



VOLUNTEER RISKS – ANSWERS TO COMMON QUESTIONS

Q -- “We have volunteers sign a waiver of liability. Doesn’t that protect us, if a volunteer is injured and sues us? “

A – Not necessarily. Waivers have been struck down many times in court. Judges often rule that the waiver is too vague, or is written unfairly in the organization’s favor. The primary benefit of a waiver is to make volunteers aware that accidents can happen, and that they should take care in carrying out their assignments.

Q – Don’t I increase my liability if I have a safety training program? It’s an acknowledgement that volunteers could be hurt, or hurt someone else.

A – The opposite is true. You increase your liability if you do *not* provide safety training, and take other reasonable steps to manage your foreseeable risks. Liability is grounded in negligence. A working definition of negligence: You failed to do something you should have known to do, or you did something you should have known not to do. When you properly screen, train and supervise your volunteers, and hold them accountable for following your procedures, you are managing the liability risk exposure. When you fail to do any of those things, you increase your liability risk.

Q – What is the Volunteer Protection Act? Does it provide immunity for my volunteers, as long as they are acting in good faith?

A – The federal Volunteer Protection Act of 1997, and the state laws modeled on it, were well-intentioned attempts to shield volunteers from liability as long as they carry out their duties in good faith. However, the law has two immense loopholes, in the form of exclusions. First, it excludes acts of “gross negligence” – a term plaintiffs’ attorneys can make very elastic. Second, it excludes operation of motor vehicles. With those two loopholes in the law, immunity is mostly an illusion.

Q—How should we respond if a volunteer is assaulted by another volunteer?

A – Investigate the incident, just as you would if one paid employee assaulted another. If an injury is obvious, get medical attention for the victim immediately. Interview both people separately, and interview any witnesses. If there is no physical evidence of an assault, determine to the best of your ability if the alleged assault actually took place. Learn as much detail about what happened as you can. If your investigation determines that an assault indeed happened, dismiss the aggressor volunteer immediately and make sure the victim knows he or she has the right to press charges. Leave that decision up to the victim.

Even if you have done so before, communicate to everyone in the organization that you are committed to maintaining a safe workplace for paid staff and volunteers alike, and that any assault – physical or verbal, involving employees or volunteers – will be grounds for dismissal. (This question was about volunteers, but it is important to remember that most nonunion employers enjoy the “employment at

will” doctrine, which means they can terminate an employee at any time, for any reason that is not discriminatory, and do it with or without notice.)

The fewer distinctions you make between paid staff and volunteers, the better. This is true for all aspects of accountability, including discipline for assaults.

Q – Our volunteers use their personal vehicles to make meal deliveries. Should we be verifying that they have a valid license and insurance? Why?

A – Yes, because it is part of the organization’s due-diligence responsibility to take reasonable steps to make sure volunteer drivers are safe and responsible drivers. Require a current driver’s license and liability insurance at least equal to the state-mandated minimum limits. Also, initially and at least annually, obtain a Motor Vehicle Record on all drivers, to make sure they haven’t had violations that would disqualify them from service. If your state requires vehicle inspection, put an item on your calendar to remind you when each driver’s inspection is due, and have them show you the sticker indicating that they passed inspection.

In states where inspection is not required, many nonprofits have arranged with a local mechanic to perform basic inspection of volunteers’ vehicles at low cost or as a donated service to the organization. Require that needed maintenance be done before the volunteer can drive for you. (Also be sure to recognize the mechanic, in your communications that thank your supporters.)

NOTE: A “Motor Vehicle Acceptability Checklist” is available to VIS members, in the “VIS Vault” of risk management information. Log in if you are a member, or [join now](#) for only \$25 a year.

Q – Why should I insure volunteers separately from my organization itself? My insurance agent says my volunteers are automatically covered on my general liability policy.

A – By including volunteers as insureds on your organization’s general liability policy, you are sharing your limits of liability with volunteers. In a serious claim involving a volunteer, those limits might be inadequate to protect both the organization and the volunteer – resulting in a substantial out-of-pocket loss to the organization. The organization’s claims experience would be affected, which could increase its insurance costs in the future. Also, depending on which standard exclusions exist in your general liability policy, a volunteer might not be protected against a claim brought by another volunteer, or by an employee.

The solution is to transfer the volunteer risk exposure, by purchasing a separate volunteer liability policy for them – a policy designed specifically to protect volunteers. The policy available through VIS provides a liability limit of \$1,000,000. For volunteers who drive, an excess auto liability policy protects them in the event the liability limits of their personal auto insurance policy are inadequate. The policy available through our organization provides up to \$500,000 in additional limits.