



FULFILLING OUR PROMISES
TO THE MEN AND WOMEN WHO SERVED

NONPROFIT ADVISOR

For DAV Departments and Chapters

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VOLUNTEER LIABILITY

Part Two

This issue of the newsletter presents some general guidance on state and federal laws that may impact the liability of volunteers and the liability of the DAV department or chapter.

If anything, the fundamental message is that although certain laws may provide protection for volunteers and charities, in no state is either one immune from suit and from liability for certain acts or omissions. The conclusions to be drawn from this situation are these:

1. Charities must take responsibility for training and monitoring the actions of volunteers;
2. Volunteers must be made aware that their actions have consequences; and
3. Proper risk mitigation measures (such as appropriate insurance) are always necessary in connection with volunteer activities.

Someone told me about the doctrine of “charitable immunity” from lawsuits. It seems that this provides sufficient protection, at least for the charity, from anyone who might be injured by a volunteer.

The doctrine of charitable immunity did, indeed, exist in most American jurisdictions for many years. Most states have abolished charitable immunity in its entirety. In those states still retaining the doctrine, it is

generally subject to fairly limiting conditions. Nonetheless, when a charity or a volunteer is sued, state law should always be consulted to determine whether the immunity defense can be raised.

Most states have volunteer protection statutes. Don’t those provide adequate risk management for charities and their volunteers?

Sorry, no. While it is true that a majority of jurisdictions do have some sort of volunteer protection legislation, these provisions typically fall into the “half a loaf” category. Virtually all volunteer protection acts extend immunity to volunteers only for “negligent” acts. Actions amounting to “gross negligence” or “intentional misconduct” are subject to liability. Of course, this makes it a simple matter for a lawyer to draft an immunity-proof complaint: only an allegation of “gross negligence” is needed to avoid dismissal of the suit. In addition, some state statutes exclude any protection for: (1) wrongful acts committed while operating a motor vehicle; (2) fraud; (3) delivery of professional services (e.g., medical or legal); or (4) knowing violation of the law.

States having laws such as that described immediately above often (but not always) protect the charity to the same extent as the volunteer.



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So won't these state statutes provide enough protection in most cases?

That depends upon what you mean by protection! While it is true that most volunteer "mistakes" amount to simple negligence, one may spend a lot of time and money defending a case in which "gross negligence" has been alleged. The costs of such a lawsuit may run well into the six-figure range for the charity and/or the volunteer. Under the so-called "American rule," defendants in those cases will almost never recover attorney fees from the unsuccessful plaintiff.

The best protection? One simple word. **Insurance.** Insurance pays defense costs in most cases.

I thought the federal Volunteer Protection Act of a few years ago was going to take care of all these problems. Why haven't you mentioned that?

No sooner asked than done! The federal act (the "VPA"), which is almost twenty years old, was intended to fill in the gaps of the dizzying buffet of state volunteer laws and homogenize the treatment of volunteers across the country.

The VPA provides protection to an unpaid volunteer who is sued for an action or omission in the provision of services within the scope of his responsibilities as a volunteer for a nonprofit organization.

The federal law sounds pretty comprehensive. Is it?

No. Unfortunately, the VPA has several shortcomings. These keep it from being the cure-all that some of its original proponents hoped.

Specifically, some of the problems are as follows:

1. The law only provides a defense to covered volunteers, and not immunity. What that means in practical terms is that the volunteer can still be sued. Statistics show that VPA has not reduced the number of lawsuits filed against volunteers.
2. VPA provides neither a defense nor immunity to the nonprofit organization for which the volunteer was working.
3. VPA does not provide any protection against the two most common kinds of suits filed against volunteers for nonprofits:
 - a. motor vehicle-related suits; and
 - b. civil rights suits (typically employment-related lawsuits filed against a volunteer officer of a nonprofit organization).

Now you've got me depressed. What's the answer?

One word. **Insurance.** (But remember that DAV Transportation Network drivers within the national program do enjoy the benefits of the federal indemnity discussed in the previous issue of the 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.