

*Managing*

# Volunteers

*Balancing Risk and Reward*



Compliments of:

Nonprofits' Insurance  
Alliance of California

and

Alliance of Nonprofits  
for Insurance, *Risk Retention Group*

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Nonprofits' Insurance Alliance of California (NIAC) is a charitable risk pool governed by 501(c)(3) tax-exempt nonprofit organizations in California. NIAC is itself a 501(c)(3) tax-exempt nonprofit. NIAC currently insures more than 7,000 nonprofits in California.

## *Alliance of Nonprofits for Insurance, Risk Retention Group*

Beginning operations in 2001, the Alliance of Nonprofits for Insurance, Risk Retention Group (ANI) is modeled after, and is an affiliated organization to NIAC. ANI provides insurance to the charitable nonprofit community outside California. ANI is a 501(c)(3) tax-exempt nonprofit. At the writing of this booklet, ANI insures more than 3,000 nonprofits in 25 states and the District of Columbia.

Members of these two organizations purchase a variety of insurance coverages from NIAC and ANI including general liability, directors and officers liability, improper sexual conduct liability, commercial auto, and many others. Property and accident insurance coverages are available through arrangements with other insurance companies.

In addition to providing insurance coverages, both NIAC and ANI offer members a variety of free risk management and loss control services. These services include driver training, access to legal assistance, newsletters, and a video lending library, all provided free of charge to members.

Titles include:

- Arrive...Safe and Sound: Tips to help with your nonprofit's vehicle safety program
- Sound Advice for Functions and Events: Tips to help your nonprofit stage safer special events
- Nonprofit Directors and Officers: Key facts about legal liability and insurance
- What Nonprofit Managers Need to Know About Lawsuits
- Supervision of Children and Teens Never Includes Sex
- Managing Volunteers: Balancing Risk and Reward
- Surviving a Crisis: Practical Strategies for Nonprofit Organizations

If you would like to learn more about how NIAC or ANI can help you, you may call (800) 359-6422 or check out our website at [www.insurancefornonprofits.org](http://www.insurancefornonprofits.org)



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*Please note: This booklet is designed to provide general information to help nonprofit managers better understand issues relating to using volunteers to support their nonprofit's mission. It does not provide legal advice of any kind.*

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# *Introduction*

## **Volunteers in America: A Rich History**

Volunteering is big business in America today. According to Independent Sector (a coalition of leading nonprofits, foundations, and corporations), 56% of adults age 18 or over volunteered a total of 19.9 billion hours in 1998. These numbers translate into 109 million people representing the equivalent of over 9 million full-time employees at a value of \$225 billion (based on an hourly rate of \$14.83). It is hard to imagine the nonprofit sector operating effectively without the time, skills and commitments of volunteer workers.

Volunteer activities range from direct service activities such as serving food, performing home repair services or providing transportation, fundraising, teaching computer skills, coaching a sport, counseling survivors of domestic violence, working with youth, serving on a board, or pitching in at an event. According to Independent Sector's 1998 National Survey on Giving and Volunteering, volunteers provide an average of 3.5 hours of service per week. More than a third of volunteers (39%) provided volunteer service at a scheduled time, while 41% volunteered as a one-time activity.

Regardless of the type of commitment or assignment, most nonprofits regard volunteers as a vital and essential resource. However, like all aspects of a nonprofit's operations, there are risks associated with volunteering and using volunteers. Some government agencies have decided that having volunteers perform various activities is too risky and do not allow non-employees to provide services. In contrast, most nonprofits would not be able to function without volunteers. A more practical approach is to acknowledge the risks and develop practical, affordable strategies for managing volunteer risks.

### ***Balancing Risks and Rewards***

People volunteer for many different reasons ranging from altruism, wanting to make the world a better place, meeting high school graduation requirements, fulfilling a court imposed community service requirement, or as a way to meet new people. In the Independent Sector's National Survey, the most important reasons cited were:

- 86% - Feeling compassion for those in need
- 72% - Having an interest in the activity or work
- 70% - Gaining a new perspective on things
- 63% - The importance of the activity to people the volunteer respects

Whatever motivates someone to volunteer for your organization, it should be a win-win situation for both parties. The rewards should be plentiful for the volunteer, the clients, the organization and the community. A volunteer may experience a sense of receiving more than he or she gives and thoroughly enjoy the experience. However, that joy can quickly change to remorse or anger if the volunteer sustains an injury or harms another. Every nonprofit wants to provide a safe environment for its paid and volunteer staff, clients and others. And every nonprofit should be committed to taking the steps necessary to balance the risks or dangers to its volunteers and others with the potential rewards for the volunteers, clients, the organization and society in general. These volunteer risks should be managed as effectively as possible to protect everyone involved with the organization.

# Chapter 1

## What is Volunteer Liability?

Volunteer liability is a somewhat vague term that may be interpreted differently based on one's perspective. It generally refers to an organization's potential responsibility for the actions or inactions of its volunteers. It may also refer to an organization's potential responsibility for harm suffered by volunteers.

There are three general classifications or types of liability:

*Direct liability* - is when an organization or individual is held responsible for its actions or inactions. For example, a nonprofit could be held directly liable for:

- Providing unsafe athletic equipment for use by volunteer coaches and participants.
- Sponsoring programs and activities in a facility the nonprofit knows poses hazards because it is not "up to code."
- Failing to use readily available and affordable screening tools when screening individuals working with children.
- Failing to supervise a volunteer appropriately.
- Failing to conduct routine maintenance and repairs on vehicles or premises.

*Indirect or vicarious liability* - is when an organization is held responsible for harm caused by persons acting on its behalf.

For example, a nonprofit could be held liable for:

- The negligence of a volunteer driver who damaged a parked car while exiting a parking space.
- Medical and other expenses incurred by a young person who was injured during an outing with a volunteer mentor.

Does it make sense for a nonprofit to be held accountable for the actions of its volunteers? The societal and legal justifications for imposing vicarious liability are that an entity that directs and benefits from an individual's actions should bear the costs of any resulting harm.

The doctrine of respondeat superior ("the master will respond") has been held to apply to nonprofit organizations. Under the doctrine of respondeat superior, if a "servant" acts negligently and causes some damage while performing his or her assigned work,

- Failing to supervise a volunteer appropriately.
- Failing to conduct routine maintenance and repairs on vehicles or premises.

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The doctrine of respondeat superior ("the master will respond") has been held to apply to nonprofit organizations. Under the doctrine of respondeat superior, if a "servant" acts negligently and causes some damage while performing his or her assigned work, then the "master" is legally liable for that damage.

It's important to keep in mind that the imposition of vicarious liability does not depend on a finding that the "master" was negligent or at fault in any way. The key questions are:

- Did a "master-servant" relationship exist?
- Did the servant's negligence cause the harm?

Whether a "master-servant" relationship exists between an organization and a volunteer depends primarily on the following factors:

- the degree of control the organization can exercise over the volunteer;
- the scope of the volunteer position; and
- the benefit the organization derives from the volunteer's services.

***Strict liability*** - is when responsibility for harm is automatic and a finding of negligence or misconduct is not required, such as liability for a dog bite (in some states) and violations of some laws.

### ***Facts About Liability, Negligence and Volunteers***

- Most lawsuits involving nonprofit organizations and volunteers generally concern one of the following: negligence (doing something a reasonable person would do under the circumstances), strict liability, or intentional misconduct.
- Allegations of negligence, strict liability or intentional misconduct may be made against an individual volunteer, the nonprofit organization, or both.
- The fact that an action taken by an agent is expressly forbidden by the nonprofit or contrary to organizational procedures will not necessarily allow the nonprofit to escape responsibility.
- Nonprofits may be held liable even when an agent was clearly acting outside the scope of his or her duties (although this is not always the case).

# Chapter 2

## Volunteer Recruitment, Screening and Selection

The need for a growing number of volunteers to staff charitable programs has been accompanied by the exponential growth in methods for attracting volunteers. The widespread use of the Internet has led to previously unimaginable strategies for seeking volunteer help. Every day, large numbers of nonprofits add the Internet as a tool for soliciting volunteers.

As the process of soliciting volunteers has gone high tech, the need to develop and apply a screening process based on the needs and risks of the position has never been greater. It's easier than ever before to contact a nonprofit and apply for a volunteer position. It's easier for those with good intentions and easier for predators seeking to prey on a nonprofit's clients.

Whether your nonprofit uses word of mouth referrals, traditional enrollment programs, or accepts applications via your web site, there are a number of critical risk management guidelines you should keep in mind and apply to your recruitment strategies. We review these guidelines below.

*1. The rigor of the process should mirror the risks of the position.* Rarely, if ever, do all volunteer positions in a nonprofit merit the identical screening process. For example, a volunteer ticket taker at a nonprofit's public fundraiser should be subject to a different screening process than a volunteer mentor or camp counselor.

*2. Prior to recruiting for a volunteer position, develop a position description and assessment of risk.* This process should identify, at a minimum:

- the position's responsibilities and key tasks;
- the primary risks posed by the position, including risks to the volunteer (will the volunteer be required to drive clients in a multi-passenger vehicle?) and risks to clients and others (will the volunteer ever work one-on-one with a vulnerable client?);
- the educational requirements, special skills or licenses, or other qualifications of an ideal candidate; and
- the reporting relationship for the volunteer and the position's supervisory role, if any.

*3. Never skip steps in your prescribed screening process or allow special consideration because a volunteer is overly enthusiastic or a friend of a staff or board member.*

*4. If any "red flags" are raised during the screening process, STOP.* For example, an applicant's references are vague or abrupt about his or her volunteer experience, or you don't understand the results of a criminal history background check. Consult a legal professional before proceeding. In large organizations that use many volunteers, the screening process may vary from one position to the next. In many cases, however, two major processes will emerge: a basic process suitable for "low-risk positions," and a rigorous process for positions deemed "high risk." In organizations that recruit large numbers of volunteers for one-day activities, such as a beach clean-up project, practical considerations necessitate a third process. Assuming these volunteer positions are in the

“low-risk” category, the screening process for a one-time-only volunteer position may be limited to the acceptance of a short application. If your organization uses volunteers in this fashion and the screening process is shortened, consideration should be given as to whether the situation warrants additional supervision.

In most cases volunteers are recruited for ongoing assignments that may span weeks, months or years. In these more typical cases either a basic (for “low-risk” positions) or rigorous (for “high-risk” positions) screening process is generally appropriate.

### ***Elements of a Basic Screening Process***

The core elements of a basic screening process include:

- written applications,
- interviews, and
- personal reference checks.

### ***Screening Rules and Reminders***

- The screening process should provide the basis for a mutual understanding of the nature of the position and the expectations of both the organization and applicant.
- If the basic screening process discloses potential problem areas, the applicant should not be accepted until the issues presented are resolved.
- Resumes may not provide the type of information an organization needs to determine suitability for placement or compare information on each applicant for a position. In most cases, a completed application with attached resume (if available) is preferable.
- Interviewing applicants one-on-one in most cases is preferable over interviewing a group of applicants at one time.
- Reference checks are an important screening tool, and it is rarely, if ever, appropriate to omit reference checks in a screening process.
- If your organization uses shortcuts, be aware of the risks and understand that other risk reduction strategies, such as increased supervision, may be required to compensate for shortcomings in your screening process.

### ***Elements of a Rigorous Screening Process***

The greater the risk, the more extensive the screening process should be. In addition to the basic application process that includes a written application, interviews and reference checks, organizations have several options for more extensive screening. These options include:

- official agency record checks,
- license verifications, and
- additional reference checks.



## **Record Check Reminders**

- The most common types of criminal history record checks are state-based checks and federal (FBI) record checks. Generally, checking both state and federal criminal history databases involves two separate processes.
- A criminal history record check is part of a screening process—not a selection criterion.

Before incorporating criminal history record checks into its screening processes, a nonprofit should:

1. *Establish screening criteria.* An organization should develop clear guidelines stating which offenses are relevant. For example, any crimes against persons, sex offenses or convictions for child abuse and neglect, should clearly be relevant for teaching, coaching or counseling positions.

- When establishing screening criteria, organizations must take into account state and local laws and regulations. Some jurisdictions have instituted screening or licensing requirements for individuals who have substantial contact with children or other vulnerable individuals (dependent elderly or individuals with disabilities). Make certain you determine if licensing or regulatory agencies have identified specific offenses that would disqualify applicants for some assignments.
- Youth-serving organizations generally agree that individuals should be permanently disqualified from holding positions that require substantial contact with children if their criminal records include any of the following: past history of sexual abuse of children, conviction for any crime in which children were involved, and history of any violence or sexually exploitive behavior.

2. *Determine what offenses will disqualify an applicant and what, if any, other factors will be considered.* For example, a prior conviction as a sex offender should disqualify an applicant seeking a job as a youth counselor. The same conviction may or may not disqualify an applicant seeking a bookkeeping position at an environmental action group.

3. *Determine how the rights of the applicant will be preserved.* For example, if a background check reveals a criminal record, will the applicant be told about the findings and given an opportunity to correct possible errors in the record?

For more information on the topic of criminal history record checks, visit [www.insurancefornonprofits.org](http://www.insurancefornonprofits.org), or call the Member Services Administrator at (800) 359-6422, ext. 37.

## **Verifying Licenses**

Unfortunately, some people try to pass themselves off as something they are not. For this reason, it pays to verify credentials that are required for particular positions. For example, if a position requires an individual to have a license for counseling, the organization should contact the appropriate licensing authority and verify that the individual holds a current license. For example, in California, a person who is employed (on a paid or volunteer basis) as a driver of a motor vehicle for hire that is used primarily for the transportation of persons with developmental disabilities must possess a valid driver's license of the appropriate class endorsed for passenger transportation and a valid special driver certificate issued by the Department of Motor Vehicles. The special driver certificate will certify that the applicant has cleared a criminal history background check by the Department of Justice and, if applicable, the FBI. A nonprofit organization

in California may not hire such a person unless the person operates the vehicle in compliance with this law.

Always inform applicants for volunteer positions that the information they provide on the application will be verified and misrepresentations or omissions may be cause for immediate rejection as an applicant or termination from volunteer service if hired. This statement is called a “truth clause.” A sample is provided below:

*“I certify that I have and will provide information throughout the application process, including on this application for a volunteer position and in interviews with [Nonprofit] that is true, correct, and complete to the best of my knowledge. I certify that I have and will answer all questions to the best of my ability and that I have and will not withhold any information that would unfavorably affect my application for a volunteer position. I understand that information contained on my application will be verified by [Nonprofit.] I understand that misrepresentations or omissions may be cause for my immediate rejection as an applicant for a volunteer position with [Nonprofit] or my termination from such a position if I am selected.”*

# Chapter 3

## Training, Supervising and Disciplining Volunteers

The time and energy your nonprofit spends establishing a comprehensive screening process and recruiting suitable volunteers will be wasted if you fail to provide appropriate training and supervision for them.

### ***Determining Training Needs***

The extent of training required by your volunteers will depend on a number of factors, including:

- The nature of the job that will be performed by the volunteer.
- The experience and training the volunteer brings to the position (for example, a volunteer counselor in an after-school youth program who holds a full-time counseling position in a high school may not require any position-specific training).
- The special needs or circumstances facing your clients (most volunteers will not have any special training working with your client population).
- The nature and extent of the organization’s current policies (for example, if the nonprofit has a crisis management plan or media relations policy, new volunteers should be trained on these important procedures).

Within an organization, training needs often differ. A volunteer driver responsible for transporting elderly clients in a wheelchair-lift equipped van will require different training from a volunteer assisting with the annual beach clean-up project.

For each category of volunteers in your organization, you should design a training program that includes, at a minimum, the following:

- An orientation program for new volunteers providing an official welcome to the organization and the opportunity to ask questions about the nonprofit's history, mission, and services. Every volunteer should have a solid understanding of the organization, its mission and services. Remember that volunteers perform critical tasks and also serve as ambassadors of your nonprofit.
- A skills and responsibilities activity that instructs volunteers on essential tasks and duties and answers the how, what, where, and when of the position. If the volunteer will be required to use any special equipment or tools, additional training on the use of the equipment should be provided.
- A policies and procedures briefing that brings volunteers up to speed on the nonprofit's essential policies, such as reimbursement policies, use of technology, grievance procedures, etc.
- A safety briefing that presents vital information on protecting client and staff safety, discusses the nonprofit's risk management program and crisis management plan, and provides information on emergency procedures.

### ***Keep in Mind***

- Many nonprofits choose to address several training topics in a single session, while others schedule training sessions over a period of weeks or months.
- All of the training provided to volunteers should be repeated periodically.
- Don't forget to welcome and solicit input and feedback from volunteers on the training topics and sessions they might find useful.

### ***Supervising and Disciplining Volunteers***

Involving volunteers in a safe fashion doesn't end with proper selection and training. There is a tendency among nonprofit managers to breathe a sigh of relief after a volunteer is "approved" for service. However, in many ways the real work has just begun since all volunteers require and deserve careful supervision.

While there are many ways in which to supervise a volunteer workforce, consider checking your strategies against the list below to make sure your supervisory practices are making your nonprofit the safest it can be.

### ***Rules of the Road***

1. Paid and unpaid staff need to know what is expected of them. They cannot meet expectations that are unclear. Commit to providing explicit instructions for all volunteers.
2. Volunteers should be told what they can do as well as what they can't and shouldn't do. For example, many programs specifically prohibit volunteers from offering clients rides, or taking clients home for meals or social activities. Avoid unintended liability by providing explicit direction. Don't assume that your interpretation of "common sense" will prevail.
3. The safety of your nonprofit's clients, staff and the organization itself should be paramount

and this message should be understood and embraced by your volunteers. The continued presence or involvement of a volunteer who poses a threat to safety should not be permitted.

4. Volunteers should be subject to discipline leading up to and including termination. Your nonprofit is not an employment agency for volunteers; you have critical tasks to be performed and you need to rely on your volunteers to get these tasks done.

5. Volunteer injuries deserve your immediate attention. When a volunteer is injured while on the job, you should conduct a prompt and thorough investigation of the matter. Your action plan should include:

- Demonstrate compassion and concern for the volunteer's well-being.
- Determine the cause of the injury.
- Notify your insurance broker to determine if there is any insurance coverage available.
- Evaluate whether future injuries can be prevented with training, equipment or other measures.
- Evaluate the adequacy of the immediate response following the incident. Were medical personnel contacted in a timely fashion?
- Identify how the organization's response to a similar incident in the future could be improved.

### ***Checklist for Volunteer Supervision***

- Do all volunteers have a position description that describes the essential duties of their position?
- Does your nonprofit have a Volunteer Handbook or similar document that contains all of the policies that apply to volunteers?
- Do you have a grievance policy/procedure or other strategy for receiving and taking action on volunteer complaints?
- Are all volunteers required to sign an acknowledgment indicating that they have read and agree to abide by the nonprofit's policies?
- Are volunteers subject to discipline, up to and including removal, for failing to follow the nonprofit's policies?
- Are the nonprofit's disciplinary procedures concerning volunteers applied consistently?
- Are supervisors of volunteers trained in performance counseling so they are in position to help a volunteer address performance weaknesses?

Visit [www.insurancefornonprofits.org](http://www.insurancefornonprofits.org) to review sample documents, or call the Member Services Administrator at (800) 359-6422, ext. 37 for more information.

# Chapter 4

## Insuring Volunteers and Volunteer Actions

In this section we'll briefly discuss key considerations in understanding five categories of insurance coverage.

***Commercial general liability for the organization*** - Commercial General Liability (CGL) policies protect a nonprofit and its directors, officers, and employees for claims alleging property damage, bodily injury, and personal injury (false arrests, malicious prosecution, and defamation). Although a CGL policy provides broad coverage, it does not address every possible liability exposure. A CGL specifically excludes exposures covered more appropriately under a special policy or endorsement (for example, medical malpractice or improper sexual conduct or directors and officers). For covered claims, a CGL policy will pay the costs to defend against allegations and for damages due to the negligence of the insured. A CGL policy does not provide automatic coverage for all injuries. It is triggered if there is an allegation that your nonprofit or its volunteer or employee was “negligent.”

***Insurance for volunteer accidents and injury*** - There are three types of policies that might respond in the event a volunteer is injured even though the nonprofit is not negligent. Some states allow volunteers to be covered under workers compensation policies. Historically, the cost of adding volunteers as insureds under workers compensation policies has been prohibitive. As a result, relatively few nonprofits cover volunteers under their workers compensation policies. The second possibility is the commercial general liability (CGL) policy. The “Medical Payments” provision of the CGL policy responds to claims of bodily injury by a third party, in most cases, the Medical Payments provision will provide limited assistance for injuries to volunteers. The third category of coverage—volunteer accident policies—cover the medical expenses incurred by a volunteer while serving a nonprofit. Keep in mind that Medical Payments under the CGL policy as well as any volunteer accident policy are usually excess over the volunteer's existing health insurance. These policies typically pay when the injured volunteer's health insurance doesn't apply or limits have been exhausted.

***Directors' and Officers' liability*** - Many volunteer board members believe that because they are donating their time, they are or should be immune from suits alleging wrongful acts while volunteering. This is simply not the case. Board members or directors of a nonprofit are vulnerable to suits filed by disgruntled or dissatisfied employees, clients, government officials, and others. For information on managing governance risks and the role of D&O insurance, see the booklet titled, “*Nonprofit Directors and Officers: Key Facts About Insurance and Legal Liability*.” The booklet can be downloaded for free from [www.insurancefornonprofits.org](http://www.insurancefornonprofits.org) or call (800) 359-6422, ext. 37 to request a copy.

***Personal liability insurance for volunteers*** (such as Homeowners or Renters, Umbrella/Catastrophe policies) - Many people believe that nonprofits do not need to purchase liability coverage that protects against harm caused by volunteers because their volunteers' personal insurance is sufficient. Keep in mind that very few homeowners or personal liability policies provide coverage for governance or management acts undertaken on behalf of a nonprofit. If a volunteer believes they are adequately protected by such policies they should be encouraged to review the wording of their policy carefully to make certain that it provides adequate coverage.

Also, remember that these personal liability policies provide no protection or coverage for the nonprofit organization.

***Automobile liability*** - There are several critical concepts necessary to understanding auto liability coverage. First, remember that the coverage follows the car. That means that a driver's personal auto liability coverage (even while that person is volunteering for a nonprofit) will always respond first when he or she is involved in an accident. Nonprofits, however, which have volunteers or employees who drive their own cars on behalf of the organization should purchase "hired and non-owned" commercial auto insurance. This coverage is triggered when the limits of the volunteer's or employee's personal auto insurance are exhausted, and the nonprofit is sued for damages resulting from the accident.

# *Conclusion*

## **The Rewards of Managing Risks**

Millions of Americans volunteer every year and provide valuable assistance to nonprofit organizations across the country. Without a volunteer workforce, many nonprofits would be unable to fulfill their missions and address critical community needs. A nonprofit faces a variety of risks when it decides to use volunteers. While none of these risks should be ignored, few, if any of these risks represent insurmountable obstacles for the typical organization.

Every nonprofit can and should take steps to manage the risks associated with its use of volunteers. Implementing the strategies explored in this publication will enable your nonprofit to use volunteers safely. Balancing risk and reward in the area of volunteer management will enhance the effectiveness of your organization and make it the type of nonprofit that attracts and retains volunteers for key assignments.