

‘Hold harmless’ option for staff babysitting and employee references

by Holly Elissa Bruno

CASE STUDY 1: Teacher Ramona is stunned. She babysits for the Williams family. The Williams’ twins are in her preschool class. Ramona loves the twins and depends on the babysitting income. Today Ramona’s director, Isaiah, announces a new policy: *Staff members may not babysit for program families.* “That can’t be right!” Ramona gasps.

CASE STUDY 2: Director Isaiah is frustrated. He is interviewing applicants for infant/toddler lead teacher. Every time he calls for a reference, he is told, “Our policy is to release only whether the person worked for us or not, plus her/his dates of employment.” Isaiah needs to know the

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applicant’s classroom management skills, creativity with curriculum, and ability to work with special needs children. “How am I supposed to find the best candidate when I can’t get any substantive information?” Isaiah fumes.

Help for Ramona, Isaiah, and all of us may be on the way in the form of ‘hold harmless’ documents that allow for flexibility in enforcing program policies. Let’s take a look at how ‘hold harmless’ can make a difference to both teachers and administrators.

When staff babysit for program families

Early childhood teachers like Ramona often work multiple jobs to survive financially. Over the years, teachers have grown accustomed to accepting work as babysitters for program families. After all, parents and children know and trust their teachers. Teachers love the children and need the work. This has seemed like a win-win arrangement.

But is it? Consider these possibilities: While babysitting, a teacher trips and injures the child. The stricken parents sue the program, exclaiming: “We only hired her because she works for you! You are responsible too!”

Or, children, luxuriating in one-on-one attention with a babysitting teacher, demand the same special treatment in the classroom. “My teacher likes me best. She even comes to my house,” boasts preschooler Tad. Perhaps the family asks the teacher to join them on a ski weekend. Professional boundaries blur. Other teachers feel resentful.

A seemingly simple win-win arrangement like babysitting for program families can tip over like a milkshake into a splattered mess. Given these potential issues, which answer would you select in the Pop Quiz on the next page?

Nia’s safest response is either: c) Our policy forbids our babysitting for program families; or, d) Our policy forbids babysitting. However, if Rafiq’s parents sign a ‘hold harmless’ document, Winette may be able to continue babysitting. Why is this?

What’s the big deal?

Programs that allow staff to babysit for families can be sued if the child is harmed. Logically, you might ask: “Isn’t this just between the babysitter and the family?” The answer is, “No. Programs can be liable if a child is harmed while a staff member is babysitting.” After all,

Pop Quiz

Baby Rafiq's parents ask infant teacher, Winette, to babysit for Rafiq on Friday nights. Rafiq's parents trust Winette and value the strong and caring bond she has built with Rafiq. The parents look forward to their Friday 'date night' thanks to Winette's babysitting. When Winette tells Director, Nia, about her new job, Nia responds:

- "Great. You'll do a fine job."
- "Why don't you post a notice on the parent bulletin board announcing your babysitting services?"
- "Our policy forbids babysitting by staff for families in our program."
- "Our policy forbids babysitting for program families. However, if Rafiq's parents sign a 'hold harmless' document, you may be able to take the job."

the family met the teacher through the program, and relied upon the program's representation that the teacher is qualified to work with children. When Rafiq's parents hire Winette, they do so based in part on this representation. Winette is currently employed by the program. Like it or not, the program can be held accountable.

As a result, programs need to strongly consider a policy like this for both staff and family handbooks:

'No Babysitting' Policy

Staff members cannot babysit for families with children enrolled in our program.

'Hold harmless' to the rescue

Colleagues at a number of national for-profit programs have chosen to offer

an option to parents who insist on hiring teachers as babysitters. Parents can choose to essentially waive their right to hold the program liable should a child be harmed while a teacher babysits.

In that case, parents agree to *hold your program harmless*. Parents who sign a *hold harmless* agreement and hire a teacher to babysit acknowledge that they:

- Are aware of the program's *No Babysitting policy*; and
- In choosing to bypass the policy, accept the consequences of their choice.

These parents would complete, sign, and date the consent form below. Some programs require parents to sign and date a new copy of this form each time they hire a staff member to babysit. Other programs require families to complete and sign the form periodically, e.g. every three months. In either case, the documentation needs to be kept on file with a copy given to the family. Given these options, do you think your program needs to update or change any of its policies and/or procedures?

Programs, like individuals, can be sued for many reasons. Having a *No Babysitting policy*, and *Hold Harmless* documentation will not stop your program from being sued. However, with the *No Babysitting policy* and *Hold Harmless* documentation completed and kept up-to-date, your program is less likely to be found liable.

Case Study: Rafiq

Rafiq's parents sign a "hold harmless" form each time they hire Winette to babysit for Rafiq. Winette leaves your program to teach at a nearby program. She continues to babysit for Rafiq. If Winette causes injury to Rafiq, can your program be sued?

If *hold harmless* consent forms can help resolve this babysitting challenge, where else might these forms help early childhood professionals?

References of substance

Licensing regulations require employers to check references on applicants prior to hiring. Directors seeking the most qualified person for the position need to know details about the applicant's past job performance. Many directors report they cannot obtain meaningful, substantive information when calling former bosses for references on an applicant.

Let's look at what the challenge is and how a 'hold harmless' document might again come to the rescue (see box on page 71).

Current policies on providing employee references

Check your program's policy on providing references on former employees. You are likely to find: *Our policy is to release only whether the person was employed by us, and the dates of the person's employment.*

Where does this leave Soledad? At best, she can confirm that Mari worked for her, and provide the dates of her employment. Soledad's hands are tied after that. She cannot reveal that Mari was a substandard employee. If Soledad were to say more, she would not only be in violation of her program's policies, she also makes herself vulnerable to a lawsuit by Mari for slander. (Slander is willfully harming another person's reputation in the community.)

In some cases, the policy on providing references might include this additional clause: *In response to the question, "Would you rehire this person," the person called for the reference can answer either 'yes' or 'no.'* Were this her program's policy, Soledad could respond "No" to Isaiah's ques-

tion: "Would you rehire Mari?" That one word response would be the limit of what Soledad could say.

What if the potential new employer, Isaiah, is impressed with Mari's interview? Having no further information to back up Soledad's "No," Isaiah hires Mari. Once hired, Mari shows up late for work and expects toddlers to behave like preschoolers. Mari's toddlers grow anxious and their parents complain to Isaiah.

How can we ensure that employee references are useful and thorough, given these tight restrictions on what information can be shared?

Holding former employers harmless for references

Consider the ramifications of the policy shown above on employee references. Mari completes this form, authorizing Soledad to provide a reference on the areas Mari initials. When Isaiah asks Soledad about Mari's job performance, Soledad can share her professional opinion on Mari's performance on any areas initialed. "In my professional opinion, Mari's classroom expertise in developmentally appropriate practices is lacking," Soledad can tell Isaiah. If Soledad is asked to comment on an area Mari did not initial such as "Timeliness" or "Attendance," Soledad can say, "I do not have the employee's permission to comment on that/those areas."

Directors can ask their teachers to complete these forms at any time during employment, and as part of the exit interview. Because Mari has consented, Soledad can provide an honest evaluation of Mari's performance and Mari holds Soledad harmless for providing that reference. Everyone benefits. Isaiah makes an informed hiring decision,

Soledad provides her honest professional opinion, and Mari controls the areas of her performance that can be discussed.

The 'hold harmless' clause comes to the rescue again.

Where's the catch?

In order to gain a benefit, such as being able to babysit or to be given a substantive reference, an employee can waive her/his right to holding the employer liable. Perhaps because 'hold harmless' documents can appear to be signed under a degree of duress, not all courts are willing to uphold these agreements. By some estimates, only about 50% of hold harmless consents are upheld. Giving up a right is frowned upon by our court system.

Case Study: Nazareth

Head Teacher Nazareth does not trust Gina, her former director at Little Darlings Academy, to provide a positive reference. Nazareth does not include Gina on her list of references. During her interview, Nazareth mentions her past employment at Little Darlings. Can the interviewing director call Gina at Little Darlings to ask about Nazareth's performance? If Gina is called for a reference on Nazareth, what can she say?

Just breathe

Nonetheless, if teachers like Winette can continue to babysit and directors like Isaiah can get information they need to hire the most qualified teachers, hold harmless agreements can give our programs breathing space.

Where does your program stand on these everyday challenges? Could you use some breathing room?

Pop Quiz

Preschool teacher, Mari, quit just before Director, Soledad, fired her. Mari was unskilled with developmentally appropriate practices, and was frequently late for work. Unbeknownst to Soledad, Mari applied for another teaching position and gave Soledad's name as a reference. When Mari's potential new Director, Isaiah, calls Soledad to ask, "What do you think of Mari as a teacher?" Soledad should:

- Share only the fact that Mari worked for her and the dates of Mari's employment;
- Respond "yes" or "no" to the question: "Would you rehire Mari?"
- Confide 'off the record' that Mari was a disappointment and a troublemaker;
- Say, "In my professional opinion, I do not recommend Mari for the position."
- Let me check our files to see if Mari gave us written permission to comment on her performance.

Consent to provide reference

I, _____ (employee name),
agree to hold _____ (program title)
harmless for any reference an agent of that program provides to a potential employer of mine.

Specifically, I authorize that these areas of my job performance may be openly discussed
(Initial each area for which you give consent):

- | | |
|--|--|
| <input type="checkbox"/> Classroom management | <input type="checkbox"/> Developmentally appropriate practices |
| <input type="checkbox"/> Relationships with parents/families | <input type="checkbox"/> Curriculum expertise and creativity |
| <input type="checkbox"/> Inclusiveness | <input type="checkbox"/> Timeliness |
| <input type="checkbox"/> Attendance | <input type="checkbox"/> Taking initiative |
| <input type="checkbox"/> Respect for diversity | <input type="checkbox"/> Team player |
| <input type="checkbox"/> Other, (Specify): _____ | |

(Employee's name, position)

(Administrator's name, title)

Date _____

Date _____

Consent to hold _____ program harmless for staff babysitting

We/I _____ parents/legal guardians of _____ (name of child/ren)
agree to hold _____ (name of program) harmless for any harm that our child may experience while under the care of staff member
_____ (teacher's name). We are aware of the program's *No Babysitting policy*, and chose to take exception to that policy.

We hold _____ (name of program) harmless for any harm that may befall our child _____ (child's name)
when staff member _____ (teacher's name) babysits for our child on _____ (date and time).

Parent(s)/guardian's signature

Date

Program Director signature

Date

Teacher signature

Date