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Volunteer Protection Act Ten Years Later

October 7, 2009

presented by
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Our approach

- The Act's provisions
- From the states - statutes and cases
 - Who is a volunteer?
 - What type of conduct is considered?
 - What is the impact of insurance?
 - Does the organization remain liable?

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What The Act Does

The Volunteer Protection Act provides immunity for volunteers serving nonprofit organizations or governmental entities for harm caused by their acts or omissions if:

- the volunteer was acting *within the scope of his or her responsibilities at the time of the alleged act or omission.*
- if appropriate or required, the volunteer was properly licensed, certified or authorized to act.
- the harm was not caused by *willful, criminal or reckless misconduct, gross negligence or a conscious, flagrant indifference to the rights or safety of the individual harm.*
- the harm was not caused by the volunteer operating a motor vehicle, vessel, or aircraft where the State requires an operator's license and insurance.

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Protection Provided by the Act

Protection for volunteers

- A volunteer of a nonprofit organization or governmental entity is not liable for harm caused by an act or omission done in the scope of responsibility on behalf of the organization.
- This applies if the volunteer was properly authorized and licensed, if such is authorization is needed.

Exceptions to Immunity

- The harm was caused by willful or criminal misconduct, gross negligence, reckless misconduct or
- a conscious, flagrant indifference to the rights or safety of the individual harmed; or
- if the harm was caused by the volunteer operating a motor vehicle, vessel, aircraft or any vehicle for which a license or insurance is required.

Circumstances in which state laws are not inconsistent

If state laws limiting volunteer immunity are based on any of the following conditions, the condition won't be construed as inconsistent with this section:

- a law that the organization or entity adhere to risk management procedures, including mandatory training of volunteers;
- a law that makes the organization liable for the acts or omissions of its volunteers to the same extent an employer is liable for employees;
- a law that makes a limitation of liability inapplicable if the action is brought by an officer of state or local government pursuant to state or local law; or
- a law that makes a limitation of liability applicable only if the organization or entity provides a sufficient source of recovery for harmed individuals.

The Act Pre-empts State laws

The Volunteer Protection Act pre-empts any inconsistent law of a state, except if the state law provides more liability protection for volunteers than the VPA provides.

Defining a volunteer

Who is a volunteer

The VPA protects an individual who performs services and who receives no compensation (although reasonable reimbursement for expenses incurred is allowed) or who does not receive anything of value in lieu of compensation in excess of \$500 per year.

Illinois protects those volunteers who serve as officers and directors unless the director earns in excess of \$5,000 per year from his duties as director (other than reimbursement for actual expenses) or the act or omission involved willful or wanton conduct.

Types of Conduct protected by VPA

- Those done in good faith and
- Within the scope of official functions or duties

Most prevalent exception in VPA and in states is wanton and willful acts

Conduct in the course and scope

VPA and the states confer immunity for that conduct that is in the course and scope of his/her responsibilities.

In Minnesota - broad wording protects all uncompensated persons acting on behalf of the nonprofit, not just those acting within the specific scope of their job description.

Immunity for Negligent Acts

VPA protects conduct as long as harm not caused by willful and wanton...acts.

Other states expand protection to other types of conduct including not only those done in good faith but also those done negligently.

- Delaware - A volunteer of a nonprofit organization is not subject to suit in any manner for any civil damages resulting from a negligent act or omission performed in connection with the activity of the organization.
An exception:
- A plaintiff may sue due to negligent act or omission relating to the operation of a motor vehicle.

The amount recovered from the volunteer may not exceed the insurance coverage held for negligent operation of a motor vehicle under the circumstances.

Types of Activities Protected by States

- Illinois - Using defibrillator - Any certified person who renders emergency medical care using an automatic external defibrillator in good faith and without compensation is not liable for civil damages to the person helped.

Types of activities

The volunteer coach

Illinois - A volunteer who provides services as a manager, coach, instructor, umpire or referee or voluntarily assists a manager, ...in a sports program of a non-profit association is not liable for civil damages as a result of rendering services or sponsoring a sports program.

An exception: no immunity if

- the conduct of the person falls substantially below typical standards of a similar person rendering similar services, or
- the person did an act or omitted doing an act that the person had a duty to do, knowing the act posed a substantial risk of harm. Establishing that the person acted below the ordinary standard of care is sufficient to impose liability.

Types of activities

Massachusetts - No officer, director, trustee, or member of a nonprofit serving without compensation shall be liable to any person for any action in tort as a result of any acts of failures to act in rendering such services or in conducting such sports program.

The immunity conferred by this section shall not apply to any acts or failures to act intentionally designed to harm, or to any grossly negligent acts or failures to act which result in harm to the person.

- Far stricter standard than Illinois – falling below typical standard of care

But have to be involved in the protected activity - The organization was not immune for injuries that may have resulted due to its negligence during a coaches' game where children did not participate.

Types of Activities

- Idaho - Officers, directors and volunteers who serve a non-profit organization or corporation without compensation are immune from civil liability arising out of conduct that was within the course and scope of their duties and was at the direction of the corporation or organization.

Exceptions: No immunity attaches to the following categories of conduct:

- intentional breach of fiduciary duty owed to the organization, corporation or members;
- acts or omissions not in good faith and involving intentional misconduct, fraud or knowing violation of the law

Who is the injured person

- A child's thumb was amputated when a university professor closed a door on the child's thumb at a Boys & Girls Club. A professor had established a program enabling his students to participate as volunteers at the Boys and Girls Club.
- In reviewing this case, the Supreme Court of Virginia found that at the time of his alleged negligence, the professor was not at the Club to directly perform any of the Club's work; rather he was carrying out his duties as a professor at Virginia Wesleyan College.
- The court concluded that the professor was not entitled to immunity because he was not engaged in the work of the charity at the time of his alleged negligence.

Who is the injured person

Washington's Good Samaritan Law –

Immunity does not apply to anyone who is facing a suit brought by someone other than the initially injured party.

The legislative intent was to protect Good Samaritans from claims of ordinary negligence for acts that cause further harm to an ill or injured person.

The Impact of Insurance

- Georgia - The court said that a pastor involved in a car accident with the church van was entitled to immunity, as he was the agent of the church with primary custody of the vehicle. But the court also found that the church waived its charitable immunity by taking out an insurance policy on the van.
- Maine - The extent of damages will not exceed the extent of insurance coverage.
- New York - A volunteer for a charitable organization is not liable for civil damages. A director or officer of a non-profit is not civilly liable for monetary damages, except to the extent that they are covered by insurance.

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The Impact of Insurance

- Maryland - A volunteer, which includes officers, trustees, or any person who provides service, is not liable for personal actions or the actions of others at the organization beyond the limit of personal insurance available.
- North Carolina - A volunteer who in good faith performs reasonable services for a charitable organization is not liable in civil damages for acts or omissions resulting in injury, death or loss arising from the services rendered.
An exception: A volunteer is deemed to have waived immunity to the extent that he has liability insurance.

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The Impact of Insurance

- Kansas - If the non-profit organization has general liability insurance, a volunteer is not liable for damages in a civil action for the acts or omissions of officers, directors, trustees, employees or other volunteers.
An exception: The volunteer is required by law to be insured or is insured for those acts or omissions. If the volunteer has insurance, they are liable only to the extent of the coverage

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Liability of the Organization

One of the most common misinterpretations of or assumptions about the state and volunteer protection laws is that these laws immunize *nonprofits* as well as volunteers. They do not.

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Liability of the Organization

Liability of organization terminated if volunteer not liable

- California - A volunteer placed a coffeepot on a shelf at a senior center. The pot fell and injured a woman. The court granted the senior center charitable immunity from vicarious liability for the volunteer's actions, because she was acting as a volunteer, not as an employee
- Delaware - Proof of an act or omission by a volunteer that establishes a basis for the volunteer's immunity shall be sufficient to establish the liability of the organization under the doctrine of respondent superior.
- Florida - A victim of a car accident sued Habitat for Humanity alleging that the nonprofit was vicariously liable. The court found that the wife was an employee of Habitat for Humanity, but the husband, who was driving at the time of the accident, was a volunteer and not an agent of Habitat for Humanity. The court declined to hold Habitat for Humanity vicariously liable.

Liability of the Organization

- Kansas - Nothing in this section is to be construed to affect the liability of a non-profit organization for damages caused by negligent or wrongful acts or omissions of its volunteers. A volunteer's negligent or wrongful act is imputed to the non-profit organization so liability can be apportioned to a third party.
- Missouri - Nothing in this section shall be construed to create or abolish an immunity in favor of a nonprofit organization or a governmental entity.

Liability of an Organization

- New Jersey - New Jersey - nonprofits are not liable for negligently causing injury to a beneficiary of the organization.

But the Charitable Immunity Act is inapplicable in lawsuits alleging negligent hiring, supervision or retention of an "employee, agent or servant" that resulted in a sexual offense being committed against a person under the age of 18.

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Liability of the Organization

- Alabama - nonprofits are immune only with respect to claims from beneficiaries.
- Georgia – are immune unless the nonprofit fails to exercise ordinary care in the selection or retention of competent officers and employees, or where the plaintiff is a paying recipient of services from the nonprofit.
- Maine - charitable immunity only applies if an organization derives its funds mainly from public and private charity.
- Maryland - charitable immunity applies only if an organization's assets are held in trust and the nonprofit has no liability insurance.

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Liability of the Organization

- Utah - A non-profit organization is not liable for damage or injury that was caused by an intentional or knowing act of the volunteer which constituted illegal, willful or wanton misconduct, unless the non-profit should have had reasonable notice of the volunteer's unfitness to provide services under circumstances that make the organization's use of the volunteer reckless or wanton. A non-profit organization is also not liable where under the law a business employer would not be liable for an employee.
- Wyoming - a charitable immunity defense is available to nonprofits that provide services without charge.

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Liability of the Organization

Liability limited by capping damages

- Colorado - lawsuits against nonprofits are not prohibited, but judgments are limited to the extent of existing insurance coverage
- Massachusetts - A tort cap of \$20,000 applies to nonprofits for torts committed in the course of any activity carried on to accomplish directly the charitable purposes of the organization
- South Carolina - Awards against charitable organizations are limited to \$250,000 in actions for injury or death caused by the tort of an agent, servant, employee, or officer.

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Liability of the Organization

Third party harassment

- EEOC guidelines provide that unless the employer takes immediate and appropriate corrective action, the employer can be responsible for harassment by third parties such as volunteers when the employer, its agents or supervisory employees knows or should have known of the improper conduct
- The employer is in the best position possible to stop the harassing conduct and consequently should be legally responsible

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Factors in Assessing Exposure

- Type of conduct
- Type of activity
- Whether there is insurance
- Who is injured

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Best Practices

- Develop a written position description for all volunteers so they are aware of the scope of their duties and responsibilities
- Provide orientation to ensure knowledge of responsibilities and of organization
- Provide appropriate oversight and support to ensure activities are consistent with responsibilities
- Separate volunteers whose continued service presents unacceptable risks
- Establish policies and follow through including those involving your code of conduct
- Provide training on harassment and discrimination issues

and as always and as needed, consult with legal counsel

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Other resources from the Center

Hot off the Press:
No Surprises: Harmonizing Risk and Reward in Volunteer Management—5th Edition

New Software Tool:
My Risk Management Policies—create custom policies for you nonprofit
www.MyRiskManagementPolicies.org

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Next month's webinar

November 4, 2009 2 p.m. Eastern

Managing the Risk of Volunteer Misconduct

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