

Caution, Care and Compassion: Understanding Volunteer Liability



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A strong volunteer program offers nonprofits the opportunity to increase mission impact. Yet when a nonprofit retains volunteers, its liability exposure—the legal, financial, or other obligation to another—includes two disruptive possibilities. The first is potential liability for harm a volunteer experiences while performing service for the nonprofit. The second possibility is the nonprofit’s potential liability for harm, damage or loss a volunteer causes while serving the nonprofit’s mission. Thoughtful volunteer risk management practices account for both possibilities. In some cases, steps and strategies your nonprofit takes will mitigate both exposures and build the confidence and resilience you need to engage volunteers without regret.

Managing the Risk of Volunteer Injuries

Reducing the likelihood—and potential severity—of volunteer injuries requires attention to four key areas: position design, equipment and supplies, training and support, and readiness to respond.

Position design. Preventing injuries to your invaluable volunteers begins with thoughtful position design. Most nonprofits that recruit and engage volunteers offer multiple volunteer roles, with varying expectations, tasks, and needed skills or experience. A volunteer who will pull weeds at an older person’s home may need no prior experience, while a volunteer who will lead the music program at a camp may require credentials, talent, and experience in the performing arts. Some nonprofit leaders try to save time by creating an ‘everything but the kitchen sink’ position description that conveys the unappealing message that ‘volunteers may be asked to do anything we want.’ Avoid that mistake with position descriptions that honestly describe distinct volunteer roles in your nonprofit.

Equipment and supplies. If you can’t afford to provide the equipment and materials needed to increase the safety and comfort of your volunteers, you have no business recruiting volunteers. Whether those tools and materials include safety goggles, left-handed scissors, or training on your phone system, skimping on supports increases your liability risk.

Training and support. From the part-time jobs we held in high school to the knowledge worker roles many of us hold today, none of us knew how to do our jobs without training and support. And if you remember ever being told to begin work without any training, we doubt your first days on the job were rewarding. See “Craft a Volunteer Training Program That Works” in this issue of RME for helpful tips on the phases of volunteer training,

including onboarding, role-specific training, scenario-based learning, compliance and reporting, and refreshers. Important risk reminders in this area include:

- *Remain open to any and all questions from your volunteers.* At NRMC we sometimes joke that when it comes to asking us questions about risk topics, there is ‘never a forever hold your peace moment’ with our clients and Affiliate Members. And remember to never dismiss, in words or facial expressions, the question of a volunteer, which would convey a lack of interest in and commitment to the volunteer’s success.
- *Make it as easy as possible to report injuries, share concerns, or provide feedback.* When you make it easy to provide feedback, you increase the possibility of receiving invaluable information you can use to change your organization for the better. Requiring volunteers to complete unwieldy forms—paper or online—or accepting complaints on days and at times convenient for you limits the potential insights you could receive. Stop worrying about keeping up with an avalanche of complaints. Instead, resolve to find the wisdom and seeds of opportunity in the feedback from your volunteers.
- *Consider purchasing volunteer accident coverage.* A volunteer accident policy provides coverage for volunteers’ medical expenses and accidental injuries suffered while performing volunteer service. It is a form of excess coverage, meaning it is secondary to the volunteer’s primary personal health insurance. If the injured volunteer has no primary insurance, the volunteer accident policy will typically be primary. Accident policies are generally very affordable compared to other coverages purchased by a nonprofit.

Readiness to respond. Avoiding all volunteer injuries or harm caused by volunteers isn’t practical, given the roles in which volunteers serve and the risks inherent in a community serving mission. This requires that nonprofit leadership teams be ready to respond when harm, loss, injury, or allegations of wrongdoing occur. The components of readiness will vary based on the mission of your nonprofit, the programs you offer, and the potential for harm or loss based on circumstances beyond your control, such as severe weather in your geographic location, the potential for criminal conduct, and more. Resolve to build readiness in the following areas:

- *Your first call:* Who will you call if a volunteer is injured while serving your mission at your headquarters, in the field, or elsewhere? In most cases the first call may be 911, but in other instances a nonprofit may have first-aid trained or nursing/medical staff on site. Anyone who might witness a volunteer’s injury should know how to reach help.
- *Your next call:* After a volunteer injury, your next call may be to the injured volunteer’s emergency contact. If an adult volunteer is in stable condition and able to communicate with their loved ones, your next call may be to your insurance advisor. When insurable claims happen, many nonprofit leaders acknowledge not knowing exactly which insurance policy applies. Your best bet is to call your trusted insurance agent or broker and seek their guidance on filing claims with the policies that might apply.
- *Be ready to step in and help:* In a recent training designed by NRMC for a youth camp staff team, we referenced a public education program and courses by FEMA and the [American Red Cross](#) titled “You Are the Help Until Help Arrives.” The goal of the program was to teach bystanders basic life-saving steps to use before professional help arrives. Now is the time to determine who should be trained to help until help arrives.
- *Your first communication:* In NRMC’s experience, trying to draft a thoughtful, written communication to the public, media, or a constituent group after a tragedy or event involving injuries is incredibly difficult. Instead, we suggest leaders draft simple statements that can be expanded when needed. Sometimes referred to as holding statements, these materials might simply describe your mission (purpose), commitment to safety, and provide a phone number and email address.
- *Caring outreach to affected constituents:* Communicating with constituents with empathy and humility is key to responding to any impactful incident. Silence sends a message that is inconsistent with the caring your mission and programs conveyed before the incident.

Vicarious Liability for Volunteer Service

Did you know your nonprofit could be held liable for the wrongful actions or inaction of your volunteers? As agents of a nonprofit, the conduct of volunteers can be imputed to the organization. Vicarious liability arises from the legal concept of respondeat superior, which means “let the master answer.” When vicarious liability applies, a nonprofit can be legally and financially responsible for the actions or inactions of a volunteer, even

when it appears the nonprofit did nothing wrong. Three conditions are required for vicarious liability. First, the nonprofit must have the right to exercise control over the volunteer. Second, the volunteer must be acting on behalf of the organization when the harm occurs. And lastly, the volunteer must be acting within the scope of their duties.

The first condition above has led some nonprofit leaders to believe less is more. They wonder, “If we provide minimal direction to our volunteers and a volunteer causes harm, are we potentially absolved of responsibility for the harm they cause?” Our answer is a resounding “no.” While vicarious liability may not apply if harm results after the nonprofit fails to supervise its volunteers, direct liability for failing to supervise agents acting on the nonprofit’s behalf is a concerning possibility.

Direct Liability for Volunteer Actions and Inaction

Direct liability refers to an organization’s liability (responsibility) for failing to meet the standard of care: exercising the care of a reasonable and prudent professional. The standard of care applicable to nonprofits does not require that an organization do everything it possibly can to anticipate and prevent harm or loss. The core concepts within the standard are reasonable conduct and prudence. The NRMC team believes reasonableness and prudence include two components:

- *Risk Awareness*: awareness of the types of disruptive possibilities (events) that could arise from service delivery and the work of your volunteers. Psychic abilities are not required! Take time to consider the types of mistakes, misunderstandings, and mishaps that could arise when volunteers work on behalf of your mission.
- *Risk Management*: taking steps to reduce the likelihood of harm or loss, and readiness to respond when harm or loss occurs.

When nonprofit leaders recognize their responsibility to thoughtfully design and support volunteer work and take steps to manage risk, direct liability becomes less likely.

Screening, Supervision and Separation

Through thoughtful recruitment, training, orientation and supervision, a nonprofit leadership team can minimize the concerning risks of volunteer service while maximizing the benefits volunteers bring to the organization.

Screening Risk Tips:

- Never recruit or engage volunteers your nonprofit cannot support and supervise properly. Believing an unpaid volunteer—even one serving a single shift—cannot cause mission harm or personal injury to others is naïve and dangerous.
- Use a volunteer application form to collect vital information from anyone who wishes to volunteer at your nonprofit. Consider tailoring the application based on the scope of the volunteer role. For example, an applicant for a mentoring role might be required to complete an extensive application that includes personal and professional references, while a volunteer for a team coaching role might be required to submit evidence of their first aid training, certification from a national governing body for the sport, and coaching and professional references.
- Obtain the volunteer applicant’s permission to verify information on the application. The form should also ask the applicant to agree not to bring a legal claim against the nonprofit or hold the organization responsible for any harm that results from the nonprofit’s actions to verify information provided by the applicant or check additional sources for information necessary to the screening process.

Supervision Risk Tips:

- Clearly articulate duties, limits, expectations and requirements in position descriptions, volunteer agreements, volunteer handbooks and volunteer training.
- Always provide an orientation and training to volunteers to make certain they understand what they can, can’t, should, and shouldn’t be doing in their role.
- Design a straightforward complaint or grievance process that provides an opportunity for volunteers to express dissatisfaction with the supervision they are receiving or other aspects of their experience with

the organization. A grievance process can serve as a valuable safety valve and help an organization avoid costly or otherwise damaging complaints from volunteers.

Separating a volunteer from their service role at your nonprofit can be challenging. Although volunteers generally don't enjoy protection under anti-discrimination laws or workers' compensation coverage, a disgruntled volunteer may bring a lawsuit alleging a wide range of torts, including intentional infliction of emotional distress, in lieu of other causes of action, such as wrongful termination. Therefore, treat volunteers in accordance with appropriate volunteer policies—not employment policies.

Many managers experience complex, conflicting emotions when they realize it's time to part company with a volunteer. Why? Perhaps because we naively believe we should take all the free help we can get and opt for quantity over quality. Or we worry that by letting a volunteer go, we might jeopardize relationships with other volunteers or expose our nonprofit to negative feedback or reputation harm.

The truth is that the potential liability is greatest if you continue to engage a volunteer who isn't supporting your mission. You also face the potential for significant liability exposure if you retain a volunteer who puts themselves or others in harm's way. *Never retain a volunteer who puts your mission or the communities you serve at undue risk.* Volunteers can be disciplined or terminated appropriately, for reasons such as shirking one's duties, driving negativity and conflict, or disregarding critical policies around workplace safety, anti-harassment, anti-discrimination, and more.

Discipline and Separation Risk Tips:

Try these tips to establish appropriate volunteer discipline and separation practices at your nonprofit and apply these procedures fairly and consistently.

- *Promote understanding before reaching the point of no return.* When a volunteer enlists to serve your nonprofit, integrate disciplinary and termination information into the volunteer's onboarding or training program. Volunteers must recognize from the outset that your workplace has behavioral expectations, and volunteers can be disciplined or terminated if their behavior warrants it. Some volunteers may help you out by 'self screening' or dropping out of the program early if they know they cannot meet your expectations.
- *Offer coaching or training before discipline.* If a volunteer has clearly committed harm or egregiously violated a volunteer program policy, immediate disciplinary action or termination may be necessary. But for minor violations or errors, positive support may be all a volunteer needs. Before you discipline an unsuspecting volunteer, offer role-specific or skills coaching or training to empower the volunteer to meet your expectations. Providing meaningful opportunities to succeed is one of the most important duties of a volunteer manager.
- *Discipline and/or terminate with care.* While you may have fewer options for disciplining volunteers compared to employees, strong disciplinary measures may include a week or a month of volunteer probation, or the 'demotion' of a volunteer to a role with less responsibility or less frequent client contact. Depending on the infraction, you might offer disciplinary measures before terminating the volunteer. Clearly communicate that the volunteer is close to being dismissed and must modify their conduct in order to continue serving your mission.
- *Watch for shifting anti-discrimination laws.* Though only [a few states have extended anti-discrimination and workplace harassment protections to volunteers](#) and unpaid interns, more states may follow. Be mindful of shifts in your state laws and watch for [cases](#) that may set a precedent for volunteers to effectively claim anti-discrimination and anti-harassment protections under the law. Even if you have no legal requirement to protect volunteers and provide avenues for recourse (should they experience discrimination or harassment), your nonprofit's reputation is always at stake. Resolve to treat volunteers fairly and honorably and foster a workplace culture that rejects discrimination and harassment.
- *Conduct volunteer exit interviews.* If you left a job or volunteer role angry, might you be more willing to sue or threaten the organization in some other way? Conversely, if you leave a job with positive feelings, you will probably be far less likely to wish any harm upon the organization. Exit interviews provide closure to a volunteer's service while offering the individual one more opportunity to make a positive impact on your mission. Similarly, nonprofit leaders can benefit from analyzing exit interview data to understand their volunteers' experiences. Of course, the exit interview is also a chance for you to make one final positive impression, to ensure that the volunteer understands your gratitude for their

commitment to your nonprofit's mission. For any departing volunteers that you would consider for 'rehire,' ask this question during the exit interview: "If there was one thing our nonprofit could call on you for in the future, what would it be?"

Prudent Steps Now Provide Benefits Later

We hope you'll never have to face liability for the actions, inactions or injuries of a volunteer. If you take the steps in this article, you'll make that less likely, be more prepared if harm or injury occurs, and raise the level of volunteer experience for all who perform uncompensated service for your mission.

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