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[Using Volunteers: Best Practices for Not-for-Profit Risk Management](#)

Go to: [Overview](#) | [Sources of Liability for Acts of Volunteers](#) | [Liability to the Volunteer](#) | [Mitigating Risks of Using Volunteers](#) | [Policies](#) | [Training and Supervision](#) | [Waivers](#) | [Insurance](#) | [Conclusion](#)

Maintained

by [Rosemary E. Fei](#) and [Geena Yu](#), Adler & Colvin

This practice note examines the use of volunteers by nonprofit entities, the risks posed by such use, and best practices and approaches for managing those risks. This note includes an overview of the most common risks that using volunteers presents to the nonprofit entities they support and the ways in which liabilities may arise, before examining the best practices and tools nonprofits can use to mitigate risks to reduce them to acceptable levels.

Specifically, this practice note provides guidance on the following topics concerning the management of risk by nonprofit entities when using volunteers:

- [Sources of Liability for Acts of Volunteers](#)
- [Liability to the Volunteer](#)
- [Mitigating Risks of Using Volunteers](#)
- [Policies](#)
- [Training and Supervision](#)
- [Waivers](#)
- [Insurance](#)

For more information and resources regarding not-for-profit corporations, see [Not-for-Profit Corporations Resource Kit](#).

Overview

Volunteers are widely used throughout the nonprofit sector and while we most often think of volunteers working in nonprofits serving charitable purposes, many other types of nonprofits use volunteer help, including unions, trade associations, and social clubs. Nonprofits, especially charitable nonprofits, are critical to the healthy functioning of our communities and civil society, often filling needs that are unmet by either the government or the private sector. Volunteers, in turn, are critical to the operation of many nonprofits to execute their charitable activities and programs.

According to the IRS, 85% of all charitable nonprofits in the U.S. have no paid staff and are run entirely by volunteers (see, e.g., [Providing Disaster Relief through Charitable Organizations: Working with Volunteers](#)). Such groups are sometimes known as "all-volunteer organizations" or "AVOs." The Independent Sector, a coalition of

Using Volunteers: Best Practices for Not-for-Profit Risk Management

nonprofits, foundations, and corporate giving programs, in April 2021, calculated an average value for volunteer time of \$28.54 per hour, resulting in volunteers contributing approximately \$200 billion in value to the communities they serve (see, e.g., [Value of Volunteer Time and Independent Sector Releases New Value of Volunteer Time of \\$28.54 Per Hour](#)).

During the past year and a half, the global pandemic has shown the country just how important volunteers are in times of crisis. Prior to the pandemic, nearly 63 million volunteers worked alongside nonprofit staff providing a range of essential services to those in need. Nonprofits with national or even international reach are joined by regional, state, and (very) local groups, ranging from community food banks to animal shelters, hospitals, schools, and down to local nonprofits that may exist as a handful of individuals dedicated to putting books in the hands of local children or doing local beach cleanups.

Large nonprofits may maintain an infrastructure of paid staff, including risk managers, to organize and oversee an army of volunteers, but many more have no professional staff to think about concerns like potential liability. Volunteers provide much more than free labor to conduct programs, such as promoting their organizations to the community, bringing their specialized skills and expertise to bear on the organization's mission, and contributing to the organization's morale. To obtain these benefits, organizations that use volunteers must fund the overhead of managing and paying expenses to maintain volunteers, but may overlook the less obvious and immediate costs that arise from the risks of using volunteers. If not managed properly, such risks can become existential threats to the survival of a nonprofit.

While directors and officers of nonprofits often serve without compensation, this note does not attempt to address risks associated with volunteers serving in these roles, which carry corporate governance obligations and fiduciary duties inapplicable to volunteers generally, outside the scope of this discussion.

Sources of Liability for Acts of Volunteers

While ordinarily legal persons (in this case, the volunteer and the nonprofit) are responsible for the consequences of their own actions and omissions, a nonprofit that recruits, manages, and controls volunteers may become liable for their actions and omissions. The fact that a nonprofit has expressly forbidden certain conduct by a volunteer, or that the volunteer has deliberately ignored the nonprofit's policies and procedures, will not necessarily allow the nonprofit to escape responsibility. Nonprofits may be held liable even when a volunteer is acting outside the scope of their duties. That the nonprofit does not pay the volunteer does not allow the nonprofit to avoid liability in most cases; in fact, a volunteer may be deemed to "step into the shoes" of an employee even where clearly no actual paid employment relationship exists, but where the nonprofit exercised or could exercise a sufficient degree of control over the volunteer's activities.

While there are various state and federal laws, notably the federal Volunteer Protection Act, which are meant to protect volunteers who meet the specific requirements of the Act from liability, these laws should not be confused with laws intended to protect the organization. See [42 U.S.C. §§ 14501–14505](#). Such laws protecting nonprofit organizations, called "charitable immunity" laws, generally have fallen out of favor and only exist to some degree in a handful of states through common law (see, e.g., [Risky Business: There's liability for the acts of your volunteers](#)). At least one state supreme court found the concept of charitable immunity, "antiquated," and went on to conclude that ". . . a charitable institution is subject to liability for its tortious conduct the same as any other person or corporation." See [Fitzer v. Greater Greenville S.C. YMCA, 277 S.C. 1, 6 \(1981\)](#). Many state courts have concluded that nonprofits who can exercise some control over the activities of their volunteers are in the best position to avoid harms, and should therefore be required to take precautions and guard against injuries to volunteers, and injuries by volunteers to participants in their activities. Below we discuss the types of liability that an organization might find itself at risk of through its volunteers.

Direct Liability

Using Volunteers: Best Practices for Not-for-Profit Risk Management

Direct liability occurs when a nonprofit's own actions or omissions are primarily responsible for injury, damage, or loss, whether to the volunteer or a third party. Direct liability can occur even where the nonprofit may have acted through a volunteer who was the proximate cause of the harm. The acts or omissions may be intentional misconduct, or negligence (doing or not doing something a reasonable person would do under similar circumstances). For example, a nonprofit could be held directly liable for a volunteer injuring a program participant, another volunteer, or a bystander while conducting an activity, if the nonprofit itself, knowingly or carelessly, provided faulty or unsafe equipment for the activity, trained its volunteers incorrectly or failed to train them at all on how to use the equipment, failed to screen volunteers working with children, or conducted such screenings sloppily. In each of these examples, the nonprofit would be exposed to direct liability for its own actions.

Indirect or Vicarious Liability

Indirect or vicarious liability describes a nonprofit's responsibility for harms caused by volunteers acting on its behalf, even where the nonprofit itself did nothing wrong and was not the primary cause of the injury or loss, but its volunteer was. Indirect or vicarious liability commonly arises in employer-employee relationships, under the Latin term *respondeat superior*. Nonprofit-volunteer relationships are often analogized in the law to the employee-employer relationship, since volunteers, like employees, act on behalf of the organization and are essential to carrying out its operations. Three requirements must be met for the *respondeat superior* doctrine to apply: (1) there must be an injury caused by negligence or will of the volunteer, (2) there must be a "master-servant" relationship between the nonprofit and the volunteer, and (3) the volunteer must have been acting within the scope of their activities as a volunteer. See [Restat 2d of Agency § 219](#). Evidence that the volunteer acted without the knowledge or consent of the organization, or that the negligent behavior was done outside of the scope of the volunteer's duties, are defenses, but vicarious liability is one of the most common sources for lawsuits against nonprofits. See [Jill Horwitz & Joseph Mead, *Letting Good Deeds Go Unpunished: Volunteer Immunity Laws and Tort Deterrence*, 6 *J. Empirical Legal Stud.* 585–635 \(2009\)](#). Examples of indirect or vicarious liability include a volunteer's negligence that results in an automobile accident injuring property or a bystander; a volunteer harassing staff, other volunteers, or activity participants; or a volunteer creating an infringing use of a third party's intellectual property.

Strict Liability

Strict liability describes situations where responsibility for harm is automatic and does not require a finding of negligence or intent. In cases of strict liability, the organization will be held responsible regardless of what the volunteer's intent or mental state was when committing the action. The law has prescribed that some actions create liability by virtue of the action itself, rather than requiring any particular mental state. In situations where strict liability applies, the law makes no distinction between a nonprofit's paid staff and its volunteers. Whereas the indirect or vicarious liability discussed in the preceding section rests on the extent to which the volunteer is acting like an employee, in strict liability that is irrelevant, and no regard is given to the individual's title or relationship to the organization. Although strict liability is more common in cases of product liability or criminal law, nonprofits can still be pulled into cases by actions of their volunteers. Examples of strict liability include owning or possessing certain types of animals or livestock, certain abnormally dangerous activities such as blasting or disposing of hazardous chemical wastes, and selling alcohol to minors.

Liability to the Volunteer

In addition to being concerned about liability to third parties for its volunteers' actions or omissions, a nonprofit must also consider a final category of liability, liability of the nonprofit to its volunteers. In a sense, this is not a separate category in itself, since the same acts or omissions that could injure participants or bystanders can often as easily injure volunteers. Liability to volunteers largely parallels that of worker compensation issues that would have been present if the volunteer had instead been an employee of the organization, except that there is no systematic requirement or mechanism for nonprofits to protect themselves against injuries to volunteers on the job like workers' compensation insurance. Examples of activities that could generate liability to volunteers are similar to those that generate liability to third parties and include conducting programs in a dangerous facility, failing to conduct routine

Using Volunteers: Best Practices for Not-for-Profit Risk Management

maintenance and repairs on vehicles provided to the volunteer for use, and failing to properly train volunteers to conduct activities safely for themselves or other volunteers.

Mitigating Risks of Using Volunteers

From a big-picture perspective, perhaps the most important factor for a nonprofit being held liable for a volunteer's acts or omissions will be the extent of control that the nonprofit exerted over the volunteer's activity. This will usually be a factual question and therefore, it is important that the organization exercises good judgment in what tasks it asks its volunteers to do, and ensures that the volunteer is adequately trained to undertake those tasks. The level of training and supervision should match the risk of the activity; obviously dangerous activities (e.g., a wilderness rock-climbing camp) require greater care and risk management attention.

In considering the approaches below, it is important to keep in mind that there is no silver bullet that will eliminate all risks for a nonprofit from using volunteers. Each of the approaches implemented properly will reduce exposure to the types of liability discussed above, some more effectively than others depending on the facts and circumstances of the situation. It is important for an organization to think in specific detail about the kinds of hazards that a volunteer might be exposed to while volunteering, and that the volunteer may expose participants and bystanders to. We recommend organizations consider each of the following: (1) policies, (2) adequate training, (3) waivers, and (4) insurance. Each is discussed in turn below. When executed effectively, these practices can help the organization reap the benefits of using volunteers while minimizing the risks.

Policies

Policies and procedures are some of the basic building blocks of any organization's approach to risk management, whether they are for-profit or nonprofit corporations. They signal to regulators, and in the case of nonprofits, to the IRS, their state's attorney general, and the general public, that the organization is aware of the risks posed by their activities, and more importantly, has taken steps to address them. A range of policies should help mitigate the risk of volunteers getting injured and injuring others while working on behalf of the organization.

Screening

First and foremost is the question of whether to take on that particular volunteer. The organization should maintain a policy or procedure for volunteer screening and selection. The rigor of the screening process for a volunteer should again correlate with the risks of the position. Not every volunteer opportunity should require an extensive application process, but it may behoove an organization to start with a written application that provides some basic identifying information on the volunteer. A further step, if the volunteer position might entail some additional skill or specific type of service, could be to interview the potential volunteer, and conduct personal reference checks. There may be other official agency record checks you could conduct. You will need to determine if there will be anything in the volunteer's scope of duties that would require a license or certification, and if so, you should verify their current status and maintain such verification or documentation on file for at least the minimum duration of their service. For example, if the volunteer position could or should require knowing how to conduct cardiopulmonary resuscitation (CPR), you would want to make sure they have a valid CPR certificate or have been trained recently.

Background Checks

Although most jobs require some sort of background check, including a criminal background check, applying for a volunteer position may not always rise to that level of rigor. However, in some cases, such as volunteers who work with vulnerable individuals or children, a criminal history record check has become standard. You should always use a reputable vendor for any type of background check, and it should cover the federal, state, and local level. A criminal history background check should include a search of the sex offender registry as well. Since these background checks will be more expensive and take longer, you should wait until you have narrowed your applicant pool and use it as the last step of your organization's application process.

Using Volunteers: Best Practices for Not-for-Profit Risk Management

Workplace Behavior

Additionally, it should be made clear during the volunteer recruitment and screening process that the organization maintains a nondiscriminatory policy as a workplace. This is important for both staff and volunteers. Although discrimination claims may arise more in the context of an employment relationship, you should emphasize to volunteers that discrimination, racism, and sexism will not be tolerated at the organization or while the volunteer is working on behalf of the organization. Making this clear from the outset will make volunteers feel more welcome and also more willing to let you know if there are any issues to be addressed before they turn into something more pressing.

Volunteer Handbook

One fundamental policy that the organization should maintain, update regularly, and ensure that a volunteer receives and acknowledges, is a volunteer handbook. The handbook should contain certain basic information volunteers should know about the organization and information relevant to their specific activities; it may also conveniently consolidate other policies (privacy, confidentiality, technology use, etc.) in one place. You will want to consider whether it makes sense to have different policies for short-term volunteers who may only be volunteering for one event or a short-term program versus volunteers who will work regularly with the organization.

Job Descriptions and Scope of Work

An organization should be explicit about the range of jobs it needs volunteers to do overall, as well as the jobs of specific individuals or groups of volunteers within that range. For many organizations, volunteers are their workforce, taking the place of employees, and efficient and effective use of a workforce typically demands job descriptions. Beyond the description, an organization should set boundaries, with clear instructions telling volunteers what they can and cannot do while volunteering for the organization. For example, you may want to prohibit volunteers from offering other participants rides home after an event. It is important to be clear when the volunteer's shift starts and ends, and volunteers should understand when they are acting on the organization's behalf and when they are not, and should be required to represent themselves accordingly to the public.

Intellectual Property Created by Volunteers

If an organization is requesting the volunteer to create intellectual property (writing copy, taking photographs, creating graphics, etc.) as part of their volunteer services, the organization should notify and make explicit to the volunteer that the organization, and not the volunteer, will own the resulting intellectual property rights. This is similar to the treatment of employees under copyright law. In some circumstances, it may be appropriate to get volunteers to sign a document evidencing the organization's rights for clarity, evidence, and to reduce the chances of a dispute with a volunteer later. It may also be important to make sure volunteers do not use works owned by third parties in creating works for the organization, which would expose the organization to claims of infringement. Finally, volunteers' work product should be vetted to ensure it does not contain statements that could be defamatory or constitute slander or libel by the organization.

Incident Handling

In case of an injury or issue with a volunteer or participant, the organization's policies and procedures should lay out a plan to respond to these worst-case scenarios. A plan should include determining the cause of injury; notifying the appropriate personnel, including your insurance company to determine if there is any insurance coverage available; evaluating whether future incidents can be prevented with better training, equipment, or other measures; and implementing appropriate prevention measures. You should also evaluate the adequacy of the immediate response following the incident (e.g., were the right people contacted in a timely fashion) and identify or brainstorm internally how the organization's response to a similar incident could be improved. Ideally, an organization builds in these approaches and mindset as part of the organization's DNA to improve the response and reduce the likelihood of the organization being held liable for any kind of harm. Again, you will not be able to foresee every risk associated with the use of volunteers, but having policies and procedures in place allows volunteers to understand what is expected

Using Volunteers: Best Practices for Not-for-Profit Risk Management

of them and what they can expect on the job, and provides documentation that the organization is taking its risk management seriously.

Terminating Volunteers

While nonprofits may be reluctant to consider it, sometimes, as with employees, when policies and trainings have not sufficed, termination is the right response. Both the nonprofit and the volunteer should experience volunteering as contributing meaningfully toward a shared goal, but if it becomes clear that interests or priorities are not aligned, it is appropriate for an organization to ask a volunteer to leave. Keeping an unhappy volunteer creates risks of its own. It is important to convey clearly, in advance, and before problems arise, that termination may occur for specific types of behavior; the volunteer handbook can be the right place for this sort of information.

Monitoring the Operating Environment and Updating Policies

A nonprofit's liability in court will often be determined by whether it acted as a reasonable person under similar circumstances. What is reasonable, however, can change over time, so policies and procedures to manage risk need to be updated to reflect current standard practices. Changes can be driven by changes in laws, but also by increased awareness of certain risks based on the experience of similar groups conducting similar activities. A good example is criminal history record checks for adults volunteering with children: Not long ago these checks were relatively rarely conducted on volunteers, and failing to do such a check was not unreasonable, but the same cannot be said today.

Training and Supervision

As a best practice, volunteers should always be trained for the role they are about to take on at the organization. The extent of the training requirement will depend on several factors, including the nature of the job, the experience and training the volunteer brings to the position, and any special needs or circumstances. Training is used as a tool to mitigate the risk of injury to the volunteer and the risk that the volunteer will injure others, and to improve the efficiency of the organization's activities. Once volunteers are on the job, appropriate supervision becomes key. Leaving volunteers unsupervised greatly increases an organization's exposure to liability if something goes wrong.

Training Tailored to the Volunteer and the Organization

Training is not one size fits all organizations, or all volunteers. An organization's size and scope of operations, the number of paid staff (if any) and their capacity and backgrounds, and the inherent riskiness of activities in which volunteers are engaged, are all relevant when determining the appropriate scope of the organization's training programs for its volunteers. Of course, the nature of the jobs that volunteers are needed to do, and the types of people an organization can reasonably expect to recruit, also affect what training is needed. That said, a training program should include, at a minimum, an orientation for new volunteers providing an official welcome and an opportunity to ask questions about the organization. The purpose of the training program should be to ensure that you instruct the volunteer on their tasks and duties. It should answer the how, what, where, and when of the position and also give you an opportunity to evaluate the volunteer's level of readiness. For example, you may need to consider whether the volunteer will be asked to do manual labor. If they will, then you want to consider whether the volunteer has the skill or physical attributes to carry out that activity safely. Some volunteer positions require specialized training or policies; for example, proceed with extra caution and training if the volunteer will be working with children.

Supervision

Once a volunteer is on the job, it is important that the organization provide adequate levels of supervision, to ensure policies and procedures are being followed, to develop the volunteer, and maintain quality control and safety. If the volunteer has limited experience, you may consider partnering the volunteer with a more senior person who can provide more hands-on training as well as supervision. It should be clear who has authority to ask the volunteer to

Using Volunteers: Best Practices for Not-for-Profit Risk Management

undertake or stop tasks, and to whom the volunteer reports, just as with any job. The nonprofit should also have mechanisms in place so volunteers can report problems they see, including problems involving their supervisor.

Good training and supervision demonstrate an organization's concern for the volunteers' and participants' well-being. It signals that the organization is willing to put in the time and effort to do things in a way that is safe for everyone. It may cost more money or require more staff, but it is better to provide the training upfront rather than deal with the consequences of a lack of training and supervision after something that could have been prevented goes wrong.

Waivers

Another tool available to an organization to help mitigate the risks of using volunteers is requiring that volunteers sign waivers as a condition of volunteering. Waivers that the volunteer provides to the organization, properly drafted, can release the organization from liability in the event the volunteer is injured while working on behalf of the organization. (If an organization is hosting an event or activity, it may also require that attendees sign waivers to participate, which can often release both the organization and its volunteers from liability, including for volunteer errors.) These waivers or releases from liability generally cover bodily injury and personal and property damage. You should consider distributing a blank form of waiver, and collecting a signed copy, as part of a volunteer's onboarding process or before every event that the volunteer will be working.

Waivers are not helpful in every circumstance, but can be especially useful when an event or activity entails unavoidable dangers. The kinds of language in a waiver that a court will accept will differ by state, but in general, the volunteer's informed consent is key. The more specific the risks that are disclosed, the more likely a waiver will be upheld in court. If a volunteer was injured by a risk that was specifically and prominently disclosed (through formatting, color, type size, etc.), the less likely it is that the organization would be held liable for harm arising from that risk. In some states, minor volunteers will need a parental waiver to participate in the organization's activities, whereas in other states, no waiver of a minor's rights will be upheld even if a parent or guardian has signed on behalf of the minor.

Another effect of waivers is to put the volunteers on notice of the kinds of risks that they will be taking on should they choose to participate. This notice function is in synergy with the defense of informed consent. The waiver should be clear, easy to read, and not include extensive legal jargon (although it should be reviewed by legal counsel familiar with the laws of the state in which the activity will occur), which benefits both the organization and the volunteer.

Insurance

Nonprofits should maintain insurance coverage commensurate with their size and activities. Generally, the same types of insurance coverages are available for nonprofits as for their for-profit counterparts. It is important to work with an insurance broker to confirm who and what will be covered under the policy, as volunteers may not always be covered, and specific claims may be carved out. Appropriate insurance coverage may also incentivize volunteers if they know an organization has adequate protection and coverage for their activities. Directors and officers liability coverage is beyond the scope of this discussion, although it is another important type of coverage for an organization to consider.

Commercial General Liability

The most common type of insurance is general liability insurance, also known as commercial general liability. This insurance covers the organization itself rather than individual directors and officers. It provides coverage for tort actions including direct and vicarious liability for things like bodily injury and personal property damage. Although coverage under general liability insurance is broad, it does not address every possible liability exposure. General liability may cover certain contract damages in the event of a breach of contract claim, and it may or may not

Using Volunteers: Best Practices for Not-for-Profit Risk Management

depending on the organization's specific policy cover "advertising injury" (i.e., when the organization is harmed by slander or libel claims).

General liability insurance may be offered on a "claims-made" or "occurrence" basis. For general liability insurance, occurrence-basis coverage is usually preferable. Occurrence-basis coverage means that the insurance policy is in effect when the act giving rise to liability occurred covers the claim, regardless of when the claim is made, even if the claim does not surface until after the term of the policy has ended. This can be especially important if a claim may be slow to arise or if you need to change insurance policies. Claims-made coverage, in contrast, means that the insurance policy in effect at the time the claim is made, rather than when the act occurred, covers.

The insurance policy will be triggered if there is an allegation that the nonprofit or its volunteer was negligent. Volunteers should be added as additional insureds to this policy, which will help protect the volunteers under the organization's policy, but also makes sure the policy will protect the organization if it is held responsible for volunteers' acts. The policy should include a broad definition of agents whose acts are covered.

Student/Volunteer/Participant Accident Policy

A student/volunteer/participant accident policy may be appropriate if the organization is a school or regularly uses students and volunteers to carry out most of its programmatic activity. This policy is not workers compensation coverage and is not intended to cover employees. This type of policy is used as a fairly inexpensive added layer of defense, should an accident occur, and the volunteer does not have adequate primary medical coverage. These policies will typically cover only medical costs and will cover claims on a no-fault basis. An accident policy, as opposed to a general liability policy, will pay out relatively quickly and efficiently, covering the organization up to the stated policy limits.

Automobile Liability

It is important to remember that automobile insurance coverage will follow the vehicle, so if a volunteer is driving their own personal vehicle, even if they are volunteering for a nonprofit, their own personal auto liability coverage will usually respond first in the event of an accident. However, if your volunteers use their own vehicles regularly while volunteering on behalf of the organization, then "hired and non-owned" commercial auto insurance is recommended as an extra layer of protection. Hired and non-owned coverage is triggered when the limits of the volunteer's personal auto insurance are exhausted, and the organization is sued for damages resulting from an accident. It also applies on a primary basis if the volunteer's personal auto liability coverage does not apply or does not exist. Actual policies will differ, but the coverage will generally include automobiles the nonprofit does not own, lease, rent, borrow, or hire used in connection with the nonprofit's activities. If the nonprofit owns vehicles, it will of course also want more typical auto insurance that covers the organization when volunteers are hurt or hurt others, or damage the vehicles.

Conclusion

It is undeniable that a nonprofit faces risks when choosing to use volunteers. However, as demonstrated in this practice note, a nonprofit has an array of tools at its disposal to mitigate such risks, and should deploy them thoughtfully. Some of these tools are more time-consuming to implement than others, some are more expensive, and some may not be warranted based on the circumstances. Risk management requires balancing costs and benefits, and where that balance is struck may differ widely based on the facts and circumstances of the particular organization. While you do not want to make it prohibitively difficult for someone to devote their free time and labor to your organization, you also have a duty to protect your organization from both legitimate and dubious claims, and the tools described above can help you do that. The more an organization understands the risks and claims it is likely to face, the better prepared it will be to address such risks and prevent them from endangering its ability to focus on its charitable mission.

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