

Volunteer Protection Act Passes

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After ten years of debate by Congress, the *Volunteer Protection Act of 1997* (VPA) was signed into law by President Clinton last June and became effective at the end of September. The purpose of the law is to provide limited protection for volunteers serving nonprofit organizations and governmental agencies.

Why was the law created?

Although a number of states, like Minnesota (Chapter 317A.257), have some protection for volunteers, there have been reported cases where volunteers were held personally liable for harm caused to others. These cases made people question the legal system or at least question whether a volunteer should be held liable in those situations. While not proven, there was also the perception that large numbers of people were being scared away from volunteer opportunities because of fear of potential liability.

Basically, this Act, and others like it, take the public policy position that volunteers individually should not bear the total financial burden. Regardless of the laws that protect volunteers, organizations, generally speaking, retain responsibility for acts of their volunteers. Both the federal and Minnesota law provide protection to volunteers (providing they meet certain criteria) against legal action that tries to place individual liability.

Who is a volunteer?

This act describes a volunteer as anyone who:

- performs services (including officers, directors, trustees, and direct service volunteers);
- for a nonprofit organization or governmental entity; and
- receives no compensation (other than reasonable reimbursement or allowance for expenses actually incurred), or anything of value in lieu of compensation in excess of \$500 per year.

A nonprofit organization is defined as an organization that is exempt under section 501(c)(3) of the Internal Revenue Code or any not-for-profit organization that is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and does not practice any action that constitutes a hate crime.

How does the Act protect a volunteer?

According to the Act, a volunteer is not liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if:

- the volunteer was acting within the scope of the volunteer's responsibilities in the organization at the time of the act or omission;
- if appropriate or required, the volunteer was properly licensed, certified or authorized by the appropriate authorities in the state for the activities taken;
- the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and
- the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft or other vehicle for which the state requires the operator or the owner of the vehicle to possess an operator's license and insurance.

What conduct is not protected by the Act?

In general, the limitations on the liability of the volunteer under this act does not apply to any misconduct that:

- constitutes a crime of violence or act of international terrorism for which the defendant has been convicted;
- constitutes a hate crime;
- involves a sexual offense for which the defendant has been convicted;
- involves misconduct for which the defendant has been found to have violated a federal or state civil rights law; or
- where the defendant was under the influence of alcohol or any drug at the time of the misconduct.

Conclusion

In general, the intention of the Act is admirable; however, there may be some confusion if both the federal and Minnesota laws are allowed to apply to situations involving volunteer liability. For example, Minnesota law applies to volunteers with organizations recognized as tax-exempt under Minnesota law, which includes those recognized as tax exempt by the IRS. The VPA includes charitable tax exempt organizations and potentially others. Another example is the issue of how much a volunteer may be compensated and still be considered a volunteer (each law is a little different).

While there are many more issues raised by the VPA than settled, the good news is that the VPA does allow for states to elect to not come under the VPA. Until this is done, however, the VPA preempts state law except where state law provides additional protection from liability.

For a copy of the *Volunteer Protection Act* (doc. # 3104) and a summary of Minnesota laws (doc. # 3105), call MOCVS fax-on-demand system at 612.296.7110 or 888.234.1121. Also, watch for the revision of **Planning It Safe: How to Control Liability and Risk in Volunteer Programs** guidebook that will be available for purchase in 1998 or borrow books on liability and risk management from the MOCVS lending library (*benefit of MOCVS membership*).