Volunteers and the Law: Myths and Misconceptions

Directors of Volunteers in Agencies (DOVIA)
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Zoom
Presenter

Joan R. Cardellino, CAVS is a subject matter expert with extensive experience engaging volunteers and community forces for good. Having served “in the arena” to the “C-suite”, she offers a broad range of management, organization, and program development skills, expertise, and experience. Joan’s most recent position for over 13 years was to manage the California Hospital Association’s statewide network serving almost 400 hospital volunteer programs including more than 100,000 volunteers. She is the 2020-2021 DOVIA Sacramento Chair and has been a DOVIA member since 1979.
Expressing views and ideas not legal advice. If you need legal advice, secure legal counsel.

Focus is on 501c3 organizations, state of California models.
Assumptions

- High level discussion around risk implications of bringing your volunteers and volunteer programs back
- The laws that apply to your employees/volunteers are related to the state they are working in, not the state where your organization is located
Format

- Breakout rooms
- Quizzes
- Chat room
- Recording
- Resources
Topics

Work Rules

Insurance

Governance
“Friends should realize that, when dealing with procedures such as we set forth here, we are still guided by the Light, not rules and forms.”
Figure 1: The Plan-Do-Check-Act Cycle

- **ACT** Implement the Best Solution
- **PLAN** Identify Your Problems
- **CHECK** Study Results
- **DO** Test Potential Solutions

Create 30, 60, 90-day scenarios.

- Critical Questions
  - Budget
  - Staffing
  - Marketing and Communications
  - Business Operations
  - Technology
  - Legal Issues and Risk Tolerance
Assumptions

Organizational Compliance

Mandates Compliance

Degrees of Certainty

Degrees of Risk Tolerance
Risk cannot be eliminated, only mitigated.

Legal and Risk Tolerance

- Individual control measures and screening
  - Gloves
  - Face coverings
  - Thermometers
  - COVID-19 screening practices
  - COVID-19 specific exclusion criteria
  - Frequent hand washing
  - Physical distancing guidelines
  - Contact surface cleaning/disinfecting protocols
Legal and Risk Tolerance

- COVID-19
  - insurance coverage? workers comp? addendum needed?
  - CalNonprofits Insurance Service
  - CIMA Volunteer Insurance Service
- COVID-19 active case management protocols?
- COVID-19 test requirements?
- Health Information Privacy – HIPPA?
  - https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-covid19/index.html

Legal and Risk Tolerance

- COVID-19
  - Return to work criteria
  - Release forms?
  - Doctor's note clearing pre-existing conditions?
  - Age restrictions?
  - Vaccine? Test?
  - Location?
  - COVID-19 Clear Pass apps?
  - Can’t/won’t wear a mask?
  - COVID-19 test refusal?

- **Legal and Risk Tolerance**
  - Inter-agency transferable criminal background checks?
    - Sharing portability is saving money and allows “just in time” flexibility
    - Fast Pass from Sterling
  - Contracts?
    - Examine all contracts for escape clauses
    - Suspend when possible
Key Legal Sources

Federal

- Fair Labor Standards Act: United States Department of Labor
- United States Department of Labor: Occupational Safety and Health Administration (OSHA)
- United States Department of Justice Civil Rights Division: Americans with Disabilities Act (ADA)

State

- California Department of Industrial Relations Volunteer Classification Opinion Letter
International

- International Red Cross: Legal Issues Related to Volunteering: A Toolkit for National Societies

Federal

- Internal Revenue Service (IRS) Form 990
- The Centers for Disease Control

State

- California Attorney General Guide for Charities
- California Association for Nonprofits
Key Legal Lexicon

- Case Law
- Opinion Letters
- Standard Interpretations
- Recommendations
- Guidelines
Enterprise Software Solutions

Risk management/insurance

Human Resources

Industry specific applications such as healthcare
“But It’s the Law”
Work Rules Quiz
“But It’s the Law!” Work Rules Quiz

What law prohibits replacing a paid staff member with a volunteer?

What law requires a volunteer to have a COVID 19 vaccination?

What law states a volunteer must have a clear criminal background check in order to volunteer?
“But It’s the Law!” Work Rules Quiz

What law prohibits replacing a paid staff member with a volunteer?
Answer: None

What law requires a volunteer to have a COVID-19 vaccination?
Answer: None

What law states a volunteer must have a clear criminal background check in order to volunteer?
Answer: None
Volunteer “work rule” policies should be written to minimize organizational risk while meeting the mission of your organization.

Organizations should consider the potential liability for volunteers acting as their agents.

Volunteer leaders who write “work rule” organizational policies based solely on recommendations and information from their peers in the volunteer sector may be placing their organizations at risk.
Work Rules
Organizational Considerations

- Insurance policies
- Union agreements
- Regulatory requirements
- Organizational culture
- Organizational needs
Sample Work Rules Affected by COVID-19

- Place of work
  - virtual
  - remote/off site
  - on-site

- Hours of Work

- Training
  - return to work orientation

- Recordkeeping
  - volunteer tracking program
  - credentialing: keep track for emergency response purpose

- Incident response and disaster recovery
  - health screenings
Sample Work Rules Affected by COVID-19

Virtual work tech policies

- electronic signatures
- account login access codes
- hours tracking
- security: hardware, software, network, files
- licenses, contracts, and agreements that were signed before allow online use
- social media and digital communication
- use of personal devices
The laws that apply to your employees/volunteers are related to the state they are working in, not the state where your organization is located.

Apply your agency’s standard Human Resource policies and procedures.
“But It’s the Law!”
Insurance Quiz
“But It’s the Law!” Insurance Quiz

True or False: Communicable Disease Liability Insurance can be purchased by your organization.

True or False: It is the law for volunteers to be covered under my organization’s workers compensation insurance policy.

True or False: It is the law for volunteers to show proof of health insurance before they can volunteer.
“But It’s the Law!” Insurance Quiz

True or False: Communicable Disease Liability Insurance can be purchased by your organization.
Answer: True

True or False: It is the law for volunteers to be covered under my organization’s workers compensation insurance policy.
Answer: False

True or False: It is the law for volunteers to show proof of health insurance before they can volunteer. Answer: False
Insurance

The laws that apply to your employees/volunteers are related to the state they are working in, not the state where your organization is located.

Apply your agency’s standard risk management policies and procedures.
Your volunteers provide valuable assistance to your organization. Every nonprofit can and should take steps to manage the risks associated with its use of volunteers. This webinar will help demystify risk management and give you practical strategies you can implement to use your volunteers safely.
“But It’s the Law” Governance Quiz
“But It’s the Law!” Governance Quiz

If you change your mission statement, what Federal agency may require you to refile for your tax exempt status?

What legal term is used if your board is allowing things to be done that do not act in compliance with board’s duty of care, duty of loyalty, duty of obedience?

True or false: The Federal government regulates organization bylaws.
“But It’s the Law!” Governance Quiz

If you change your mission statement, what Federal agency may require you to refile for your tax-exempt status?
Answer: The Internal Revenue Service IRS

What legal term is used if your board is allowing things to be done that do not act in compliance with board’s duty of care, duty of loyalty, duty of obedience? Answer: Breach of fiduciary responsibilities

True or false: The Federal government regulates organizational bylaws changes.
Answer: False
Call to Action

- What should you be doing as a leader?
  - Understand your situation
  - Set the tone
  - Make yourself into an expert
  - Rely only legal and professional sources for information
  - Make policies accessible
  - Balance kindness and enforcement
  - Consider equity
Call to Action

• Use “Plan. Do. Check. Act.” Approach
• Research
  • Best Practice Policies
  • Recommended Policies
  • Your state and local nonprofit and legal sites
• Study
  • Resource websites listed in this presentation. Search for: “volunteer” and/or “volunteerism"
Thank You!

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