

VOLUNTEERS & THE LAW

The Legal Issues of Working with Volunteers

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Volunteers & the Law: The Legal Issues of Working with Volunteers

“It is one of the most beautiful compensations of life that no man can sincerely try to help another without helping himself.” – Ralph Waldo Emerson

Introduction

Volunteers play an important role in our community. The activities they engage in can include anything from caring for children, feeding the homeless, and rescuing animals to providing information and support and cleaning up parks. Although most volunteers pose no legal risk, others do. And although some volunteer activities require minimal physical exertion, others may hold a particular level of danger for the participant or volunteer. Volunteers and staff of nonprofit organizations who engage in these activities take on certain responsibilities. If these responsibilities are not handled with care, the volunteer and organization can be held accountable. Thus, it is important to understand ways you can minimize your risk in working with volunteers.

First: A Caution

First, a caution (also known as a disclaimer) that explains the limitations of this handout and presentation, and why you should not rely on it for legal advice. We will discuss basic legal concepts and look at how they apply to some volunteer activities. There are many legal issues we won't have time to discuss. Also, some of the issues we summarize in a few sentences can take up an entire shelf in a law library. If you have a specific legal concern, you will need to examine the issue more thoroughly.

This handout is divided into three sections:

- (1) What Could Go Wrong
- (2) What Laws Apply When Working With Volunteers
- (3) What You Can Do to Prevent Things from Going Wrong

The third section is the most important because it focuses on prevention. By understanding some of the legal issues involved in working with volunteers, we hope to help you avoid getting into trouble. But, to be sure, legal issues and the law will change over time. Thus, our disclaimer:

These materials are provided for general educational purposes only. Because the circumstances of each situation involving a particular volunteer are unique, you should contact legal counsel with any specific issues or questions.

I. What Could Go Wrong?

A. Injuries to Volunteers

It is important to remember that, even with the best planning, accidents can happen that result in physical injuries to volunteers – especially when physical activity is part of the volunteer process. Volunteers also may be harmed by negligence that puts them at risk unnecessarily. Workplace safety laws, such as the Occupational Safety and Health Act (OSHA) apply to volunteers.

Claims of discrimination, harassment (including sexual harassment), and failure to accommodate a disability or religion are all possibilities when working with volunteers. An organization must provide reasonable accommodations for volunteers with disabilities. If accommodation is not financially possible, document why. Consider describing the “essential functions” of the volunteer position in writing; this can be an invaluable defense to any failure to accommodate claim.

Volunteers may suffer harm under more traditional legal theories, such as intentional infliction of emotion distress or defamation. These types of claims arise most often when you’ve told a volunteer that the organization no longer needs his or her services as a volunteer.

B. Injuries Caused by Volunteers

Unfortunately, even the best-intentioned volunteer has the potential to injure your clients or staff. These include harassment (sexual or otherwise), assault and battery, negligence, and even crimes such as child abuse or molestation. Your organization may be vicariously liable for these acts or crimes, especially in cases of negligent hiring or retention or failure to adequately supervise or train volunteers. Negligent hiring or retention occurs when someone within the organization knew or should have known that a volunteer had some tendency that would cause injury to someone else and did nothing to prevent it. Even if the volunteer’s actions don’t result in a lawsuit or monetary damage, they could just as easily damage your organization’s reputation through bad publicity.

Relationships between clients and staff or volunteer members can pose a problem for any organization, not just those working with young children. Inappropriate relationships between volunteers and clients should be expressly forbidden.

Volunteers also have the potential to injure the nonprofit itself. If a volunteer acts as an agent of your organization, or the organization holds a volunteer out as its agent – either intentionally or accidentally – the volunteer could legally bind the organization.

II. What Laws Apply When Working With Volunteers?

A. Volunteer Protection Act of 1997

The Volunteer Protection Act (VPA) protects volunteers for a 501(c)(3) organization, but it does not protect the organization itself. Essentially, the law provides that a volunteer (including a board member) cannot be liable for acts that occur within the scope of his or her authority as a volunteer for the organization, bearing in mind the training and certification he or she has received. Certain acts and accidents, including car accidents, crimes of violence, hate crimes, sexual offenses, violations of civil rights, and actions taken while under the influence of alcohol or drugs, are *excluded* from this immunity provision. The VPA also prevents an individual who files a lawsuit from recovering punitive damages against volunteers.

B. Charitable Immunity (Georgia)

In Georgia, a charitable institution is not liable for its officers' or employees' negligence unless the organization fails to exercise ordinary care in hiring or retaining competent officers and employees or the plaintiff is a paying recipient of services from the organization. This charitable immunity is waived if the organization has an insurance policy, but only to the extent the insurance policy covers the liability.

Directors and officers of nonprofit organizations enjoy limited protection from liability as long as they are acting in good faith and within the scope of their duties. Exceptions to this protection include damage or injury caused by willful or wanton misconduct.

Community service agencies and their volunteers are not liable for acts performed while participating in a community service program, except when these acts involve gross negligence, recklessness, or willful misconduct.

Sports program volunteers for non-profit associations are not liable for acts or omissions in conducting or sponsoring the programs, unless they engage in willful and wanton misconduct or gross negligence.

C. Screening Volunteers or Potential Volunteers

When conducting background or investigatory checks on employees, applicants, or volunteers, nonprofit organizations must comply with the Fair Credit Reporting Act (FCRA). The FCRA requires you to get written authorization from an employee, applicant, or volunteer before conducting background checks or credit checks, checking driving records, or hiring an agency to conduct other background checks.

D. Wage and Hour Laws – Make Sure Your “Volunteers” are Truly Volunteers

The Fair Labor Standards Act (FLSA) governs minimum wage, child labor laws, and overtime pay for employees. To ensure that your workers really are “volunteers” and not employees, bear in mind the FLSA’s definition:

- A volunteer provides entirely voluntary services.
- The work done by a volunteer benefits the agency more than the volunteer.
- A volunteer does not replace an employee. (Note: employees are not “volunteers” if they are doing their regular jobs for extra time without pay.)
- A volunteer has no expectation of compensation.
- A volunteer provides services during non-working hours.
- A volunteer’s duties are inconsequential and distinctly different from the duties of the organization’s regular employees.

Don’t be tempted to pay your volunteers “a little something” for helping out. Paying a volunteer for his or her efforts is the fastest way to transform him or her into an employee, subjecting you to the requirements of the FLSA, workers’ compensation insurance, and other federal and state laws. You may reimburse volunteers for their expenses and give occasional, non-monetary gifts. Rewarding volunteers in a non-financial way is appropriate; consider a luncheon in honor of volunteers, or a plaque or other small token of appreciation. Volunteers have many different motivations, but almost all appreciate recognition of their efforts and contribution to your organization.

III. What Can You Do to Prevent Things from Going Wrong?

A. Provide Volunteers with a Safe Place to Volunteer

A nonprofit organization has an obligation to provide safe premises to everyone who enters an area under its control, including buildings or property owned or rented by the organization and other spaces used for its activities, such as a park or a room at a community center.

Checklist: Safe Spaces

- √ Check for potential hazards, particularly if there are children in your care.
- √ Ensure that facilities like playing fields or gymnasiums are adequate for the activity and do not contain hazards. When outdoors, check the surrounding areas.
- √ Conduct regular building safety checks.

Checklist: Building Safety

- √ First aid supplies are adequate and easily located

- √ Fire extinguishers are visible and tested regularly
- √ Exit doors are not blocked
- √ Adequate lighting exists in all areas, including stairways
- √ Electrical circuits are not overloaded
- √ Carpets, treads, and tiles are secure
- √ Handrails and exterior guardrails are in good repair
- √ Water leaks are quickly fixed

B. Require Applications for Potential Volunteers

A simple way to avoid some of these legal issues on the front end is to have all potential volunteers complete a formal, written application to volunteer with your organization. An application to volunteer should include an equal employment opportunity (EEO) statement and a clause stating that, if the volunteer has provided false information or omitted important details on the application, the volunteer relationship will be terminated. If you are going to conduct credit or other background checks, you must include the written authorization and notice of rights required by the FCRA, discussed above.

Consider asking potential volunteers about their educational background and specific areas of interest. You may also want to ask potential volunteers whether they have worked with other nonprofits and to provide references.

Checklist: Applications

- √ Create volunteer enrollment or application forms that clearly ask about skills and abilities that may be required.
- √ Create a volunteer interview form for enquiring about specific areas of concern and recording the responses.

C. Screen Your Volunteers

Use the information from the application to learn more about your potential volunteer. Call the references. Check with other nonprofit organizations the volunteer has worked with. Consider contacting the potential volunteer's supervisor or manager at work. Ask him or her to review your standards of conduct or written rules and state whether the applicant would make a good volunteer. For positions that will require an applicant to operate a vehicle, verify that the he or she has a good driving record and keep a copy of his or her license on file. In-person interviews and background checks also are simple yet effective ways to screen volunteers. When interviewing potential volunteers, tailor your questions to the specific volunteer position. Credit and other background checks are important for positions of trust or financial responsibility. Checking criminal records is voluntary, but depending on the position, it may be negligent NOT to perform a criminal background check.

In screening your potential volunteers, be on the lookout for a few red flags. Gaps in employment history, unexplained geographic moves, and inconsistencies with references may cause concern. Obviously, any criminal convictions should sound an alarm.

Checklist: Screening

- √ Ask for references, and then follow up.
- √ If appropriate, conduct criminal background checks or driving record checks.

*****Additional information on how to obtain driving records, Georgia criminal background checks, and organizations that offer reduced prices for nonprofit organizations is attached.***

D. Provide Written Rules or Standards of Conduct

Depending on the size of your organization, number of volunteers, and type of volunteer activities, you may want to provide standards of conduct or written rules for volunteers to review and follow. Again, they can be extremely detailed or more general; at a minimum, consider putting it in writing that inappropriate contact with clients, violations of state or federal law, and use of profanity or other inappropriate language will not be tolerated. To clarify more detailed written rules, some organizations have created the equivalent of an “employee handbook” for volunteers. You may give out copies of the rules or standards, or simply post them in a visible location. If you do provide written copies to all volunteers, consider asking them to sign a statement that they have read and understand the rules or standards of conduct.

Checklist: Make sure Volunteers know their Responsibilities

- √ Provide new volunteers with documentation that relates to their roles and responsibilities.
- √ Give volunteers a copy of your organization’s policies and procedures and any safety instructions that relate to their specific volunteer activities.
- √ Record any changes to a volunteer’s duties.
- √ Ensure that volunteers know their direct supervisor and are aware of the person with authority they can go to if they have a concern.
- √ Advise volunteers to ask for assistance if they are not sure of a policy or procedure.
- √ Advise volunteers to refuse to proceed with any activity they feel may be unsafe or for which they think there is insufficient supervision.
- √ Make sure volunteers know the limits of their authority, such as signing purchase orders, spending money they expect to be reimbursed, or entering into agreements (verbal or written) on behalf of the organization.

E. Train Your Volunteers

Volunteers should know what is expected of them and what they may and may not do. This is especially true for infrequent volunteers. Understanding what they've volunteered to do and how you expect them to fulfill their commitment will make them better volunteers (and make them more likely to volunteer again!). Consider providing an orientation or training session for new volunteers. It can be as detailed as what you provide to new staff members or as simple as, "your job today is to paint this picnic shed, and here are the materials you'll need." You may also provide a "trial period" for all new volunteers, or have them work alongside an experienced volunteer for a short time. Orientation and training also provide a good opportunity to distribute written rules or standards of conduct where appropriate.

Checklist: Training

- √ Train volunteers for activities with which they have limited experience.
- √ Provide any necessary safety training.

F. Supervise Your Volunteers

Screening does not end when you decide to accept a new volunteer! After the volunteer relationship begins, continue to evaluate your new volunteer by assessing his or her performance and interaction with your clients. This is especially important at the beginning of the volunteer relationship and when the volunteer holds a position of trust. Give feedback so the volunteer knows what he or she can improve, and make sure the volunteer understands where he or she can go with questions or concerns.

End the volunteer relationship if necessary to avoid risk to the organization and those it serves. The fact that a volunteer is unpaid does not mean you cannot ask the volunteer not to return, but investigate first. As a general rule, it is best to suspend the volunteer pending your investigation; terminate the relationship "on the spot" only in exceptional circumstances. Consider seeking an objective third-party's opinion first. When you do find that you must end a volunteer relationship, ensure that you do so tactfully. Do not humiliate the volunteer or take other action that disparages the person or causes unnecessary distress.

Checklist: Supervision

- √ Supervise volunteers to ensure they understand their duties and follow safe practices.
- √ Regularly check-in with volunteers about their activities.
- √ Occasionally check-in with participants to ensure there are no problems.

G. Use Waivers

Many nonprofits have volunteers sign waivers releasing all rights to sue the organization and its members for injuries arising out of the volunteer relationship. When

drafted correctly, these waivers are enforceable in Georgia and provide that the organization will not be liable for any accidents or injuries to the volunteer during the scope of his or her volunteer work, in the absence of any willful or wanton misconduct by the organization.

H. Vehicles

Cars, trucks, vans, and even bikes and golf carts can injure volunteers *and* provide volunteers with a way to injure others. Although insurance may protect your organization from some losses, it does not generally cover accidents that occur while a volunteer is under the influence of drugs or alcohol. In a recent decision, one court found that a nonprofit's insurance company was not required to cover an accident that occurred after an event where alcohol was served. In this particular case, the organization had not purchased coverage specifically for accidents that occurred while it was engaged in the business of serving alcohol. Keep this in mind when planning fund-raising or other events where alcohol is served.

Checklist: Driving

- √ Screen volunteers to make sure they have a valid driver's license and insurance.
- √ Conduct a safety check of the vehicle.
- √ Ensure all passengers use seatbelts.
- √ Take extra care with passengers with special needs, such as children, seniors, or passengers with disabilities.

I. Purchase Insurance

As mentioned above, your organization may purchase liability insurance for injuries to volunteers and injuries caused by volunteers to clients or others. Available insurance coverage includes "volunteer accident" insurance, auto insurance, an umbrella policy for the organization, and lawsuit insurance. In addition, many volunteers may be protected under umbrella policies on their own homeowner's or even renter's insurance. Bear in mind that insurance does not prevent injuries or other harmful incidents from happening it only protects the organization financially when an injury does occur. Prevention is still the key.

The needs of each volunteer and organization are unique, and so are the insurance options available. Some general insurance options include:

- Options for volunteers: homeowners insurance and auto insurance.
- Options for organizations: comprehensive general liability insurance, auto insurance, professional liability insurance, and insurance for those injured on the job.

Checklist: Insurance

- √ Ensure that appropriate insurance covering all activities is obtained and maintained.
- √ Check that volunteers obtain and maintain appropriate insurance for their activities (for example, car insurance).

USEFUL LINKS

For more information about ways to manage volunteer risk, visit:

Nonprofit Risk Management Center:

<http://nonprofitrisk.org/>

Corporation for National & Community Service:

<http://nationalserviceresources.org/>