

No One Volunteers to Get Sued: Reviewing Emergency Volunteer Liability and Protections

Volunteers are an integral part of our emergency and disaster response system. A review of federal and state laws reveals how liability protection is often tied to the type of services the volunteer provides and the organization deploying the volunteer.

Types of Emergency Volunteers

Protection from liability often depends on the nature of services provided and the program through which the volunteer is deployed, i.e., the type of volunteer. Types of emergency volunteers include:

GOVERNMENT-BASED EMERGENCY VOLUNTEERS

Governmental emergency volunteers are registered, organized, and trained through government sponsored emergency volunteer systems and are often granted immunity from civil liability. State law may be specific as to Volunteer Health Professionals (VHPs) (e.g., physicians, nurses, etc.) or broad with protections for emergency volunteers in general.

NONGOVERNMENT-BASED EMERGENCY VOLUNTEERS

Nongovernmental organizations also recruit, organize, and train volunteers for emergency response activities (e.g., a hospital allows VHPs to provide onsite medical assistance or a business donates supplies or space for an emergency). State laws vary as to liability protections with most not providing specific liability protection for these organizations and volunteers.

GOOD SAMARITANS

A Good Samaritan acts independently and provides medical assistance or treatment to a victim at the emergency scene. Good Samaritan Laws often provide the Good Samaritan with immunity from liability for ordinary negligence.

CIVIC VOLUNTEERS

Civic volunteers perform unpaid work for government or nonprofit organizations (e.g., schools, faith-based institutions, social service agencies, and emergency services). State and federal volunteer protection laws provide immunity from liability for ordinary negligence.

SELF-DEPLOYED VOLUNTEERS

Unregistered, untrained, or unscreened individuals may come to the scene of an emergency to offer help. Liability protections for emergency volunteers generally do not apply to self-deployed volunteers.



Differentiate the Concepts of Ordinary Negligence, Gross Negligence, and Wanton and Willful Conduct

A volunteer and the entity that recruits, trains, deploys and manages the volunteer are legally responsible for their own acts or omissions. Volunteers and entities may also be vicariously liable for the acts or omissions of a person under their control. Liability can arise under a number of legal theories; most common is civil tort liability.

A tort is an action in which a person or entity either intentionally or unintentionally causes harm to another person or property. Intentional torts occur when there is intent to harm. Unintentional torts happen when harm occurs but there is no intent. Ordinary negligence is an unintentional tort that occurs when a volunteer or entity has a duty to another, breaches that duty through an act or omission to act, and causes direct harm or damages. Gross negligence occurs when a volunteer's deliberate disregard of duty and care causes unintended, unforeseen harm. Negligence in the emergency volunteer context may include: medical malpractice; failure to plan or prepare; breach of privacy and confidentiality; or premises liability. Willful or wanton conduct occurs when a volunteer's conscious disregard of duty and care causes foreseeable injury or harm.

Why Do We Grant Liability Protection to Volunteers to Commit Negligent Acts

Emergency volunteers are unpaid, uncompensated workers who willingly give their time and effort to emergency preparedness and response activities. Immunity is a legal protection against liability and may be asserted as a defense against tort claims. Granting immunity ensures there are adequate numbers of volunteers to participate in emergency preparedness and response efforts. Laws protecting volunteers from liability are often limited to acts of ordinary negligence. The contributory negligence of the injured person may be a defense against a claim of gross negligence but not willful or wanton conduct.

Liability Protection for Emergency Volunteers

A number of federal and state laws provide immunity and other liability protections for volunteers. Key federal and state laws include:

EMERGENCY MANAGEMENT ASSISTANCE COMPACT (EMAC) – An interstate mutual aid compact providing states a way to provide collective assistance during emergencies. EMAC provides liability coverage to state officers and employees. State law may deem volunteers to be state employees.

FEDERAL TORT CLAIMS ACT (FTCA) – Protects federal government volunteers from tort liability, except when violating the U.S. Constitution or a federal statute that authorizes suit against an individual.

GOOD SAMARITAN LAWS – State laws that protect volunteers who are near an emergency and spontaneously render aid to victims. Liability protections do not cover egregious conduct. Some state laws also apply to entities and organizations that assist in emergencies.

PUBLIC READINESS AND EMERGENCY PREPAREDNESS ACT (PREP ACT) – Authorizes the U.S. Secretary of Health and Human Services to issue a declaration providing immunity from liability for harm caused by countermeasures against diseases or other threats. Covers persons and entities involved in the manufacture, testing, distribution, administration, and use of identified countermeasures. PREP Act declarations are independent of other federal emergency declarations.

STATE EMERGENCY MANAGEMENT ACTS – Provide for emergency planning, mitigation, response, and recovery. Vary among states and may extend governmental employees' rights and immunities to volunteers.

STATE TORT CLAIMS ACTS – Allow an individual to seek compensation when harmed by a state employee or volunteer acting within the scope of employment or responsibility. Immunity is often provided for specific circumstances.

UNIFORM EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT (UEVHPA) – Uniform law adopted by states in whole or part. Allows VHPs to register through governmentally established registration systems (e.g., ESAR-VHP or Medical Reserve Corps), or with other registration systems. Protects VHPs from civil liability and allows liability protection for organizations and entities. UEVHPA does not immunize for willful or wanton acts, gross negligence, or acts occurring while operating motor vehicles. Liability protections become effective upon a state's emergency declaration.

VOLUNTEER PROTECTION ACT (VPA) – VPA provides immunity from ordinary negligence to volunteers of nonprofit organizations or governmental entities. It does not cover gross negligence, willful misconduct, recklessness, or acts committed by the volunteer while intoxicated or operating a motor vehicle. It does not cover organizational entities of any type or persons volunteering at private businesses. VPA does not require a declared emergency to apply.