



This article presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

ADDRESSING THE RISKS OF WORKING WITH VOLUNTEERS

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Everyone understands that nonprofits rely on volunteers to fulfill their missions. But are there any legal issues that you should be aware of when it comes to volunteers? Unlike for-profit organizations, which clearly must comply with specific laws that govern their treatment of paid employees, nonprofits face some uncertainty. What employment laws apply and don't apply to volunteers? What are the potential risks of working with volunteers, and how can you avoid them? Should you screen potential volunteers? If so, how? Can your volunteers be sued? How can you help protect them? This article addresses these and other important legal questions related to volunteer management.

What Are the Liabilities and Risks of Working with Volunteers?

I. 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.

Non-physical injuries to volunteers can occur as well. Claims of discrimination, harassment (including sexual harassment), and failure to accommodate a disability or religion are all possibilities when working with volunteers.

II. Injuries Caused by Volunteers

Unfortunately, even the best-intentioned volunteer has the potential to injure your clients, staff or third parties. These potential injuries include harassment (sexual and otherwise), assault and battery, negligence, and even crimes such as child abuse or molestation. Your organization may be vicariously (indirectly) 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 post 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.

III. 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 fundraising or other events where alcohol is served.

What Laws Apply When Working with Volunteers?

I. 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.

II. 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 nonprofit associations are not liable for acts or omissions in conducting or sponsoring the programs, unless they engage in willful and wanton (extremely reckless) misconduct or gross negligence.

III. 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 them an employee, subjecting you to the requirements of the FLSA, workers’ compensation insurance, and other federal and state laws.

What Are Some Solutions?

I. Application to Volunteer

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 Fair Credit Reporting Act.

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.

II. Screening

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 (such as when the volunteer will be working directly with children or the elderly), 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.

III. 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.

IV. Training

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 that is appropriate.

V. 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.

Consider describing the "essential functions" of the volunteer position in writing; this can be an invaluable defense to any future failure-to-accommodate claim.

VI. Don't Pay Your Volunteers

Don't forget that paying a volunteer can transform them into an employee. You may reimburse volunteers for their expenses and give occasional, non-monetary gifts. Keep in mind that the IRS equates gifts cards with 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.

VII. Supervision

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.

VII. Insurance

As mentioned above, your organization may purchase liability insurance for injuries to volunteers or that are 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 homeowners 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.