

Volunteer Legal Issues

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Volunteer Legal Issues



This presentation contains general information and is not intended to provide specific legal advice. Organizations should consult with legal counsel regarding matters specific to their business or operation, and aware of the relevant laws in their jurisdiction.

Perspective

Consider:

- How is a volunteer different than an employee?
- Organization's legal exposure for:
 - Injury to volunteer
 - Injury to others caused by volunteer's actions

Perspective

➤ What is a "volunteer?"

- Non-compensated, with exceptions
- Non-profit or government service
- Civic, charitable, humanitarian



Perspective

Volunteer or employee? Issues affecting status, depending upon who is asking:

- receipt of \$ or benefits –exceptions
- Treated like an employee
- Benefit: organization vs. community?
- Economic dependence; displacement; same job when paid
- Who is asking: Volunteer Immunity laws, labor laws, workers' comp laws

Perspective

Many TYPES of volunteers:

- Volunteer leaders – fun, service, education
- Volunteer 'workers' (e.g. trail work)
- In either of the above, facilitated get together vs. structured instruction (and in between)
- Chaperones – school, camp, church setting
- Physician advisors or other consultants
- Board members

Perspective

Basic Constructs – whether organization is using employees *or* volunteers



Central Concern:

- Endeavoring to run a Quality Program
- Choosing to responsibly manage risks rather than just avoid lawsuits



Perspective

Risk Management not Risk Elimination

Goal: responsibly managing risk of loss:

- to participants, staff or others
- to program

- Common sense approach



Perspective

Actual risks (www) **plus** risk of loss to participant and to operation – overlap

- Identify, assess, respond
- Risk, reduce, avoid, transfer



Perspective

Results:



- Positive and Proactive
- Fundamental fairness
- Education and edification of participants/staff
- ✓ **Personal responsibility**
- Addresses insurance and legal
- Minimize risk of injury and ultimate loss

Legal Issues

Volunteer Liability:



➤ Federal and state limited immunity from liability – protection for volunteer; not organization (42 USC 14503(c))

➤ Policy: to encourage volunteers!

Legal Issues

(Focus Civil Law)

Organization: potential liability to others hurt by acts of volunteers:

- Direct Liability
- Vicarious Liability (Respondeat Superior)
- Agency - apparent authority



Legal Issues (Focus Civil Law)

Organization: also has potential liability to volunteer for injuries they suffer during course of their duties



Legal Issues

Most Common measuring stick

➤ Standard of Care



“That degree of care that a reasonably prudent person would exercise in the same or similar circumstances”

Legal Issues

Why is the standard of care important?



Legal Issues

Because of the *duty of care*:
(tort of Negligence)

Elements:

- Duty – what is it?
- Breach
- Proximate Cause
- Damages

**Need all 4 elements!*



Duty of Care

- For volunteers, who is that 'reasonably prudent person?'
- Lower 'standard' of care for volunteer's conduct? Likely not
- Organization using volunteers held to different standard? Likely no

Duty of Care

But, consider this:

- Duty weaves in and out of all aspects of your operation – fluid and changing
- Some common duties?
- A variety of factors can create, eliminate, increase, decrease or influence the duty

Duty and Potential Breach

What does Court look to in determining duty/breach? (e.g.):

- Statutes and case law
- Standards and practices in the industry
- Your internal policies, guidelines, etc.
- Your staff (incl. volunteers) words or conduct
- Your external marketing materials, **contracts** or other documents
- Status of user (minor, IWADisability)

Duty and Potential Breach

- **Q:** Where is duty/breach potential?
- **A:** Where you address risk management.



Information exchange; staffing; gear; premises & facilities; environment; programming (instruction, supervision, activities); internal and external information and documents; applicable laws; industry standards & practices; review or accreditation....

Considerations

Consider
Context & Continuum:



- Variety of Volunteers
- Volunteer led or volunteer 'worker'
- Volunteer leaders leading volunteers
- Facilitated get together vs. structured instruction

Considerations

Specific issues to consider with **volunteer led trips or volunteer 'worker'**:

- How you market and "bill" these trips to the public can impact liability
- Information exchange; EXPECTATIONS (website, participant form, brochures and trip info)

Considerations

- **What you say "internally" to your staff.**

Is it realistic, flexible, do-able; allow for staff judgment...

(Staff manual, risk management plan...)

Considerations

- Hiring/screening of volunteers
- Use of volunteers
- Forms signed, including risk/release?
- Clear duties; and appropriate training (pushback)
- Any licensing or other authorization?
- Volunteer health issues – remote locations?

Considerations

Workers' Compensation Insurance (usually no)

Liability insurance (general liability, including SAM, auto, premises, D & O, excess)

➤ For organization: acts of, or suits by volunteers, or by others injured by volunteer's acts

➤ For volunteer



Case Law Examples



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