and 2013-17.

Since claims can take years to resolve, we exclude recent years to make time periods more directly comparable.

Questions Your Institution's Leaders Should Ask

- Does our institution know everyone who drives on our behalf, including drivers who use their own vehicles? How do we verify our driver lists are comprehensive?
- How often do we run updated MVR checks for previously approved drivers?
- How do we vet third-party transportation providers and drivers for safety concerns?
- How do we draft contracts with third-party transportation providers to shift as much risk as possible away from our institution?
- How do we train and manage drivers of golf carts and other vehicles used for cross-campus transportation?

UE Resources

[Checklist: Safety in Student and Employee Transportation](#)

[Transportation Safety Course Collection](#)

[Transportation on Campus: Managing the Risk of Motor Vehicles](#)

[Golf Carts on Campus](#)



Workplace Discrimination

Workplace discrimination claims involve adverse or unequal treatment of employees or students based on a protected class. This includes retaliation against someone who alleges discrimination and people who support someone else's allegations.

Some risk mitigation tactics can address many types of discrimination, while others target specific types of discrimination or specific audiences.



Work with an attorney to identify protected classes at your institution. Some localities and states add protected classes on top of the ones stipulated at the federal level. In addition, some institutional policies include protected classes beyond legal requirements.

Key Vulnerabilities and Risk Management Opportunities

Vulnerabilities

Opportunities

Supervisor retaliation

Many supervisors are hired or promoted for their content expertise, not for their managerial skills, and training may be limited. These supervisors may not know how to handle a discrimination matter and — knowingly or unknowingly — retaliate against an employee who alleges discrimination.

Train managers to avoid discrimination and retaliation and when to involve Human Resources (HR) for a discrimination complaint. During performance evaluations, ask direct reports about their managers' ability to create a fair, equitable workplace.

Performance evaluations and documentation

Some managers treat performance evaluations as an administrative burden, giving all their direct reports positive reviews with little documentation and addressing poor performance verbally or not at all. Under-resourced HR offices may be unaware that managers aren't documenting performance and discipline sufficiently or may not have the ability to enforce a standard.

Establish expectations for documenting performance reviews and discipline at all levels of your institution. Regularly evaluate reviews to identify managers who fail to include required detail or supporting evidence in their performance evaluations and provide them with additional training. Require HR approval for disciplining or terminating an employee.

Recruitment and hiring

Many institutions' decentralized structure delegates hiring responsibilities to the hiring manager, with minimal support from a centralized HR office. Lacking support, hiring managers can inadvertently add biases to their search.

Increase HR's capacity to assist in hiring. Analyze recruitment and hiring data for biases. If candidates from a protected class disproportionately fail to advance, adjust your practices and train hiring managers to correct for bias.

Employee disability accommodation practices

Accommodation practices may be too flexible or too rigid. Too much flexibility leads to inconsistent accommodations, over-accommodating some disabilities and under-accommodating others. Exceedingly rigid accommodation applies a blanket approach that could exclude an otherwise reasonable accommodation.

Establish guidelines for accommodations as a starting point, then engage in an interactive process to determine what is necessary and feasible for you to provide. Most requests have unique factors, meaning accommodations could reasonably differ, despite similar circumstances.

Workplace Discrimination

More than
1/5

discrimination losses
greater than \$250,000

55%

increase in disability discrimination severity, one of the fastest-growing types of workplace discrimination

* When comparing the following two five-year claims periods: 2008-12 and 2013-17.

Since claims can take years to resolve, we exclude recent years to make time periods more directly comparable.

Questions Your Institution's Leaders Should Ask

- When was our institution's last employee climate survey? How did our institution fare on questions relating to diversity, equity, and inclusion?
- How do we analyze our hiring outcomes to identify whether there is cause for further investigation of biases in hiring?
- Review discrimination allegations from the past several years. Are there commonalities among the reports that have gone unaddressed?
- When hiring or promoting supervisors, how much weight is given to managerial skills?
- How do we train supervisors on their roles in responding to allegations of discrimination and requests for disability accommodations?
- Do front line managers understand they need not — and shouldn't — handle requests for disability accommodations on their own? Do they know which offices or personnel to approach for help?

UE Resources

[Recognizing and Avoiding Retaliatory Behavior – Supervisors](#)

[Avoiding Supervisory Pitfalls](#)

[Checklists: Workplace Anti-Discrimination Policies and Response](#)

[Lessons from Discrimination and Wrongful Termination Claims](#)

[Preventing Workplace Race Discrimination](#)

[Guide to Preventing Retaliation on Campus](#)

[Checklist: Assessing Your Performance Evaluation System](#)

[Properly Documenting Employee Disciplinary Actions](#)





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