



## Volunteers: Resource or Risk?

*Volunteers can be your greatest resource—or they can devastate your organization by acting irresponsibly. Here are steps to reduce the risk.*

BY SARAH J. SCHMIDT

**W**ith nearly half of all citizens aged 18 and over volunteering at least some of their time to charities in this country, volunteers may be your organization's most abundant resource.<sup>1</sup> But if they're not properly screened and supervised, volunteers may also be your greatest source of liability risk.

Under the legal doctrine of *respondeat superior*, your organization can be liable for the negligence of its volunteers in exactly the same way it is liable for the negligence of its paid employees. Consequently, volunteer negligence is just as risky to your organization as the negligence of your paid employees—maybe even more so because volunteer negligence often goes unrecognized and poorly managed.

### Scope of Liability

Nonprofit liability depends on whether volunteers act within the scope of their duties. For example, Volunteer Vicki helps out at a local senior citizens' center by driving a van for disabled seniors. One morning, Vicki runs a red light and collides with another vehicle. Several passengers are seriously injured, and both vehicles are totaled. The senior citizens' center is probably liable for the injuries and property damage sustained in the accident because Vicki's negligence occurred while she was acting within the scope of her duties.

However, if Vicki wrecked the van on an unauthorized weekend trip to the beach with her friends, the senior citizens' center would likely not be liable because Vicki used the van without permission for something that was clearly outside the scope of her volunteer duties. Usually, such unauthorized activities will not trigger liability under the *respondeat superior* doctrine.

A nonprofit is usually not liable for a volunteer who commits intentional, wanton, or malicious acts, since these are also outside the scope of a volunteer's duties. However, there are exceptions to this rule if an intentional act is *reasonably foreseeable*. For instance, suppose Vince volunteers to handle crowd control at a local charity concert, then physically assaults a person who attempts to enter the concert without paying. The charity sponsoring the concert could be liable for the personal injuries Vince inflicted because, arguably, it was foreseeable that Vince might use poor judgment in carrying out his crowd control duties and cause injury.

Employers who put volunteers in positions of trust and responsibility are liable for intentional acts that are reasonably foreseeable.

### Screening Volunteers

Nonprofits may also be liable for failing to screen volunteers properly before allowing them to assume duties. Some of the worst cases have occurred in nonprofits that serve children.

In one frightening scenario, Victimizer Vinnie volunteers as a team leader for a neighborhood youth group, then abuses

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a child in the group. Upon investigation, the organization finds Vinnie has a prior record of child abuse and molestation charges in another state. Since Vinnie's background could have been discovered through a routine criminal records check, the nonprofit organization would probably be liable for failing to screen its volunteers properly.<sup>2</sup>

Another common screening failure results when nonprofits assign chauffeuring duties to a volunteer who has a poor driving record. The nonprofit's failure to confirm the volunteer's license status and driving record leads to liability if there is an accident. Additional liability may also arise for failure to comply with state or federal safety requirements that apply to volunteers. Federal law now requires all drivers of commercial vehicles that carry 16 or more passengers (including the driver) to undergo random drug and alcohol testing. The law applies to nonprofits as well as commercial businesses, and it includes all drivers, whether they are paid *or* volunteer.<sup>3</sup>

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ences. Conduct criminal records checks when required (see footnote 2). Maintain these documents in volunteer files similar to personnel files and keep them up to date.<sup>4</sup>

**2. Appoint a responsible manager** to interview, select, and verify the resumes and references of prospective volunteers. Appoint the same manager or another supervisor to be in charge of volunteer training. Require that a responsible manager or employee be available at all times to answer questions from volunteers concerning their duties and conduct.

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- 3. Prepare a written volunteer manual.** Describe volunteer duties and establish policies and procedures regarding how volunteers are managed. Provide copies to all volunteers; require them to read it and sign a statement indicating they will comply with all policies and procedures as a condition of their volunteer service.
- 4. Establish volunteer orientation and training procedures.** Insure that each volunteer passes the orientation and training before assuming duties.
- 5. Review specific duties with every volunteer.** Be sure all volunteers understand the procedures for performing their duties before they begin work.
- 6. Give demonstrations.** Show how each volunteer duty should be performed.
- 7. Avoid the temptation of having volunteers “learn on the job,”** unless the nature of the position uniquely supports it *and* adequate supervision by a fully trained employee is available to provide basic instruction.
- 8. Use the “buddy system” when practical,** arranging for volunteers to work in the company of at least one other paid or volunteer employee.
- 9. Give tests or conduct “trial runs”** to ensure that volunteers are properly trained before beginning their duties.
- 10. Consult legal counsel immediately** should any unusual problems arise.

## Supervising Volunteers

Nonprofits also have a duty to supervise and train volunteers just as they would train paid employees. Volunteers entrusted with any level of responsibility for others must be fully trained and capable of handling their duties. Periodic refresher courses are also prudent.

One case held a school liable for using volunteers to give physical education tests when a student suffered injuries. The court ruled that the injuries resulted from the negligence of a volunteer who hadn't been properly trained. Although the volunteer attended a group instruction session before starting work, evidence suggested the one-time instruction was not adequate. The court said that merely presenting group instruction was not enough to shield the school from liability. Instead, the school should have insured that *each* volunteer was properly trained.

## Steps to Reduce Liability

You can minimize negligent screening and supervision through prudent risk management. Remember, more is at stake than legal liability. Your organization's good reputation is always at risk whenever legal claims are raised. These 10 risk management steps can help protect your nonprofit as well as the innocent victims who may suffer lifetime consequences in cases stemming from negligent screening and supervision.

**1. Treat volunteers like employees** for the purpose of screening. Require prospective volunteers to submit resumes and volunteer applications, complete with refer-

## New Bill Protects Volunteers But Not Organizations

Nonprofits may see an unprecedented increase in volunteering now that Congress has passed a bill which shields vol-



unteers from lawsuits.<sup>5</sup> The Volunteer Protection Act removes volunteers from liability for accidents or mistakes that occur while they're volunteering.

This is good news for organizations seeking to leverage their operations. On the other hand, it means new concerns for organizations seeking to prudently manage operating risks.

It's important to note that the Volunteer Protection Act protects individual volunteers; it doesn't protect your organization. A well-conceived volunteer program is the best way to reduce your exposure to volunteer risks. ■

**Selected References**

\*Gammon & Grange, P.C., *Nonprofit Alert Memo 9101-1, Minimizing Liability for Negligent Hiring and Supervision.*

\*Gammon & Grange, P.C., *Nonprofit Alert Memo 9301-1, A Prudent Volunteer Program for Nonprofits.*

\*Gammon & Grange, P.C., *Nonprofit Alert Memo 9706-1, Substance Abuse Prevention in the Nonprofit Workplace.*

\*\*Society for Nonprofit Organizations, *Volunteer Liability and Risk Management.*

\*Available for \$20 each from the law offices of Gammon & Grange, P.C., 8280 Greensboro Drive, 7th Floor, McLean, VA 22102 (703-761-5000; fax 703-761-5023).

\*\*Available from the Society for Nonprofit Organizations' *Resource Center Catalog*, included in this issue (see page 27) or call 800-424-7367.

**Footnotes**

<sup>1</sup>This information is based on data collected in a study on volunteerism conducted annually by Independent Sector. The estimates quoted here are from the 1995-1996 study. For more information, contact Independent Sector, 1828 L Street, N.W., Suite 1200, Washington, DC 20036 (202-223-8100). Another recent study conducted by the Pew Charitable Trusts found that 90% of Americans believe volunteerism has helped improve their neighborhoods. Contact the Pew Research Center for the People & Press, 1875 I Street, Suite 1110, Washington, DC 20006, for more information.

<sup>2</sup>Federal law and some state laws require criminal records checks of all paid employees *and* volunteers in positions of responsibility over powerless citizens, such as children and the elderly. Check with local counsel to determine the requirements in your area.

<sup>3</sup>For additional information about the drug and alcohol testing requirements, make a recorded request on the Department of Transportation's automated line, 800-225-3784, or contact the Secretary of the Department of Transportation, 400 7th Street, S.W., Washington, DC 20590.

<sup>4</sup>For sample volunteer application, reference, screening, and record-check forms, along with other sample forms, see *Volunteer Liability and Risk Management* in "Selected References."

<sup>5</sup>See "Hurray—Volunteers Win Protection" on page 7 of this issue.