

Volunteers: A Primer on Possible Perils

03.31.15 | Linda J. Rosenthal, JD



Volunteers. For many nonprofits, they are key to the success of the organizational mission. They provide valuable assistance and are vital links to the community at large.

But using volunteers can also be a trap for the unwary. “The use of volunteers . . . entails risk both from and to volunteers.”

A Cautionary Tale

We’ll use the tale of a hypothetical nonprofit to illustrate how, in just a single morning dealing with a volunteer, there can be trouble lurking at every turn.

This group – let’s call it Organization X – is welcoming an energetic college student on summer break.

Ed Executive-Director is ecstatic that he’s getting some much-needed office help. To Valerie Volunteer’s delight, she’s not assigned to envelope-licking duty, but is asked to tackle the nonprofit’s fledgling social media presence.

First up is the Facebook page. She replies to the backlog of comments on recent posts. She also updates the lackluster header with a fresh new design and image borrowed from the website of one of the comment-posters.

Next, a messenger arrives while Ed is in a meeting. Valerie signs off on a large delivery of promotional brochures although – unknown to her – there are significant mistakes by the printer.

Returning to her desk, she is flustered by a troubling response to one of her Facebook replies, along with an irate email about the misappropriated website image.

After calming down a bit, she recognizes that this adventure may be a bit more complicated than she had anticipated. And she’s doing it for free. So, she hints to Ed that, if possible, she would certainly

appreciate a few extra bucks here and there.

Can you see where this is going? It may not be all sunshine and roses that day at Organization X.

The Morning Continues

At about 10:30 a.m., Valerie walks to the coffee machine but slips on some liquid that someone spilled earlier. She's distressed and in pain. Ed rushes to her side, murmuring "there, there, dear," and hugs her for a full ninety seconds.

Extricating herself from his unwelcome attention, Valerie limps back to her desk – and the social media problems.

Just before noon, Ed takes some money from petty cash, and asks Valerie to drive Organization X's van to the printer to return the unusable brochures, and to pick up some sandwiches for the two of them on the way back.

The printing firm employee refuses to correct the mistakes, pointing to fine-print waivers on the delivery documents which Valerie had earlier signed.

Still shaken from the ups and downs so far in her first few hours as a volunteer, Valerie sideswipes a minivan of preschoolers from a nearby day-care center. Local reporters, arriving soon after the police, shove microphones in the face of Organization X's newest worker . . .

And that's just the first morning.

Issue Identification Savvy

This story, by the way, looks a lot like the type of surreal essay questions that new law graduates encounter on the bar exam. Each one is a time-condensed tale of woe and misfortune or of outrageous wrongdoing. The newly minted Juris Doctor is asked to identify and analyze each and every possible legal issue, claim, or defense.

From Day 1 of law school, that's what prospective attorneys are trained to do: spot potential legal pitfalls in all types of situations. As a nonprofit executive or board member, albeit likely without formal legal training, your job is the same: issue identification. What common situations may foreseeably present risks?

Volunteers: Predictable Trouble Spots

There are certain issues likely to be encountered in any situation involving volunteers. Among the most common are:

Classification of Worker

What is a "volunteer"? Regardless of the label chosen by the organization and the worker, if the worker is not a true "volunteer," then all labor and other laws pertaining to employees must be followed. This includes payment of at least minimum wage and overtime rates, observance of meal- and rest-break rules, and anti-discrimination standards.

The term “volunteer” is not interchangeable with “intern.” And many so-called internships are not true internships, and are subject to minimum wage and other labor laws that apply to employees.

Volunteers can be paid small stipends, but how much is too much? We’ll cover that topic in a future post.

Actual, Apparent, and Ostensible Authority

By mid-morning, Valerie Volunteer has already taken actions that objectively appear to be on behalf of the organization; for example, managing the social media accounts and signing off on a printing contract performance. Will Organization X be legally bound by her actions, even if she’s not an officer or an employee with official authority?

Has she created problems with the social media activities? (Does Organization X have a social media policy or handbook, and if it does, is a volunteer bound by such a document?)

Has Valerie been sufficiently vetted before she is allowed to interact with the public and make representations on behalf of Organization X? Has she been properly supervised?

Misappropriation of Intellectual Property

Valerie has borrowed a great image from the website of one of the posters on the Facebook page. This is not a compliment; it’s a copyright violation. What are the consequences?

Liability of Organization to Volunteer

Organization X (and possibly certain key or supervisory personnel) may be liable in negligence for physical injury to anyone on its premises. Valerie’s slip-and-fall in that puddle of spilled liquid may turn out to be worse than it looked at first. For purposes of getting help with medical bills, is Valerie considered an ordinary third-party plaintiff on the premises or is she covered by workers’ compensation?

Then there’s Ed’s solicitous response to this incident; to everyone but Ed, it has a distinct whiff of inappropriate sexual contact or harassment. Is this a problem for Ed – alone, or jointly with the nonprofit? Is a nonprofit liable under harassment laws? Is a volunteer protected by employment harassment laws?

Labor Law Violations

If Valerie is not a “volunteer” because she’s being offered too much “in a few extra bucks here and there,” has Ed run afoul of labor-law rules? Similarly, since employees must be given lunch breaks, and may not be asked or required to perform duties then, was the ill-fated van ride a problem?

If she works not only during lunch and also for the rest of the day, are there overtime violations brewing? Does paying for her sandwich change any of this? And should Mr. Executive-Director be dipping into petty cash at all to pay for lunch?

Liability to Third Parties

Should Valerie have been vetted about her driving competence before being given the van keys? She was upset; should she have been allowed to drive? Was she at fault for the accident? Who can

be sued – Organization X, Valerie, Ed – or all of them? Does Organization X’s insurance policy cover Valerie generally or at least in these particular situations?

Then, of course, there’s the “film at 11” public-relations crisis-in-the-making.

Conclusion

We certainly don’t want to scare you away from accepting volunteer help – it’s much too valuable.

But there are lots of issues: Forewarned is forearmed.

And – (hint) – we’ve haven’t yet plumbed the depths of all the legal questions lurking in that madcap morning at Organization X.

– *Linda J. Rosenthal, J.D., FPLG Information & Research Director*