Citizen Corps Volunteer Liability Guide

Presented by:
Claire Lee Reiss, J.D., ARM, CPCU
Deputy Executive Director and General Counsel
Public Entity Risk Institute

Citizen Corps Volunteer Liability Project

A nationwide project to support emergency & disaster volunteer programs through research and development of online tools and good practices:

Workers' compensation

Civil (tort) liability

Licensure/certification/permits

Project Steps

- Interview Citizen Corps leaders
- Survey state and local Citizen Corps Councils
- Develop working relationships
- Formulate questions
- Research state statutes (substance and methodology)
- Prepare tools and resources for publication

2007 Survey & Conversations Found…

- Concern about liability for volunteer's acts
- Concern about liability for injury to volunteers
- Concern about volunteer licensure
- Concern about interstate mobilization
- Need for state specific information
- Limited access to legal advisor
- Limited time

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Questions Formulated

Who are emergency volunteers?

What functions do emergency volunteers perform?

What are the potential sources of liability?

Why does liability matter?

To whom does liability matter?

What liability protection is available?

How can emergency volunteer programs manage liability risk?

Who are Emergency "Volunteers"?

Individuals (not always unpaid)

Nonprofit organizations

Businesses

Organized volunteer teams

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What Functions do Emergency "Volunteers" Perform?

Shelter Operation

Premises

Mass Care

Supply Chain Management

Search & Rescue

Case work

Communication

Education

Inspections

Donations Management

Volunteer Management

Training,drills & Exercises

Transportation

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Sources of Liability?

The volunteer may cause harm

- Bodily injury
- Personal Injury
- Property damage
- Intentional or wrongful acts
- Vehicle accidents
- Professional errors/omissions

The volunteer may be harmed

- Injury
- Illness
- Death
- Property damage
- Discrimination

The law may limit the volunteer's activities

- Licenses
- Permits
- Certificates

Why Does Liability Matter?

Direct consequences of liability	Indirect consequences of liability
• Damage awards • Settlements • Costs of legal defense • Loss of property • Loss of personnel	• Damage to reputation • Loss of support & funding • Loss of partnerships • Diminished volunteer base • Higher insurance premiums
May be some protection	No protection

Chilling effect

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To Whom Does Liability Matter?

- Governmental agencies
- Organizers of volunteer programs
- Business and nonprofit organizations
- Employers of volunteers
- Individual volunteers
- Supervisors and trainers of volunteers
- Donors of premises, equipment & supplies

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What Liability Protection is Available?

- Good Samaritan Laws
- Volunteer Protection Acts
- Emergency Management and Homeland Security Acts
- Governmental Immunity
- Workers' Compensation Acts
- License, Certificate or Permit Laws
- Emergency Management Assistance Compact
- Model Legislation
- Insurance and Contractual Agreements

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What Liability Protection is Available?

Liability protection is primarily state law, and varies greatly

The following descriptions are general – check with a legal advisor about your state's particular laws.

What Liability Protection is Available?

Good Samaritan Laws

Limited immunity for individuals who assist others in emergencies, usually in settings where access to professional care is not immediately available

Usually protect only individuals
Limited immunity protects only for ordinary negligence
Protection may be limited to those with specific credentials
Protection is not limited to declared emergencies & disasters

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What Liability Protection is Available?

Volunteer Protection Acts

Limited immunity for individuals who work as uncompensated volunteers for government agencies and nonprofit organizations

Federal and many states' governments have VPAs
Protect volunteers registered with governments and nonprofit organizations but not the organizations
Protection is not limited to declared emergencies & disasters
Limited immunity protects only for ordinary negligence
Many limitations and qualifications

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What Liability Protection is Available?

Emergency Management and Homeland Security Acts

Emergency Management and Homeland Security Acts may provide:

- ***Limited immunity for emergency and disaster volunteers***
- ***Compensation for injured emergency and disaster volunteers***
- ***Temporary recognition of licenses, permits and certifications for emergency and disaster workers, both paid an unpaid***

Limited immunity protects only for ordinary negligence
Immunity is often limited to individuals
Usually required to register as a volunteer with an emergency response agency and be involved in authorized activities
May specifically protect owners of shelter premises and architects and engineers who inspect damaged premises

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What Liability Protection is Available?

Governmental Immunity

Limited immunity for a government and its representatives, usually set forth in a statute

Often included in a “tort claims act” that describes how the government can be sued

What Liability Protection is Available?

Workers' Compensation Acts

Require an "employer" to provide statutory benefits to "employees" who are injured on the job

In some states, registered disaster or emergency volunteers are treated as "employees"
Benefits for disaster and emergency volunteers may be more limited than for regular employees, or may be subject to contingencies
In some states, local governments and agencies are permitted but not required to provide injury benefits to disaster or emergency volunteers

What Liability Protection is Available?

License, Certificate or Permit Laws

In an emergency, may provide for temporary waiver of license, certificate or permit requirements or temporary recognition of licenses, certificates and permits from another jurisdiction

An issue for paid and unpaid emergency and disaster workers working out of jurisdiction and retired professionals with no active license
Usually required to register with an emergency response agency and to be involved in authorized activities
State's governor often can limit scope of activities

What Liability Protection is Available?

Emergency Management Assistance Compact

An national disaster relief compact – all 50 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands are signatories – triggered by a governor's emergency declaration

- ***Liability protection***
- ***License, certificate and permit recognition***

Provides liability protection for an assisting state and that state's officers or employees when they are aiding a requesting state

Licenses, certifications, and permits recognized by the assisting state are recognized by the receiving state, subject to limitations and conditions prescribed by the governor's executive order.

. Must be part of the state's EMAC response for EMAC protection

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What Liability Protection is Available?

Model Legislation

Uniform Emergency Volunteer Health Practitioners Act

- ***License recognition***
- ***Optional liability protection***
- ***Optional workers' compensation protection***

Limited to the health care context

www.uevhpa.org/

What Liability Protection is Available?

Insurance & Contractual Agreements
Local government insurance or self-insurance programs
Memoranda of agreement
Mutual aid agreements

Note:

1. Protection depends on the terms of the insurance document or agreement
2. Agreements can also establish a basis for liability claims

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How Can Citizen Corps Programs Manage Liability Risk?

Understanding the Law

Online research (statutes and pending legislation)

Consult with knowledgeable attorney or risk manager

Network with other programs

Working within the Law

Constructing the program to qualify for existing protection

Changing the Law

Building coalitions, making contacts and finding an advocate

How Can Citizen Corps Programs Manage Liability Risk?

Components of Risk Management

Risk identification & assessment

What can go wrong and the likely consequences

Risk "control"/mitigation

Reduce losses and their consequences
Comply with the law
Enhance the program's ability to fulfill its mission

Risk financing

Pay for losses that occur

How Can Citizen Corps Programs Manage Liability Risk?

Risk Financing - Nothing Provides 100% Protection

- Protection under statutes
- Insurance
- Agreements with others

NO GUARANTEES!

How Can Citizen Corps Programs Manage Liability Risk?

Risk Identification & Assessment
Identify possible liability events
Assess the likelihood and consequences
Establish priorities

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How Can Citizen Corps Programs Manage Liability Risk?

Risk "Control"/Mitigation

Screening and selecting volunteers & affiliates

Preparing volunteers for their roles, i.e. training

Managing volunteers, i.e. supervising

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Four Steps to Take Now

Find a legal advisor

Go to your state's online statutes

Begin to establish a network

Go to the *Citizen Corps Volunteer Liability Guide*

www.citizencorps.gov/councils/volunteer_mgmt.shtm

Contact Information

Claire Lee Reiss, J.D., ARM, CPCU

creiss@riskinstitute.org

Citizen Corps Contact Info.

Email: **citizencorps@dhs.gov**

Website: **www.citizencorps.gov**

***Citizen Corps Volunteer Liability Guide*:**
www.citizencorps.gov/councils/volunteer_mgmt.shtm