



FULFILLING OUR PROMISES
TO THE MEN AND WOMEN WHO SERVED

NONPROFIT ADVISOR

For DAV Departments and Chapters

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VOLUNTEER IMMUNITY AND SWISS CHEESE

Volunteerism has enriched our nation since the Revolutionary War. The spirit of unpaid giving continues to animate nonprofit organizations, including DAV. The briefest look at our website reveals a whole department devoted to voluntary services; programs such as the Transportation Network and the Local Veterans Assistance Program dependent upon generous contributions of time, talent and energy; and, perhaps most tellingly, robust financial reporting of the value of volunteer hours and – in the same vein – contributed media. Truly, volunteerism is the gift of time and, as someone else may have said (although we believe it is our original insight), “time is money.”

In large measure, sincere, careful volunteers enjoy immunity from legal claims arising from their philanthropic actions. Thirty years ago, a still-growing patchwork of state and federal volunteer protection laws began to emerge. Such legislation was a response to the repeal of nineteenth-century charitable immunity laws and the nearly simultaneous governmental push to promote volunteerism (e.g., “a thousand points of light”). However, legal protections and optimistically-titled laws should not lead to a complacent euphoria. Honestly, the fabric of volunteer immunity remains riddled with holes (this explains the dairy reference in the title of this essay).

This issue of the newsletter identifies some of the larger holes and suggests some ways that DAV entities may wish to consider patching them.*

The biggest gap in immunity? Organizations themselves typically receive no protection under laws designed to insulate volunteers. So-called “charitable immunity” has long been abolished in all but a few American jurisdictions. Even in places where such protection continues to exist, it is typically subject to limits and conditions. For example, in Virginia, the doctrine of charitable immunity was created by courts more than a century ago and continues to exist – in theory. In fact, judicial decisions have so diluted the doctrine that most organizations with any kind of significant financial reserve – like DAV and many of its departments – would not qualify.

Even volunteers may find themselves unprotected. Two situations, in particular, merit attention:

1. The Automobile Exception

Most volunteer protection laws DENY immunity for liability predicated on the use of a vehicle for which an operator’s license is required. Oddly, statistics show that this is the most common type of volunteer-related accident. The reason for the exception is clear: in virtually all such cases,

*Even though there is federal legislation on volunteer immunity (the “Volunteer Protection Act of 1997”), superseding state laws have substantially modified that enactment. Most state laws enhance protections but, in some cases, require tax-exempt organizations to meet certain requirements (such as insurance) before volunteers can be protected. Consult a lawyer in your state for details.



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operation of the vehicle would have also been accompanied by a requirement of “financial responsibility,” i.e., insurance. A DAV department or chapter that operates a local program that involves the transportation of persons in volunteers’ vehicles should take reasonable measures to ensure that the vehicles are insured. **this advice has no bearing on or relevance to the national transportation program, whose volunteer drivers remain covered by the federal government.**

2. The Professional License Exception

“Joe is great with electricity. If current runs through it, he can fix it!” Maybe so, but if Joe is not a licensed electrician, be careful. Joe may be acting with the best intentions, but if he does some wiring work (say in the LVAP program) and burns a veteran’s house down, Joe is not protected under the volunteer statutes. In short, if a license is required, the volunteer must have it.

Aunt Susie may be able to amputate a toe, but if she never went to medical school . . . you get the rest.

What’s the answer? Besides being careful and thoughtful, one cannot overestimate the value of appropriate insurance. It is worthwhile to sit down with a good insurance broker (ideally one who represents more than one carrier), explain the scope of your organization’s activities and get recommendations. Chances are, you’ll be advised to consider General Liability Insurance and Directors/Officers Insurance. The premiums, in all likelihood, will be fairly modest. And remember – if you can’t afford to insure a risk, you can’t afford to take it!

One fact that lots of folks forget is that any immunity statute just provides a defense in case you’re sued – it does not prevent the suit. Even if the suit is frivolous, defendants still have to go through a legal process to get the suit dismissed, and that process, involving lawyers and related costs, can be very expensive. *The right insurance policy will cover those defense costs. The policy pays for itself in one case.*

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.