Volunteer Legal Issues

By Catherine Hansen-Stamp Monday, September 30, 2013

Volunteer Legal Issues



This presentation contains general information and is not intended to provide specific legal advice. Organizations should consult with legal counsel regarding matters specific to their business or operation, and aware of the relevant laws in their jurisdiction.

Perspective

Consider:

- How is a volunteer different than an employee?
- Organization's legal exposure for:
 - Injury to volunteer
 - Injury to others caused by volunteer's action:

Perspective

What is a "volunteer?"



- Non-compensated, with exceptions
- Non-profit or government service
- > Civic, charitable, humanitarian



Perspective

Volunteer or employee? Issues affecting status, depending upon who is asking:

- receipt of \$ or benefits -exceptions
- > Treated <u>like</u> an employee
- ► Benefit: organization vs. community?
- Economic dependence; displacement; same job when paid
- ➤ Who is asking: Volunteer Immunity laws, labor laws, workers' comp laws

Perspective

Many TYPES of volunteers:

- Volunteer leaders fun. service. education
- Volunteer 'workers' (e.g. trail work)
- In either of the above, facilitated get together vs. structured instruction (and in between)
- Chaperones school, camp, church setting
- Physician advisors or other consultants
- Board members

Perspective

Basic Constructs – whether organization is using employees *or* volunteers





- Findeavoring to run a Quality Program
- Choosing to responsibly manage risks rather than just avoid lawsuits

Perspective

Risk Management not Risk Elimination

Goal: responsibly managing risk of loss:

- to participants, staff or others
- > to program
- Common sense approach



Perspective

Actual risks (wwwh) plus risk of loss to participant



Perspective



- ✓ Personal responsibility
- Addresses insurance and legal
 Minimize risk of injury and ultimate loss

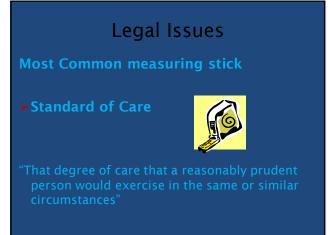
Legal Issues



Legal Issues (Focus Civil Law)











Duty of Care

- For volunteers, who is that 'reasonably prudent person?'
- Lower 'standard' of care for volunteer's conduct? Likely not
- Organization using volunteers held to different standard? Likely no

Duty of Care

But, consider this:

- Duty weaves in and out of all aspects of your operation fluid and changing
- Some common duties?
- A variety of factors can create, eliminate, increase, decrease or influence the duty

Duty and Potential Breach

What does Court look to in determining duty/breach? (e.g.):

- Statutes and case law
- Standards and practices in the industry
- Your internal policies, guidelines, etc
- Your staff (incl. volunteers) words or conduct
- Your <u>external</u> marketing materials, **contracts** or other documents
- Status of user (minor, IWADisability)

Duty and Potential Breach

Q: Where is duty/breach potential?A: Where you address risk management.



Information exchange; staffing; gear; premises & facilities; environment; programming (instruction, supervision, activities); internal and external information and documents; applicable laws; industry standards & practices; review or accreditation....

Considerations

Consider Context & Continuum:

- Variety of Volunteers
- Volunteer led or volunteer 'worker'
- Volunteer leaders leading volunteers
- Facilitated get together vs. structured instruction

Considerations

Specific issues to consider with <u>volunteer</u> led trips or volunteer 'worker':

- How you market and "bill" these trips to the public can impact liability
- Information exchange; EXPECTATIONS
 website participant form brochures and trip info)

Considerations

What you say "internally" to your staff.

Is it realistic, flexible, do-able; allow for staff judgment...

(Staff manual, risk management plan...

Considerations

- Hiring/screening of volunteers
- ➤ Use of volunteers
- Forms signed, including risk/release?
- Clear duties; and appropriate training (pushback)
- Any licensing or other authorization?
- Volunteer health issues remote locations?



