



Loss Control Department
Technical Information Paper Series

Volunteers in Public Entities

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Volunteers in Public Entities

Introduction

One of the more common liability risks that public entities face is the use of volunteers to provide services that normally would not be possible with existing resources. The reasons that individuals volunteer vary widely. Some volunteer simply out of altruism, others because they have a desire to build skills, gain experience, develop contacts, or engage in social exchange. The majority of these individuals provide their services without creating problems for the entity they serve; however, if not controlled, the risk may become significant. The general rule for public entity volunteers is: "If it is a hazard for the entity's employees, it may be a hazard for the entity's volunteers."

Definitions

In its policies and procedures, the entity should provide definitions of *volunteer* and *volunteer activity*. This will identify and clarify the relationship between the volunteer and the public entity. Where this is not defined, it may be determined that an employer/employee relationship exists where no such relationship is anticipated on the part of the entity. Such definitions may also help in determining legal culpability resulting from the actions of volunteers. One community provides the following definitions:

- *Volunteer*. A person who, of his/her own free will, provides goods, services, or both without financial gain. Volunteers do not displace or replace existing employees.
- *Volunteer Activity*. This is an activity that would not normally be provided if not for the presence of volunteers. These will not include duties normally performed by paid staff.

Liability

The entity may become liable for the acts of volunteers much in the same way it can become liable for the acts of its employees. However, because the relationships are not the same, there are some differences. For an entity to be liable for volunteer actions, it must be shown that:

- A volunteer acted on behalf of the organization, with the organization's authority
- The organization had control, or the right to control, the behavior of the volunteer
- The volunteer acted *within the scope of the directions and control* exercised by the organization

The last point is critical, in that, if the volunteer acts *outside of the scope* of his/her duties, the organization's liability is lessened. (This issue is discussed in depth below.)

Risk Management Controls

The following list provides some specific risk management controls that should be applied where public entities have occasion to engage volunteers.

Screening. Just as it is extremely important for the public entity to screen new employees, it is also important to screen volunteers. This is particularly so where volunteers will be in the position of being alone with children in their charge. Parents will assume that the public entity will provide a safe environment for their children. The screening process may include checks of any of the following:

- References
- Prior employer
- Credentials
- Local police records
- State registries of known child offenders
- NCIC
- Finger prints
- Licenses
- Motor vehicle records

Keep in mind that if any or all of these checks are made for *one* volunteer, they must be made for *all* volunteers. To single out individuals or specific groups would be to invite a charge of discrimination. Document the results of these checks, and be sure to maintain the confidentiality of the results.

Training. Provide adequate and appropriate training for volunteers. Volunteer training programs should cover the following:

- Duties to be performed
- Prohibited acts
- Risks involved in the volunteer's duties
- Ways to minimize risk or injury
- Record keeping, confidentiality, ethics
- Any required specialized skills

Job Descriptions. Just as each employee position should have a job description, so should each volunteer position. An adequate job description provides the parameters necessary for selecting an appropriate volunteer for each volunteer position. It also establishes the scope of the volunteer's duties and, as mentioned above, it mitigates the severity of liability should the volunteer exceed the parameters of the position. Just as with employee position descriptions, the volunteer job description should list the physical, experience, skill and educational requirements. This will also address discrimination and Americans with Disabilities Act (ADA) considerations.

Records. Document the results of the screening and training processes. Where potential volunteers are formally interviewed, the interviewer should follow a specific format for all candidates and document the results of each interview. In addition, make it part of any training program that each volunteer sign off that he or she attended the training and understood the material prior to his or her being placed into the position. Maintain training records for a reasonable length of time (at least five years is recommended).

Small Public Entities

Because of the lack of resources, the small public entity may not have formal policies and procedures to cover selection and placement of volunteers. Some small communities subscribe to the philosophy that “if the person volunteering has a pulse, he or she is acceptable.” For smaller entities, this usually means that most of the formal controls listed above will not be in place. It is to the entity’s benefit to formalize its process for selecting and placing volunteers even in small communities where those responsible for overseeing volunteers know the volunteers personally and don’t feel that there is a potential problem. Others are reluctant to impose policies and procedures for fear of scaring off potential volunteers. However, the need to perform basic risk management steps still remains.

Refer to the checklist that follows for steps to take in screening volunteers for public entities.

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Screening Volunteers For Public Entities

The use of volunteers in public entities is a common liability risk. However, if not handled adequately, engaging volunteers can lead to significant liability for the public entity. Therefore, it is necessary to properly screen volunteers prior to permitting them to act on the entity's behalf. Some areas that should be considered for proper screening are listed below. (Note: this list is not all-inclusive.)

- Volunteer Job Descriptions.** Job descriptions should be developed for each volunteer position and should include the following criteria:
 - Experience necessary
 - Skills required
 - Educational requirements
 - Physical requirements
- Reference Checks.** The candidate should list at least three references who are not members of his/her immediate family. The entity then should verify these references by contacting them.
- Prior Employer Checks.** If the candidate was previously employed, the entity should contact the last one or two employers. The entity should inquire as to the candidate's promptness, attendance, work quality, and consideration for rehiring.
- Credentials.** Where specific credentials are required (such as First Aid certification), they should be verified.
- State Registries of Known Child Offenders.** Where the candidate will be placed in the position of supervising children, inquiries to these registries should be made.
- Local Police Records Checks.** Where the candidate may be placed in a position of security or handling moneys, such checks should always be made.
- Motor Vehicle Records Checks.** Where the candidate may be placed in the position of driving a motor vehicle (either the entity's or their own) for public entity business, a check of the person's MVR is a must. Criteria should be established to determine MVR acceptability. Applicants whose MVRs are not adequate should not be permitted to drive for entity business.

Checking these items can go a long way toward avoiding engaging volunteers who could place your entity at risk.