



FULFILLING OUR PROMISES
TO THE MEN AND WOMEN WHO SERVED

NONPROFIT ADVISOR

For DAV Departments and Chapters

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VOLUNTEER LIABILITY

Part One

Volunteerism is an indispensable part of philanthropy and has been since the very beginnings of what we now recognize as “organized charity.” In the fourth century, unpaid Christians ministered to wounded Roman soldiers and former soldiers (veterans!) in what appears to have been the first concerted effort to help the helpless with a “quid” that was not given in return for any “quo.”

In the modern era, volunteerism has been forced to co-exist with the growth of the litigious state. Organizations are often responsible for the actions of recruited volunteers and volunteers themselves can be the subjects of lawsuits by the organizations and – in an alarming number of cases - even by the people that they have helped!

Although a federal volunteer protection law has been on the books for almost twenty years, it still appears to be the case that some people, and even some organizations, limit volunteer participation out of fear for liability. Indeed, the legislative history of the referenced federal law is replete with testimony about the chilling effect of liability on volunteerism. Current statistics are ambiguous: it is unclear whether, and to what extent, fear of litigation depresses volunteer response.

DAV departments and chapters rely upon volunteers for service work, provision of transportation and a host of other activities to support the organization’s stated purpose to fulfill our promises to the men and women who served. Those DAV entities frequently ask

questions about liability issues arising from and in connection with volunteer activities. In this and the next issue of the *Nonprofit Advisor*, we will try to address some of the more common questions.

Does DAV provide insurance for volunteer activities such as the Transportation Network?

DAV’s largest volunteer program is the Transportation Network. As is well known, volunteer drivers participating in that program are considered to be federal employees when they are rendering their service. Liabilities that the driver may incur in connection with those activities are absorbed by the federal government under – and subject to the limitations of – the Federal Tort Claims Act. Individuals who are injured or whose property is damaged by the wrongful or negligent act of a Transportation Network driver may file a claim against the government for reimbursement for that injury or damage. In order to state a valid claim, the claimant must demonstrate that (1) he/she was injured or suffered property damage by the action or omission of the driver; (2) the driver was acting within the scope of his/her official duties; (3) the driver was acting negligently or wrongfully; and (4) the negligent or wrongful act proximately caused the injury or damage of which he/she complains. In general, FTCA does not cover “intentional torts” (like a volunteer driver punching a passenger in the nose!). Please note that chapter or department transportation programs operated independently of the national program do not enjoy the federal protection. As a result, these programs may involve unknown risks to the volunteers.



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What about chapter and department service programs?

DAV also has a large number of volunteer department and chapter service officers who are instrumental in bringing our mission of hope and help to disabled veterans and their families. Although the incidence of “malpractice” suits arising from the provision of this valuable assistance is quite low, it is not non-existent. For that reason, several years ago, DAV instituted an indemnification program for department and chapter service officers. At the same time, it initiated a comprehensive department and chapter service officer training and certification program. This program, intended mainly to ensure the continued quality of our local service officer programs, was also a prophylactic measure designed to mitigate the risk that DAV had assumed. The combination of indemnification plus instruction has proven to be a winning one: in the decade since the program was introduced, there have been only a handful of claims against CSOs and DSOs.

How does that service indemnification program work?

It is worth restating the nuts and bolts of DAV’s DSO/CSO indemnification program:

What it Covers: Claims against departments, chapters and their service officers for negligence in providing assistance with respect to a claim for benefits.

How Much it Covers: Up to \$500,000 combined for legal fees/judgments/settlements. The program is secondary to any applicable insurance. The amount of indemnification and the responsibility of the chapter or department will vary depending upon whether (1) the claim in question was forwarded to a National Service Office and (2) the volunteer chapter/department service officer was in compliance with the above-mentioned certification program.

Other Limitations: To receive indemnification, the affected department, chapter and/or person must give immediate notice of the claim to the National Adjutant, surrender control of the defense and cooperate fully in the prosecution and/or resolution of the case.

What about other volunteer activities?

Apart from the two volunteer activities mentioned, other persons volunteering under programs operated by the DAV National Organization may be covered by certain insurance policies now in force. Coverage in such cases is determined by the provisions of those policies and the coverage decisions of the insurers. Coverage for volunteers under chapter and department programs is available if the department or chapter in question has purchased appropriate insurance.

In addition to insurance and indemnification programs, volunteers may be protected to a greater or lesser extent by state and federal law immunities. These will be the subject of our next newsletter.

Nonprofit Advisor is prepared by the Office of the DAV’s General Counsel and is published quarterly for the informational use of DAV Departments and Chapters. This newsletter is not intended to replace legal advice that may be required to address individual situations.