



Legal Minute

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Volunteers: A Blessing or a Burden?

Who is a volunteer under the law?

A volunteer is a person who helps a charitable organization without expectation of compensation except for reimbursement for expenses. A volunteer includes directors, officers, trustees, or direct service volunteers. Employees who also volunteer for their organization may violate the Fair Labor Standards Act. Nonprofits should seek the advice of an attorney under these circumstances.

May volunteers receive gifts of appreciation or reimbursement for expenses?

Yes. An organization may provide small tokens of appreciation to their volunteers. In addition, an organization may reimburse a volunteer for her expenses. The mileage reimbursement rate for providing services for a charitable organization is 14 cents a mile. A volunteer may not receive compensation in excess of reimbursement for other expenses incurred.

A volunteer may deduct unreimbursed expenses as a charitable contribution on their income taxes. A nonprofit should provide a receipt for unreimbursed expenses over \$250 to the volunteer. However, a volunteer may not deduct the value of the labor or services that he or she provides to the organization.

Are volunteers responsible for accidents that occur while they are volunteering?

Maybe. Generally, volunteers performing their assigned volunteer duties or functions (acting within the scope of their volunteer responsibilities) are not responsible for money damages for actions or omissions that result in death, damage, or injury. This exception includes licensed medical providers performing volunteer services through a charitable organization.

However, a volunteer may be held liable for money damages: 1) if the volunteer is found to have caused the harm intentionally or if his actions reflected a complete indifference to the safety or rights of others; 2) if the volunteer was under the influence of drugs or intoxicating alcohol; 3) if the misconduct was a crime of violence or international terrorism for which the volunteer has been convicted in a court; 4) if the volunteer is found to have violated a state or federal civil rights law; 5) if the conduct was a hate crime; or, 6) if the accident occurred while the volunteer was operating a motor vehicle. A volunteer will be liable to the extent that insurance is required or to the extent that insurance is actually maintained, whichever amount is greater.

Nonprofits should draft job descriptions for volunteers and monitor whether volunteers act within the scope of their duties.

Are there other protections for volunteers?

Yes. Special protections apply to volunteers who distribute donated food. A volunteer who provides free food is not liable for damages when the food goes bad if the condition of the food appeared to be wholesome when the volunteer distributed the food and the food was donated to a nonprofit for distribution to needy persons.

The Texas Good Samaritan Law protects volunteers who administer emergency care in good faith at the scene of an emergency. People who are not licensed in the healing arts who administer emergency care in good faith are not liable for money damages for administering emergency assistance unless they are willfully or wantonly negligent. Licensed practitioners must not expect remuneration.

Should a nonprofit have insurance?

Yes. If an organization carries liability insurance in the amounts set out by Texas law, state law caps the amount of money a person can recover from the organization for injuries resulting from a volunteer's actions. Tex. Civ. Prac. Rem. Code Ann. §§ 84.006, 84.007(g) (available at: <http://www.capitol.state.tx.us/statutes/statutes.html>).

What is the minimum amount of insurance required?

In order for the liability cap to apply, an organization must carry, at minimum, a \$1,000,000 bodily injury and property damage covering the acts or omissions of the organization and its employees and volunteers. The coverage may be provided under a contract of insurance or other authorized insurance plan. Tex. Civ. Prac. Rem. Code Ann. §§ 84.006, 84.007(g).

An organization that uses motor vehicles must have liability insurance with the following limits: \$20,000 for injury or death of one person; \$40,000 for injury or death of two people; \$15,000 for property damage arising out of any one accident. Tex. Transp. Code § 601.072.

Depending on the type of activities volunteers perform, additional coverage may be appropriate. A Volunteer Accident Policy provides excess coverage over any personal insurance carried by the volunteer. Accident and injury policies pay claims regardless of who is at fault. Since they provide "excess insurance"—they pay only after other available insurance pays—these policies are relatively inexpensive. Some organizations choose to purchase more costly "primary coverage" by including volunteers under Workers' Compensation policies. Every organization should work with an insurance professional to determine the best insurance plan for their needs.

Can the organization be held liable for volunteers' actions?

Yes. An organization may be held liable in civil actions brought against it for damages based on an act or omission by the organization or its employees or volunteers. *But*, the amount of money damages will be limited if the organization carries liability insurance at the level specified by Texas law (see above).

The liability of organizations with this minimum insurance coverage is limited to money damages in a maximum amount of \$500,000 for each person, \$1,000,000 for each single occurrence of bodily injury or death, and \$100,000 for each single occurrence for property damage caused by volunteers. Tex. Civ. Prac. Rem. Code Ann. § 84.006.

Should volunteers sign confidentiality agreements or waivers and releases?

Probably. However, this is a decision that each organization will have to make for itself based on the nature of the work that is performed. For example, volunteers working with domestic violence survivors should sign confidentiality agreements; volunteers building affordable housing should sign waivers of liability. A sample release and waiver of liability are available on the Texas CBAR website.

Should an organization obtain background checks on volunteers?

Sometimes. Background checks are required when the volunteer performs direct services to clients who are children, elderly, or disabled. Volunteers with criminal convictions may be barred from performing certain duties. Driving records for all volunteers whose duties include driving may be obtained from the Texas Department of Public Safety. (<https://www.drivingrecord.org/secure-order-form.aspx>) Because the organization may be held liable for the acts of its volunteers, it is good risk management for the organization to conduct background checks of all volunteers.

The organization should adopt clear and consistent policies and procedures for conducting background checks on volunteers. The volunteer application form should inquire about convictions (not arrests) and state that a conviction will not necessary prevent acceptance of the volunteer. At the time the application is filled out, the organization should request that the applicant sign a release and consent form that allows the organization to conduct further investigation if necessary. Further investigation should be limited to those volunteers the nonprofit is ready to accept. The information gathered should be shared only with those in a position to decide whether or not to accept a volunteer. Criminal offense information may be limited to certain agencies and entities. The Volunteer Center of Lubbock offers a Criminal Background Check program that provides a statewide background check for volunteers. The program is available to any nonprofit that provides direct services to clients considered vulnerable. More information is available at <http://www.volunteerlubbock.org/background.shtml>.

Should volunteers have training?

Yes. Training is an important aspect of a relationship with volunteers. Orientations and volunteer handbooks can introduce duties and responsibilities, the policies of the organization, and how to handle a crisis or grievance. Knowing what is expected helps to the volunteers be safe and effective.

The amount of training necessary will depend upon the duties volunteers will perform. Volunteers who will be working with vulnerable clients, such as children or the elderly, or in potentially hazardous situations should receive additional training.