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ADDRESSING ORGANIZATIONAL LIABILITY IN YOUR VOLUNTEER PROGRAM

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Many not-for-profit organizations rely on volunteers to supplement their labor force. There are many reasons why people donate their time – altruism, a need for social interaction, and fulfilling a court order are a few of these. Whatever the reason, the experience should be mutually rewarding for all parties. Knowledgeable and satisfied volunteers represent your organization well.

Just as with employees, volunteers may pose a liability exposure. Organizations can be directly liable for their actions or inactions, and may be held vicariously liable for accidents or incidents involving volunteers that result in customer bodily injury. For example, a volunteer is pushing a wheelchair, when the chair tips, causing the occupant to fall out and sustain an injury. Allegations often include a failure to adequately select, train, and/or supervise the volunteer. As a long-standing animal assistive therapy volunteer in different not-for-profits, I have first-hand experience that volunteer selection and service standards vary considerably.

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Risk Management Strategies:

Even though you may not have experienced a claim involving a volunteer, an assessment of associated organizational risks may reflect areas that need to be addressed. Identify who your volunteers are, how they were selected, what areas they work in, what they do, and how they do it. You may find you utilize volunteers for not only for routine operations, but special one-time events, such as a fundraising golf tournament.

1. **Review your services and determine if there is a role for volunteers.** What responsibilities can be appropriately delegated? What member of your leadership team is responsible for overseeing the program? If you utilize minors as volunteers, there may be state limitations on work hours and operation of equipment.
2. **Create and/or review written volunteer job descriptions.** Be sure to include responsibilities, any hazardous risks, specific skills, necessary certifications, or licensure and reporting relationships, as you would with your employee position descriptions. This will facilitate a mutual understanding of expectations.

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3. **What screening is needed?** The extent of the screening may vary depending upon the risks of the position. For example, processes should be more rigorous for positions working with children than for a volunteer at a fun run. A written application, interview, and reference checks form the basic elements of screening. Federal/state and/or local laws and regulations, as well as accreditation standards (as applicable), may necessitate additional practices. For example, criminal background checks are needed for volunteers working with children or vulnerable adults. If a volunteer's registration/certification/license is needed to perform their duties, then verification of these documents is needed. Similarly to your employee screening, red flags should alert you to proceed carefully and investigate the applicant further.

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4. **Is there an appropriate orientation and training program for all volunteers?** For example, as an animal assistive-therapy volunteer at one senior living organization, my orientation consisted of being introduced to the activity director who oversaw my visits, provided a short tour, and asked me to sign in and out. That was the extent of my orientation. Contrast that to another organization, which required a full application; reference check; background check; completion of a training checklist including emergency, confidentiality, and infection control issues; and shadowing of an existing team, followed by being shadowed by an experienced team. The volunteer orientation should include an introduction to the organization's history, mission, values, and services, as well as specific information about responsibilities and relevant policies and

procedures including discrimination and harassment-free workplaces, use of equipment, incident reporting, and safety and emergency procedures. Solicit feedback from your existing volunteers to determine what additional information would be helpful to enhance the quality of your program.

The orientation process should be documented, including agreements to maintain confidentiality and adherence to policies and procedures. Training should be repeated periodically and documented as well.

5. **Do you have policies and procedures in place that address volunteer activities?** Are they up-to-date and written in language that is easily understood? If rationale is also included, volunteers are more likely to understand why compliance is needed. In addition, agencies should maintain a tracking system for volunteers and hours worked since some states require reporting of this information.
6. **Similar to an employee's performance, you want to ensure volunteers represent your organization well through guidance and supervision.** If orientation is sufficient, volunteers should have a clear understanding of what is and is not acceptable behavior. A volunteer who breaks the rules and jeopardizes the safety of themselves or others should be subject to discipline, including release from volunteering.
7. **Lastly, an exceptional program recognizes its volunteers.** While most volunteers do not get compensated, they do appreciate being informed about operational updates. They also appreciate knowing they make a difference. Many organizations use a variety of methods to recognize their volunteers, including highlighting volunteers in newsletters, holding recognition events, and offering service awards.

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Once your risks are identified, risk management strategies should be planned and implemented to prevent and mitigate possible exposures. However, risk managers should also consider how the organization and volunteers will be protected from financial losses related to claims and/or lawsuits.

The Federal Volunteer Protection Act of 1997 provides certain protections from liability related to volunteers serving at not-for-profit organizations and governmental entities. While there are a few exceptions (notably criminal activity, negligence/willful misconduct, harm while operating a vehicle for which a license/insurance is needed, and civil rights violations), volunteers may not be held liable for harm caused by their actions or omissions, if the volunteer was acting within the scope of their responsibilities and appropriately certified or licensed for these activities. State protections may also be present and vary in their scope. In Washington, RCW 4.24.670 provides protections from liability similar to those of the Act if the not-for-profit carries public liability insurance. Oregon (ORS 30.260-300) considers volunteers agents of the state for acts and omissions when acting within the course and scope of their duties. As for Alaska, there are also statutory provisions concerning limited liability for some directors and officers and other specified individuals in Chapter 09.65 of Title 09.

Insurance:

Not-for-profits should consider the need for the various available insurance options depending upon your volunteer scope of responsibilities. Director & officers/employment practices insurance pays for losses and defense costs in the event legal action is brought against

board members for alleged wrongful acts in their capacity as a director and/or officer. Many not-for-profit organizations indemnify their volunteer board members and find that potential members may make this a condition of their participation. Other organizational insurance coverage such as general liability, professional and non-owned auto liability policies may also include volunteers as an insured. Non-owned auto policies are intended to cover liability for employees or volunteers who drive their own vehicles during official business for the non-profit. The driver's auto policy usually responds first, and because it is very easy to exceed the liability of many auto policies, non-owned auto coverage should be seriously considered as part of the organization's insurance portfolio. For all the agency's policies, it's essential you consult with your broker to determine if policy language covers volunteers and there are any exclusions for volunteer activities. If volunteers are not covered as insureds, it is advisable that they be added as an additional insured on the policy or be required to purchase their own insurance. Some volunteers may rely on their homeowner/renter policies. In such circumstances, the volunteer should review their own policy coverages and exclusions to ensure all their volunteer activities are covered, and limits are adequate. It may be necessary to request an endorsement to broaden coverage or increase policy limits.

Most not-for-profit organizations rely on their base of volunteers to help fulfil their mission and objectives. A volunteer program that includes appropriate selection, training, and retention, as well as insurance coverage, will help prevent and mitigate the risks associated with this very important group of individuals.



References and Resources

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