**Risk Management: Volunteers**

**PLUS: Insurance and Payroll Tax Webinars and Board Orientation Manual**

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**Risk Management: Minimizing Volunteer Liability**

Though many nonprofit organizations rely on volunteers to operate and provide services to the community, such reliance is not without risk. Negligent actions by or to a volunteer could result in financial losses, reputational harm, or adversely affect an organization's ability to attract or retain funding. This article offers an overview of one aspect of volunteer liability -- harm caused or suffered by volunteers -- and tips for developing policies and procedures to minimize these risks.

**Risk of Liability**

A nonprofit's potential liability for injuries a volunteer sustains while working for the organization depends on the facts of any given situation, but generally a nonprofit may be liable for any injuries that occur on the organization's premises, injuries that occur in the course of the relationship, or injuries caused by the organization's employees or other agents. It is important to remember that a volunteer is owed the same duty of care as an employee or a member of the public on the organization's premises.

An organization may also be held liable for harm caused to a third party by a volunteer acting on behalf of the nonprofit if an "agency relationship" has been established. An agency relationship exists any time the nonprofit has the legal right to control the work of the volunteer, which includes the right to terminate the volunteer's services. The creation of the agency relationship may be informal, such as when a volunteer gives verbal assent to perform work on the organization's behalf, and may be short-term or temporary.
In order to minimize volunteer-related risks, nonprofits should (1) assess the level of risk involved with each volunteer position, (2) provide a safe workplace and attempt to eliminate any activities that are high-risk and avoidable (e.g., not transporting volunteers to or from volunteer sites, not allowing volunteers to use the nonprofit's vehicles), (3) establish commensurate screening and training processes for volunteers (i.e., the higher the risk, the more screening / training required before a volunteer can begin to perform services), and (4) implement an appropriate volunteer supervision program.

Background Checks

Background checks (possibly including one or more of such elements as references, educational verification, health screening, credit history, fingerprints or criminal background) are commonly used by nonprofit organizations as part of the volunteer screening process. Whether an organization is required to obtain background checks on staff and volunteers usually depends on the scope of the organization's activities and requirements tied to licensing and certain sources of funding. In California, for example, schools, daycare facilities and residential care facilities for the elderly are among the agencies required to perform statutorily mandated background checks on employees, contractors and volunteers. But even without any external requirement, many nonprofits find background screening to be a good way to reduce exposure to liability and reassure supporters and clients.

If background checks are used, they should be carefully scrutinized and acted upon, not taken as a mere formality for volunteer service. Obtaining background checks and not using them could ultimately backfire on an organization. An organization may be held liable for negligent selection of a volunteer if the organization has negative information about the volunteer and the volunteer injures a third party in a way that would be expected based on the information available.

For individual for privacy protection reasons, and as required by federal and state law in cases such as credit or criminal checks, an organization should provide notice to and obtain consent from the volunteer before running a background check. The type of information requested as part of the background check should be limited to that which is relevant to the scope of the volunteer service. For example, if a volunteer will not handle or raise funds for the nonprofit, it may be inappropriate to inquire into the volunteer's credit history.

The background check notice and consent forms should include (1) a precise description of the information that will
be collected for the background check, (2) how the information will be collected and the name and contact information of the background check vendor, (3) the sources consulted for the check, (4) the period of time encompassed by the check, (5) whether the check will be conducted once, annually, or on a continuing basis, (6) a statement of the consequences of declining to authorize the check, (7) a notice of additional rights under federal and state law, and (8) any other specific language required by statute. The nonprofit will also need to comply with any applicable record retention and privacy laws to make sure that the findings from a background check are kept confidential and provided to the organization's staff on a need-to-know basis only.

Volunteer Agreements and Waivers

Volunteer agreements and waivers should be part of any nonprofit's risk management strategy, but should not be relied on to relieve an organization of all liability. A well-drafted volunteer agreement should carefully define the volunteer's relationship with the organization, the scope of the volunteer's duties, and each party's expectations, including compliance with privacy and other organizational policies. The agreement should also specifically limit the volunteer's activities to the extent of the contemplated relationship and waive the nonprofit's liability for intentional acts or gross negligence committed by the volunteer. Note, though, that a nonprofit will not necessarily escape liability even if an action taken by a volunteer is outside the scope of his or her duties or even expressly forbidden in the agreement. Furthermore, liability for ordinary negligence may not be waived.

Many organizations also require volunteers to sign a release and waiver of liability for injury to the volunteer caused by the organization's negligence. Such a waiver must be relatively specific to be enforceable. Waivers that are too open-ended, or for risks that could have been easily avoided or eliminated by the organization, may not be enforced.

Insurance

While there is no substitute for high standards of operation and risk management practices, purchasing appropriate insurance coverage, including commercial general liability and volunteer accident policies, is often necessary to protect against risks that cannot be limited under the law or otherwise avoided.

Under California law, volunteers are not included under a nonprofit's workers' compensation coverage. However, nonprofits can extend their workers' compensation coverage to their volunteers. Doing so requires authorization from the board of directors and notification to the insurance provider.

including best practices for designing successful programs, recruiting an effective board, developing a sustainable fundraising plan, forming a California nonprofit corporation and applying for tax exemption, and complying with ongoing tax and legal requirements.

Seminar attendees will be eligible to participate in a FREE “Ask A Lawyer” Nonprofit Formation Clinic (date TBA at the seminar), where they will be able to meet one-on-one with an attorney to discuss specific questions relating to forming a nonprofit and obtaining tax exemption.

Advance registration is required. For more information and to register for the seminar, please visit our website.

Legal Services for Nonprofits

The Community Development Project builds strong foundations for healthy, vibrant and economically stable communities by providing comprehensive legal and capacity building services to organizations serving people with lower-incomes in the Los Angeles area. CDP provides assistance on a wide range of matters to community organizations, including:

Contract & Lease Renegotiation

Does your nonprofit need to terminate or renegotiate contractual or lease obligations? Do you know
If your nonprofit needs legal assistance with reviewing a volunteer agreement or waiver form, please contact us at 213-385-2977 x.200 or visit our website.

Insurance and Risk Management Webinar Series for Nonprofit Executives

Join us for a series of FREE webinars designed to help board members, executive directors, CFOs and other managers gain a deeper understanding of insurance and risk management decisions faced by nonprofit organizations. This series is co-sponsored by Public Counsel and the DC Bar Pro Bono Program.

Nonprofits engage in many different activities. Your organization may own property, employ staff, utilize volunteers, provide services to the community in need, publicize your efforts through written materials, speeches and the Internet, and raise donations from the public. Each of these activities involves risks to your organization that could be financially devastating unless they are recognized, mitigated, and if necessary, insured against.

Risk management is the process by which you identify potential risks from your activities, take steps to prevent any potential risks from materializing, and insure against any financial claims made against your organization. This series will cover the following topics:

- the different types of insurance coverage and provisions commonly found in insurance policies;
- buying insurance for your organization;
- reading insurance policies to know what they cover;
- handling an insurance claim when it arises; and
- identifying risks and developing a risk management program

The sessions will be led by experienced practitioners in the insurance field, including leading attorneys that represent policy holders in disputes with their insurance carriers, insurance brokers and senior claims management professionals.

Whether your nonprofit is legally permitted to sublet unused space?

Modification & Reduction of Workforce

Is your nonprofit exploring reduction of employee benefits, salaries or hours? Do you know the criteria to use when downsizing staff? Are you attempting to reclassify employees as independent contractors? Are you aware of the legal implications of all of these actions?

Corporate Governance

Is your board aware of its duties during a period of financial difficulty? Do your board members know how to conduct financial and programmatic oversight? Has your organization adopted a conflict of interest policy? Are your directors aware of the situations where they could incur personal liability for the acts of the corporation, and do you have appropriate controls and procedures in place to protect them?

Debt Reorganization & Cash Flow

Does your nonprofit need to renegotiate debt repayment terms? Do you know what agreement terms you should pay special attention to if applying for or increasing a line of credit? Have any of your key vendors filed for bankruptcy?

Fundraising & Social Enterprise

Is your nonprofit considering alternative fundraising
Webinar Schedule
Each webinar will start at 9:00AM and last 60 minutes.

February 20 - Understanding Insurance
March 20 - Buying Insurance
April 22 - Filing an Insurance Claim
May 22 - Loss Prevention and Mitigation

Advance registration is required. To register, please click here. For more details, including descriptions for each webinar and speaker bios, click here. If you have any questions, please contact Lauren Paley at lpaley@dcbar.org.

Webinar: "Payroll Taxes" on Feb. 26

Join us on Tuesday, February 26, at 9:00AM, for a FREE one-hour live webinar, Payroll Taxes: FICA Taxes and Income Tax Withholding, co-sponsored by Public Counsel and the DC Bar Pro Bono Program.

Employee wage withholding and reporting are two critical employer responsibilities. The IRS requires every employer to determine who is an employee and who is an independent contractor, accurately report compensation to the IRS, withhold FICA and income taxes from employee wages, and timely report and transmit the withholdings, along with the employer's share of FICA taxes, to the US Treasury. The IRS vigorously enforces these rules, and an organization that fails to follow them will remain liable for underwithheld taxes, plus potentially interest and penalties including late deposit penalties.

This webinar will cover the following topics:

- employers' wage withholding and reporting responsibilities;
- IRS penalties for failure to comply with the payroll tax rules;
- potential personal liability of officers and directors for payroll tax failures; and
- steps employers should take to avoid and/or deal with these issues.

Advance registration is required. To register, please click here. If you have any questions, please contact Lauren Paley at lpaley@dcbar.org.

methods (e.g., loans from directors, starting a for-profit business, joint-ventures, etc.)? Do you know how to structure these activities to protect your tax-exempt status? Are you aware of the legal ramifications of using restricted or endowment funds to pay ongoing expenses?

Mergers & Strategic Alliances
Is your nonprofit considering a merger or consolidation to save or expand programs? Do you know the difference between a formal merger and other types of strategic alliances?

Organizational Documents
Did you know that the Articles of Incorporation and Bylaws determine the legal scope of your organization's activities? Has the economy forced your nonprofit to consider changing its activities or operations? Do you know the procedure for amending your nonprofit's organizational documents and notifying the proper government agencies?

Lobbying & Advocacy
Is your nonprofit advocating for certain government budget allocations or ballot measures on behalf of its constituents or key programs? If so, do you know how much lobbying your nonprofit can engage in and what registration and reporting rules apply?

If your organization needs legal assistance, please visit our website or call 213-385-2977, x200.
Does Your Organization Have a Board Orientation Manual?

Over the past several years, many groups and organizations have placed a great emphasis on **nonprofit governance**. Watchdog groups, such as the Better Business Bureau's Wise Giving Alliance and Charity Navigator regularly rate charities based in large part on the organization's governance structure. State regulators also require nonprofits to provide more information about their governance structures, and donors, foundations and the news media also have placed a greater emphasis on nonprofit governance. **In fact, many of the recent nonprofit scandals have been traced back to insufficient oversight of the charity's operations by the organization's board of directors.** Finally, the IRS has redesigned the Form 990, the reporting form that most charities must file with the IRS on an annual basis. On the revised form, the IRS asks for much more detailed information about the nonprofit organization's governance practices and policies.

One of the most critical ways for boards to promote **good governance** is by establishing an effective process for **educating board members about their legal and ethical responsibilities**. To help you with this task, Public Counsel is pleased to provide you with a free manual entitled **"Welcome to the Board of Directors."** The purpose of this manual is to provide your organization with a template that will help you develop an orientation manual for new and existing directors. This manual allows you to set forth the mission, programs and goals of your organization and covers the following topics:

- basic legal responsibilities for members of the board;
- board's role in overseeing the financial and fundraising practices of the organization;
- safe harbor requirements for setting executive compensation;
- importance of evaluating the performance of management and the board; and
- board's role in risk management and strategic planning.

To view and download this and other free publications for nonprofits, please visit our [website](#) and click on "Publications."

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