

Watch Out for These Legal Risks: Liability Concerns following COVID

Take care not to let your guard down too soon.

By Nicole M. Jolley

It has been more than a year since much of the United States shut down in response to the COVID-19 threat. During that time, nonprofits have had to pivot their engagement strategies, struggle through budget shortfalls, and reimagine how they can continue to live out their missions. Now that vaccines are widely available, organizations have relaxed their restrictions and reverted to “business as usual.” Be wary, however, of letting your guard down: There’s still plenty of risk for legal action surrounding COVID-19.

Here are four areas in which you should be especially careful as our nation navigates its recovery.

Children under Age 12

While vaccines are available for adults and teenagers, some families with younger children may be left out of the return to “normal.” If your organization serves children or families, be mindful the virus still is spreading among children. It’s important to reassess your mitigation efforts with some regularity given the changing landscape of the pandemic.

Your path forward largely depends on the area in which you live. If your organization is based in a region that has seen a steep decline in the number of COVID-19 cases, you might consider changing your mitigation efforts. Additionally, some states have extended laws shielding organizations from liability surrounding COVID-19. Consult your attorney as to the legal implications of how these laws impact your organization.

On the other hand, if cases have remained steady in your area, it may be too early to ease your mitigation efforts – at least in situations that include children under 12. The Centers for Disease Control and Prevention (CDC) recommends that childcare providers, for example, continue procedures related to quarantining, masking, and disinfecting.

Vaccination Requirements

While many people have been vaccinated, many others have chosen to opt out. That leaves nonprofits with a decision to make: Do they require their employees and volunteers to show proof of vaccination before performing their duties?

When making this decision, you should consult with your attorney to ensure you’re following guidance from the Equal Employment Opportunity Commission (EEOC) on your employees’ rights regarding mandatory vaccination.

“Requiring vaccinations will shield you from lawsuits.”

If you decide to mandate vaccinations for your employees or volunteers, you may be required to give them time off for the vaccination and for recovery time. You may also need to reimburse employees and volunteers for costs associated with the vaccination. While the U.S. government is using taxpayer dollars to give vaccines to all Americans, some vaccine providers may charge an administration fee. Check with your organization’s health-insurance provider to find out whether these costs will be covered.

Some of your employees and volunteers may decline the vaccine for religious or medical reasons. You should accommodate them unless you can show that doing so will create an undue hardship for your organization. Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADA) provide for exemptions from mandatory vaccination and require reasonable accommodations for employees with disabilities (including any medical conditions that would preclude an employee from receiving the vaccine) or religious objections. Employee requests for medical exemptions should be treated like any other ADA request for accommodation.

Requiring vaccinations can keep your employees, volunteers, and clients from contracting the virus on your premises. Taking this step can also give you a shield with which to defend a lawsuit. If an employee, volunteer, or client claims to have contracted COVID-19 from your organization’s premises, you can make a solid case the organization isn’t liable because you performed due diligence in ensuring all employees, volunteers, and clients were vaccinated.

Cyber Liability

Over the past year, more people have been working from home than ever before. While some organizations are bringing employees back into an office setting, others are giving them more flexibility to work remotely. Remote workers, however, increase an organization’s risk for cybercrime. Here are some steps you can take to reduce that risk:

Safeguard protected data. Protect employee, volunteer, and client data (personally identifiable information) such as

social-security, driver's-license, bank-account, and credit-card information.

Use multi-factor authentication. This provides an added layer of protection for your system.

Back up critical information. Establish a process for regular backups.

Create a policy requiring employees to use strong passwords. Passwords should have a combination of letters, numbers, and symbols, and should be different for every device or account. Employees should also be required to change their passwords regularly.

Perform background checks on all individuals who have access to your systems.

Train staff on phishing. Employees should be mindful to not open suspicious e-mail attachments or visit unknown websites.

Special Events

As the world returns to pre-COVID activities, there's still a big question mark around the right way to handle special events. Even some top-tier performing artists have shied away from planning tours because they don't want to expose themselves to the liability of causing a super-spreader event.

For many nonprofits, events of some sort are a necessity for fundraising purposes. But what's the right balance between keeping safety in mind and moving forward with your organization's day-to-day operations? According to a report from QGiv (go.qgiv.com), nonprofits are divided as to how they plan to approach special events. Only 3.5% say they plan to shift back to fully in-person events, while 23.7% will hold virtual-only events, and 28.3% are planning hybrid events.

What is a hybrid event, and why is it the new vogue? A hybrid event is one that limits the number of in-person attendees – which could make the lucky few attendees feel special enough that they're more likely to open their checkbooks. But it also gives others a chance to participate in the festivities remotely. After more than a year of virtual events, many people may be content to attend your event virtually.

From a liability standpoint, a hybrid event reduces your risks. It gives attendees an opportunity to choose how they want to participate. If they attend in person, they're doing so with the full knowledge that they run the risk of

exposure to the virus. You'll want to consider implementing a hold-harmless agreement or waiver of liability that each in-person attendee can sign before entering your event. This will lower your organization's liability risk.

As for precautions you should take at the event itself, that depends on your location and your organization's tolerance for risk. While many states have relaxed requirements on group sizes, masking, and social distancing, others still are being very cautious. Even if you believe your event falls within the given parameters, it's a good idea to communicate with local and state officials before investing money into the planning process. 

Nicole M. Jolley, CPCU, MBA, AIC, ARe, AINS, is director of Nonprofit & Human Services, Church Mutual Insurance Company (churchmutual.com). Church Mutual is a stock insurer whose policyholders are members of the parent mutual holding company.

More on Managing Your Risks (NonprofitWorld.org):

The Most Likely Lawsuits – and How to Protect Yourself (Vol. 19, No. 1)

How Risky Is Your Special Event? (Vol. 20, No. 1)

Don't Get Caught by Phishing Schemes (Vol. 35, No. 2)

Hacking People: Why Your Biggest Vulnerability Isn't in Your IT Department (Vol. 37, No. 1)

Volunteer Management Strategies: Balancing Risk & Reward (Vol. 17, No. 3)

Use Background Checks to Avoid Legal Pitfalls (Vol. 29, No. 1)

Planning for the Unforeseeable: How Smart Risk Management Provides Peace of Mind (Vol. 24, No. 2)

Can Your Organization Afford to Lose \$100,000? Safeguards Every Nonprofit Needs to Implement (Vol. 30, No. 3)

Mitigate Cyber Risks with the Right Security Controls (Vol. 36, No. 1)

Hurricanes, Strikes, Terrorism – Protect Your Events from These Causes of Loss (Vol. 28, No. 4)

Is Your Organization Lawsuit-Proof? (Vol. 20, No. 1)

Setting the Stage for an Abuse-Free Organization (Vol. 30, No. 6)

How to Accommodate Disabilities under ADA (Vol. 18, No. 5)

Trust: The Reason Volunteer Screening Is More Vital than Ever (Vol. 37, No. 3)

Risks Get Riskier for Nonprofits: ERM Can Help (Vol. 38, No. 1)

“Remote workers increase an organization's risk for cybercrime.”