



Volunteers and Liability

The Federal Volunteer Protection Act

People who volunteer for a nonprofit or school may be concerned about a lawsuit if an injury occurs. This fact sheet provides an overview of legal protections designed to shield volunteers from liability.

Volunteers are crucial to the fight against childhood obesity—leading kids in physical activity through Safe Routes to School programs and after-school activities, teaching cooking and gardening classes, and encouraging healthy lifestyles through many other programs. Volunteers often make it possible for financially stretched schools, nonprofits, cities, and counties to do more to create healthy communities and help children lead healthier lives.

But people sometimes worry that they could be at risk of liability if an injury occurs while they are volunteering. Fortunately, a federal law—the Volunteer Protection Act—provides volunteers with significant protections from liability associated with volunteer activity¹ in every state but one.² Some states also have laws that provide additional protections for volunteers.

The Volunteer Protection Act protects volunteers under many circumstances, although it does not eliminate the possibility of a lawsuit. It does not shield the nonprofit or governmental agency using the volunteer’s services from liability; it only protects the volunteers themselves.

Generally, the Volunteer Protection Act protects volunteers from liability if they are:

- 1. Volunteering for a nonprofit organization,³ school, or other government agency.** The Act covers individuals providing services to a nonprofit, school, church, or agency (such as a park department or city transportation agency) for little or no compensation.
- 2. Acting in the scope of volunteer duties.** Volunteers are protected if they're engaged in an activity that's related to their volunteer role. But if, for example, an incident occurs when a volunteer detours from volunteer duties to carry out a personal errand, this might well be considered outside the scope of the volunteer duties.

and

- 3. Negligent or accused of negligence.⁴** Negligence occurs when a person or entity doesn't act with the care that an ordinary, reasonable person would under the circumstances. Although no one wants to act negligently, in the real world, a momentary lapse in attention can lead to an injury due to negligence.

If all three of these conditions are met, volunteers will generally be protected from liability even if their negligence caused the harm.

However, the Act does not protect a volunteer under some circumstances. There is generally no protection if:

- The harm took place because the volunteer acted in an **extremely negligent or deliberately criminal manner⁵** (as opposed to being somewhat careless).
- The volunteer's activity **required a license or certification** in the state in question, and the volunteer did not have the required credentials.⁶
- The volunteer was under the influence of **drugs or alcohol.⁷**
- The harm was due to the volunteer's **operation of a motor vehicle.⁸**

The Act leaves open the possibility that a volunteer may be found liable despite the Act's protections, if the injured person sues the nonprofit organization or government agency, which then sues the volunteer.⁹ While this loophole seems to mean that volunteers remain vulnerable to liability, we are not aware of any such lawsuits.

Although volunteers should know that the Act does not provide total protection against liability, the Act does provide significant protections for volunteers.

The National Policy & Legal Analysis Network to Prevent Childhood Obesity (NPLAN) is a project of Public Health Law & Policy (PHLP). PHLP is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

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¹ The Volunteer Protection Act of 1997, 42 U.S.C.A. §§ 14501-14505 (West 2010) (Pub. L. No. 105-19), Available at: www4.law.cornell.edu/uscode/html/uscode42/uscode42_usc_sec_42_00014501---000-.html.

² The exception is New Hampshire, which has opted out of the protections of the Act for lawsuits against volunteers in which everyone involved is a citizen of New Hampshire. 1998 N.H. Laws 129 (S.B. 438) (effective June 2, 1998); see 42 U.S.C. § 14502(b) (allowing states to opt out of the Act). However, state laws in New Hampshire provide some related protections for volunteers.

³ Under the Act, nonprofit organizations include organizations that have tax exempt status under section 501(c)(3) of the Internal Revenue Code, as well as other not-for-profit organizations that operate for the public benefit.

⁴ The Act is not limited to protecting against negligence, although that is the main type of liability with which volunteers are likely to be concerned.

⁵ A volunteer will not be protected if the harm was caused because the volunteer acted with "willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer." 42 U.S.C. s. 14503(a)(3). See also 42 U.S.C. § 14503(f)(1).

⁶ 42 U.S.C. § 14503(a)(2).

⁷ 42 U.S.C. § 14503(f)(1)(E).

⁸ 42 U.S.C. § 14503(a)(4).

⁹ See 42 U.S.C. § 14503(b) (preserving nonprofit organizations' ability to sue volunteer despite coverage by the Act) and § 14503(c) (preserving right of injured person to sue nonprofit or governmental entity).

No Protection for Nonprofits or Government Agencies

The Volunteer Protection Act only protects volunteers themselves—not the nonprofit organization, school, or government agency that used their services. Because agencies and nonprofits may be liable for the negligence of a volunteer even when the volunteer is protected by the Act, they should (1) maintain insurance to protect themselves (and to provide additional protection for volunteers), and (2) screen, train, and monitor volunteers, to minimize the risk of injuries due to negligence or other causes.

All states have some form of "immunity" for government bodies, though the level of protection these laws provide varies considerably among states. If immunity applies, the agency will not be liable, even if it was shown to be negligent. A few states also provide some immunity or liability caps for nonprofit organizations.

Additional Resources

The following organizations have additional resources and information about liability and risk management for volunteers and nonprofits:

- The Public Entity Risk Institute (PERI): www.riskinstitute.org
- Nonprofit Risk Management Center: www.nonprofitrisk.org

Other liability resources available at www.nplan.org:

- NPLAN's *Liability for After-Hours Use of School Facilities* has additional general background on liability, myths and reality of liability, the elements of negligence, governmental immunity, and more.
- NPLAN's fact sheet on *Safe Routes to School and Liability* has more information about negligence and liability in the context of Safe Routes to School programs, with specific tips on how to minimize risk of liability for schools, nonprofits, and others.