

COMMUNITY Risk Management & Insurance

 A publication of the Nonprofit Risk Management Center

Volume 13, No. 2, May/June 2004

Classification Conundrum

Avoiding Potentially Costly Exempt Vs. Non-Exempt Errors

by Melanie L. Herman

The publication of the U.S. Department of Labor's new wage and hour regulations on April 21, 2004, received a mixed greeting. Some groups claim that the new regulations will result in substantial numbers of workers losing overtime benefits. Others, including the Bush Administration, claim that large numbers of Americans will now be eligible for overtime pay. The regulations go into effect on August 23, 2004.

The reaction in the nonprofit sector was also mixed, but in a different way. Some nonprofit HR directors and CEOs greeted the announcement by simply vowing to review the regulations carefully in order to make certain their organizations are in compliance. Most, however, failed to notice the change.

U.S. Secretary of Labor Elaine L. Chao testified before Congress on April 28, telling legislators that the new regulations would mean guaranteed overtime protection for 1.3 million salaried workers who earn \$455 a week or less.

Whether you've been keeping up with the public debate and wondering which "side" is telling the truth, or ignoring the matter like a dreaded household chore, it's time to take a look at the regulations and determine what actions are necessary.

Wage and hour violations are a lurking risk in many nonprofits. Unlike risks that pose obvious threats to an

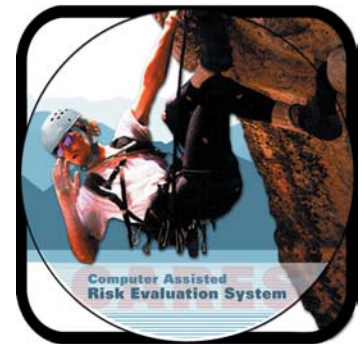
organization's well-being, it is very difficult for even a well-intentioned CEO to spot compensation errors that could jeopardize the fiscal health of the nonprofit. As long as the nonprofit meets its payroll obligation every pay period and employees voice few or no complaints about their pay stubs, wage and hour violations go unnoticed. Yet undetected compensation errors are commonplace in the nonprofit world.

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Visit www.nonprofitcares.org to check out Version 2.0 of the **Computer Assisted Risk Evaluation System (CARES)**, the only online risk assessment tool that offers specific action-oriented advice on a wide range of subjects based on your answers to an assessment. Unlike a tool that produces "canned" results that are the same for every user, CARES produces a truly customized report. CARES is like having a risk management consultant on your desktop. The cost is only \$89 for a license that never expires, and you can check out the program for free and with no obligation. Register at www.nonprofitcares.org to take the program for a test drive. Forgot your password? A brand-new feature allows you to retrieve a forgotten password.



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Common Wage and Hour Mistakes

Wage and hour investigations by the Department of Labor often claim that an employer failed to pay overtime because of misclassifying and treating employees who were really “non-exempt,” as if they were “exempt.” The true danger in this practice lies in the fact that if the government’s position is correct, the nonprofit will not only owe back overtime wages and withholding taxes, but also penalties—often money that the nonprofit had not budgeted and is generally not available out of the operating budget. Other common but risky practices include:

- disciplining exempt employees by docking pay in periods of less than a full day, which results in the conclusion that the employer was paying the employee by the hour, rather than on a salary basis, thus creating liability for overtime;
- failing to treat mandatory work-related meetings and training sessions as hours worked;
- not providing “duty free” lunches for non-exempt staff—keep in mind that if you’re requiring an employee to answer phones or perform *any task* during lunch you have not provided a true lunch break;
- not requiring non-exempt employees to clock in and out for lunch—some employers automatically deduct one hour or one-half hour from an hourly employee’s workday, regardless of whether the employee actually takes a lunch break;
- not paying work preparation time or travel time that is legitimately part of the job;
- not reimbursing employees for employment-related expenses (e.g., mileage or required extra insurance premium for auto coverage the employer requires that exceeds the state’s minimum limits);

- not providing all wages due at termination. Most states have “final paycheck” laws that require prompt payment of a departing employee’s final check that may include payments for accrued vacation time; and
- erroneously classifying employees as independent contractors.



An employer that commits any of the violations just described may be liable for unpaid wages, statutory penalties, interest, and attorneys’ fees for all affected employees. To avoid exposure to financial penalties and an enormous headache, every employer should conduct a thorough review of wage and hour practices and eliminate any non-compliant practices.

Step by Step

The new regulations provide an updated approach to the three tests that should be used in classifying white collar employees: the salary test, the salary basis test, and the duties test. If you’re responsible for developing job descriptions and/or classifying employees in your agency but you don’t

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fully understand these tests (Can you explain them in lay-person's terms to someone else?), there's a good chance your nonprofit has made some potentially costly missteps in classifying employees. It is never appropriate to classify employees based solely on their salary, rank, background, or the nonprofit's desire to avoid overtime pay. Act wisely: Make plans today to conduct a careful review of all staff positions in order to determine which classification is correct under the updated rules. If a position has been classified incorrectly, consult with legal counsel about the process for changing the classification and reducing the exposure facing your agency. Here are some suggested steps for reviewing the positions in your nonprofit.

Step 1: Does the Position Meet the Salary Test?

Salary Test—The regulations provide that positions that are paid more than \$455 per week *may* be exempt from overtime, but only if the positions meet the second and third tests. This means that an employee whose annual earnings are \$23,660 or less must be classified as non-exempt. If a position pays more than \$455 per week proceed to Step 2. Remember, the title, position, authority or role of the employee are of no consequence in determining whether a position meets the salary test.

Step 2: Does the Position Meet the Salary Basis Test?

Salary Basis Test—The salary basis test answers the question of whether the employee is paid on a salary basis or a fee basis. According to the Department of Labor, "Being paid on a 'salary basis' means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of

variations in the quality or quantity of the employee's work. Subject to exceptions listed below, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked. Exempt employees do not need to be paid for any workweek in which they perform no work. If the employer makes deductions from an employee's predetermined salary, i.e., because of the operating requirements of the business, that employee is not paid on a 'salary basis.' If the employee is ready, willing and able to work, deductions may not be made for time when work is not available."

For information on the circumstances under which a salaried employee may receive less than his or her full salary for any week in which the employee performs *any* work, see DOL Factsheet #17G, available at www.dol.gov. The term "Fee basis" is defined in 29 CFR 541.605.

Step 3: Does the Position Meet the Duties Test? Which Exemption Category Applies?

Duties Test—The duties test is the most complicated of the three tests. It provides that a position that is eligible for exempt status because it meets the salary and salary basis tests can only be classified as exempt *if the position's duties meet the parameters of an allowed exemption category*. The most common exemption categories are *executive*, *administrative* and *professional*. These are discussed in the next section. Keep in mind that other exemption categories, such as *technical* and *creative*, exist as well. Consult the DOL Web site for insight into the additional exemption categories.

"Make plans today to conduct a careful review of all staff positions in order to determine which classification is correct under the updated rules. If a position has been classified incorrectly, consult with legal counsel about the process for changing the classification and reducing the exposure facing your agency."



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Tempting But Confusing and Dangerous: Paying Volunteers “Just a Little Something”

by George L. Head, Ph.D.

A thoughtful, appreciative board or executive director may want to pay a nonprofit's volunteers “just a little something” beyond reimbursing individual volunteers for their expenditures on the organization's behalf. Some nonprofits rationalize a monetary gift as a demonstration of thanks for the loyalty volunteers have shown to the organization: “Buy yourself something you like as a reminder of how much we like and need you.” Or the “little something” may be offered as token compensation for the countless gallons of gas and miles of wear that volunteers put on their cars as they so willingly drive to and from the nonprofit (“Helping you get here is the least we can do, when you do so much for us.”).

Any nonprofit executives who find themselves thinking or saying these words should find better ways to say, “Thanks, please stay,” to their volunteers. The “little something” paid periodically to all volunteers may seem like a nice way to thank them for the time they so graciously give to the nonprofit, but may raise serious issues and yield unwanted tax consequences for the nonprofit and volunteer.

Paying volunteers money or anything of value that can reasonably be construed to be *in exchange for their work* is confusing and potentially dangerous to your nonprofit, and even to the volunteers you're trying to reward. The basic source of the confusion and the danger is that the law draws sharp distinctions between employees and volunteers. The precise distinctions vary among jurisdictions, but the almost universal point of difference is that employees get paid for their work—volunteers do not. Pay a volunteer *for his or her work* and you've

transformed the former volunteer into an employee—or at least you've created a plausible basis for that person (or perhaps someone else) to claim he or she is an employee of your nonprofit.



Why Claim Employee Status?

A person who joined your nonprofit's staff as a volunteer, or so you've always thought, may have several reasons for claiming employee status:

1. If your nonprofit terminates this person as a volunteer for any reason, he or she, claiming to be a paid employee, may file for unemployment compensation benefits or may sue for wrongful termination of employment.
2. If this person becomes ill or is injured off the job, he or she may assert entitlement to the health insurance benefits your nonprofit gave all its “other employees.”
3. As this person approaches retirement age, he or she may demand pension benefits like your “other employees” receive, or may sue for having been wrongfully deprived of eligibility to participate in your pension plan.
4. If this person dies while still working for your nonprofit, his or

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Paying Volunteers “Just a Little Something”

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her surviving dependents may go to court, arguing that—because you paid the deceased from time to time—they should receive the same life insurance benefits you provide to the families of “other employees.”

5. If, now or in the future, this person becomes very angry with your nonprofit or with one of its leaders, the volunteer may start destructive rumors, or may go to the media, bringing adverse publicity, decreased donations, and possibly regulators’ scrutiny by claiming that your organization violates the wage and hour laws by paying staff members less than the required minimum wage.

Any of these five sets of circumstances can impose costs on your nonprofit that are much greater than the largely intangible benefits it gains by paying its volunteers “just a little something.” When the potential costs substantially exceed the probable benefits, sound management calls for finding less risky, more responsible alternatives. There are some ready, effective alternatives for retaining, motivating, and thanking all your productive, generous volunteers.

There are Better Ways

The two primary reasons a nonprofit’s board or executive director may be tempted to pay its volunteers are (1) to cover their expenses for their work and (2) to motivate their continuing efforts for the nonprofit.

The two straight-forward ways to cover volunteers’ expenses are (1) to reimburse individual volunteers for particular amounts they can document having spent for the nonprofit and (2) for expenses that are more difficult to document (such as for commuting or lunches) a uniform monthly allowance that, on the average give or take a dollar or two, covers each volunteer’s costs.

Either of these two payment procedures accomplishes the reimbursement objective more logically, openly, predictably, and defensibly than the “just a little something” approach.

Those who volunteer for nonprofits generally do not do so for the money; if they wanted money from their nonprofit efforts, they would become its employees. Instead, most volunteers labor because they believe in a given nonprofit’s mission. Beyond the mission, they may seek others’ gratitude for their selfless work, opportunities to work with or lead others, or perhaps community recognition.

Most volunteers don’t work for “just a little something” in their wallets or checking accounts. Therefore, to reward, motivate, and hold good volunteers incentives such as volunteer-only social events, “outstanding volunteer(s) of the year” awards, and newspaper articles about volunteers’ group achievements can be particularly effective. These rewards require more than “just a little something” from the board or CEO. They require some creative effort, originality, and personal attention from a nonprofit’s leadership. They require more personal effort and attention from the leaders, but ultimately they mean more to the volunteers whom the leaders wish to inspire and to the successful pursuit of your shared mission. ■



George Head is special advisor to the Nonprofit Risk Management Center. Dr. Head welcomes your comments and feedback on the issue of paying volunteers or any risk management topic or dilemma facing your nonprofit. He may be reached at George@nonprofitrisk.org.

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“Some nonprofit leaders regard all of their staff as ‘professionals’ and therefore believe the professional exemption applies to all positions. This is rarely, if ever true.”

Executive Exemption

Eligibility for the *executive employee exemption* is limited to positions:

- ❑ Whose primary duty is managing an enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- ❑ Whose customary duties include supervising the work of at least two or more other full-time employees; and
- ❑ Whose authority includes the ability to hire or fire other employees, or whose recommendations as to the change of status of other employees are given weight.

Classification Tip: Some nonprofit managers believe that anyone who supervises two or more employees is automatically “exempt.” As the section above indicates, this is a misconception about the regulations.

Administrative Exemption

Eligibility for the *administrative employee exemption* is limited to positions:

- ❑ Whose primary duty is the “performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers”; and
- ❑ Whose primary duty includes the exercise of discretion and independent judgment.

Classification Tip: A key to properly applying the Administrative Exemption is understanding the phrase “discretion and independent judgment with respect to matters of significance.” Some nonprofits misstep by claiming that all (or most!) employees use discretion and judgment. A closer look reveals that the opposite is generally true: a minority of employees at the typical nonprofit use discretion and judgment. When an employee performs work that involves

following techniques or procedures, they are applying skill to the task. When an employee is expected to depart from or change procedures without supervisory intervention they are probably using discretion and judgment.

Professional Exemption

Positions that may be exempt under the *professional exemption* category include those where:

- ❑ The primary duty is work requiring advanced knowledge, defined by DOL as “work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment”;
- ❑ The advanced knowledge required for the position is in a field of science or learning;
- ❑ The advanced knowledge required for the position is acquired through a “prolonged course of specialized intellectual instruction.”

Classification Tip: Some nonprofit leaders regard all of their staff as “professionals” and therefore believe the professional exemption applies to all positions. This is rarely, if ever true. The requirements listed above should make it clear that the professional exemption applies in only rare instances. While it may be good for morale to refer to staff members as “professionals,” remember that this term is interpreted narrowly in wage and hour regulations and a staff member who is regarded as a professional may be non-exempt and therefore eligible for overtime pay.

For more information on the executive, administrative and professional exemptions, see the *Handy Guide to the FLSA* published by the Department of Labor and available at: www.dol.gov/esa/regs/compliance/whd/hrg.htm or visit the Wage and Hour Division site at www.wagehour.dol.gov.

It is important to realize that to be exempt from overtime, an employee

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Wage and Hour Q & A

- Q. Can a part-time employee be paid on a salary basis and qualify for exempt status?
A. YES, as long as the position also meets the salary test and the duties test.
- Q. Can we dock the pay of an exempt employee who only worked a partial day last week but has exhausted their accrued leave?
A. NO. Disciplinary action may be taken against a salaried, exempt employee who fails to meet your performance requirements, but you may not dock their pay on any day where they performed any work.
- Q. We no longer employ secretaries. All of our secretaries are now called Administrative Assistants. Doesn't this mean the administrative exemption applies and they are no longer eligible for overtime pay?
A. NOT NECESSARILY. The position description must be scrutinized carefully to determine whether the position of administrative assistant is eligible for the administrative exemption. In most cases AAs should be classified as non-exempt.
- Q. We cannot afford to pay overtime, so we ask incoming employees to voluntarily agree to "exempt" status. As long as they volunteer, is this ok?
A. NO. An employee may not opt out of the wage and hour laws.
- Q. Where can I find additional information on the wage and hour laws and the new regulations?
A. The Department of Labor's Wage and Hour Division's Web site is available at www.wagehour.dol.gov. You may also call the Division's toll-free help line, available from 8 a.m. to 5 p.m. in your time zone, at 1-866-4US-WAGE (1-866-487-9243). Keep in mind that when state laws differ from the federal Fair Labor Standards Act, your nonprofit must comply with the standard most protective of employees. Links to state labor departments can be found at www.dol.gov/esa/contacts/state_of.htm.

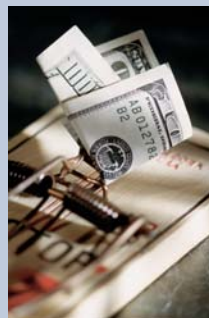
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must not only meet the federal test for exempt status, but must also meet any state requirements that may be more stringent than the federal exemptions. Review the wage and hour provisions in your state by visiting your state department of labor Web site. A complete listing of state labor departments is found at www.dol.gov/esa/contacts/state_of.htm.

Before proceeding with changing the classification of *any* positions in your nonprofit, consult an experienced employment attorney licensed in your state who can advise your nonprofit about the best way to proceed. ■

The U.S. Department of Labor Web site (www.dol.gov) offers numerous resources on the new "white collar" regulations, including 3 to 20 minute videos that can be viewed online. Underlined words in the slides and script offer links to the regulatory text, preamble, fact sheets and other related documents. The seminars can also be downloaded for training at your nonprofit. Visit: www.dol.gov/esa/regs/compliance/whd/fairpay/main.htm for details.



10th Anniversary Nonprofit Risk Management Institutes

Nonprofit organizations by their very nature are risk-taking operations. They venture to provide services to people at risk, in risky places and on limited, and sometimes risky, budgets. To tell a nonprofit organization not to take risks is as good as telling the organization to close its doors. The purpose of the *Nonprofit Risk Management Institutes* is to provide policies and procedures, techniques and direction for keeping your nonprofit's doors open. The annual *Institutes* is where board members, executive directors and senior staff who are concerned about safeguarding nonprofits meet to expand their horizons. Take this opportunity to reinvest in yourself and your organization. Register yourself and a team of staff from your organization for this year's conference.



What's It All About?

This *10th Annual Nonprofit Risk Management Institutes* will focus on employment practices, youth protection, and insurance—three subjects that present recurring challenges to nonprofit leadership. The format of this year's program encourages participants to choose the most compelling subject area and follow it through day-to-day, or to select the most compelling topic from each time slot no matter the subject. Either way, you'll leave Washington fortified by your immersion in practical insights and best practices.

Who Should Attend?

The *Institutes* program is designed for nonprofit CEOs, program managers, CFOs, board members, department

heads and professional advisors to nonprofits. Veteran nonprofit executives and newly employed staff members who have responsibility for risk management, HR, youth protection or insurance/risk financing will feel at home. At the *Institutes*, you will be surrounded and inspired by kindred spirits who have made a true commitment to protecting the vital mission-focused programs and assets of their nonprofits.

Open Format

The 10th anniversary *Institutes* features an open format—which means that you can design a conference agenda that suits your personal interests and professional needs. You may:

- attend all of the sessions in a single track; or
- move from track to track, choosing individual sessions that interest you.

REGISTRATION

To register for the 10th annual Nonprofit Risk Management Institutes, visit www.nonprofitrisk.org or call (202) 785-3891 to request a copy of the printed brochure.

Exhibits

The 2004 conference will feature an exhibition of companies that provide products and services to nonprofits. To inquire about space availability call Suzanne Hensell at (202) 785-3891 or Suzanne@nonprofitrisk.org. For general conference inquiries, contact Sheryl Augustine at (202) 785-3891 or Sheryl@nonprofitrisk.org.

2004 Nonprofit Risk Management Institutes Program

Sunday, October 17

9:30 - 10:00 am

Forum Registration

10:00 am - 4:00 pm

3rd Annual Forum for Insurance Agents & Brokers

Noon - 5:00 pm

Institutes Registration

1:30 - 5:00 pm

Concurrent Sessions

Insurance "Boot Camp" for Nonprofit Leaders—This intensive clinic offers a foundation for those who have new responsibilities in insurance and risk management, whose insurance skills need refreshing or who simply want to get a firmer footing on the ever-shifting insurance terra firma. What is out there and what policies do nonprofits need?

Effective and Legal Employment Practices—This clinic covers a range of critical employment topics: wage and hour concerns, proper overtime pay practices, legal hiring, practical recordkeeping, and performance appraisal. The final hour will provide an opportunity for participants to receive advice on their thorniest employment dilemmas from a panel of experts.

Youth Protection Retrospective—This session sets the stage for the future of youth protection. Presenters will highlight critical issues in youth protection and offer a retrospective look at developments during the past decade. Ground has been gained and lost in nonprofit organizations' work with children and teens that portends future strategy.

5:00 - 6:30 pm

Opening Reception in the Exhibit Hall

Monday, October 18

8:00 - 9:00 am

Exhibit Hall Open/Coffee and Pastries

9:00 - 10:15 am

Plenary Session

10:30 am - 12:15 pm

Concurrent Sessions

Top 10 Employment Mistakes That Could Land Your

Nonprofit in Court—Investigate some of the common triggers of employment claims and lawsuits against nonprofits. Find out what your agency can do to avoid the potholes and pitfalls that have tripped up other organizations.

Staff Screening: A Closer Look—Focus on the hows and whys of comprehensive screening, and the options available for examining criminal history records. Learn about findings from a demonstration project conducted by the Boys & Girls Clubs of America, the National Mentoring Coalition, and the National Council of Youth Sports.

Insurance Industry Specialization: Who's Doing What?—Dig into the increasing move to specialization by insurance agents/brokers and markets. Find out which carriers are expanding their focus on specific nonprofit segments and which companies are moving away. Learn who the specialists are for brokering, TPA and claims management services.

12:30 - 1:45 pm

Networking Lunch

2:00 - 4:00 pm

Concurrent Sessions

Staffing Changes: How to Manage Expansion and

Downsizing—Managing transformation effectively is key to reducing the likelihood of a lawsuit and fortifying the nonprofit to withstand a legal challenge. This session will explore and explain proven strategies for managing employment transitions safely and with compassion.

Youth Protection Policies: Translating Theory Into

Practice—Investigate the progress organizations have made in formulating policies to help protect children who are participating in their programs from abuse. Strategies employed ensure adequate supervision, training and education that remove the opportunities for abusers to victimize children.

Insurance Coverage

Clinic—Understanding how coverage works is essential to managing a nonprofit's insurance program. Look at several intriguing policy nuances. Study cases chosen from actual policy disputes involving nonprofits. Ratchet up your knowledge and confidence about components of coverage.



Tuesday, October 19

8:00 - 9:00 am

Exhibit Hall Open/Coffee and Pastries

9:00 - 10:15 am

Plenary Session

10:30 am - 12:15 pm

Concurrent Sessions

Common and Confounding Lessons From Recurring and Wacky Employment Cases

—Lawsuits alleging wrongful termination, benefits or age discrimination, illegal retaliation, and sexual harassment are filed every day in U.S. courts. Many of these cases offer familiar and avoidable patterns, while an occasional case presents a path not previously taken. There are both humor and lessons to be learned buried in the legalese.

Responding to Allegations and Incidents of Abuse

—Measures taken by youth-serving organizations seem to be reducing the number of abuse cases, but not yet eliminating them. You still need an organizational response to abuse allegations, effective strategies for minimizing the damages to the organization and the victims, and to know the role of the attorney, investigative agencies, insurers, and officers of the organization.

Putting Your Insurance Program Out to Bid: Three

Approaches—This session will explore three approaches to putting a nonprofit's insurance program out to bid: open bidding, market assignment and conceptual competition. Learn how the approaches differ, and the pros and cons of each from the perspective of the nonprofit client, the agent or broker, and the carrier.

12:30 - 2:00 pm

Working Lunch Sessions

The Employment Trends Crystal Ball: Looking Over Your

Shoulder and Into the Future—To wrap-up the employment track, a panel of employment gurus offer insights on rapidly approaching trends and challenges in the employment arena and those a bit further down the road.

Trends and Advances in Youth Protection—The closing session in the youth protection track looks at the growing body of claims involving youth-on-youth abuse. These events includes bullying, violence, sexual harassment, and sexual abuse.

Commercial Markets vs. Alternatives: What Risks and

Rewards Are in Store for Nonprofits?—The final session in the Insurance track will weigh the ongoing question: Are nonprofits best served by a marketplace that includes captives, risk retention groups and pools, in addition to commercial insurers?

Insurance for Volunteer Programs

The following article is excerpted from Chapter 9 of *No Surprises: Harmonizing Risk & Reward in Volunteer Management, 3rd Edition*. To purchase a copy, call (202) 785-3891 or visit www.nonprofitrisk.org. The book is available as a printed publication or as a downloadable PDF file.

Claims Against the Volunteer

Fear of incurring personal liability for volunteer service isn't uncommon among the estimated 90 million Americans who perform volunteer service each year. Volunteer board members may be targeted in suits alleging wrongful employment practices, breach of fiduciary duty, fraud and other causes of action. Suits against volunteer service providers may allege negligence or gross negligence in caring for a client. Despite the relative infrequency of these actions, it's important to understand the legal and insurance protections available to your volunteers. There are two major categories of protection that a volunteer can turn to if he or she faces a suit: volunteer protection laws at the state and federal levels, and insurance. This article addresses the topic of insurance protection.

Many nonprofits purchase broad forms of coverage that will defend a volunteer should he or she be named in a suit. And in some cases, an insurer may elect to defend a volunteer even if the coverage was intended to protect the nonprofit only. If volunteers aren't covered as insureds under the nonprofit's CGL, D&O or professional liability policies or the nonprofit doesn't purchase any coverage, the volunteer may look to his personal homeowners' policy or renters' policy for coverage. Other options are a volunteer liability policy purchased by the nonprofit to provide additional protection for its volunteers, and personal auto liability policies.

□ **Homeowners' or Renters' Policies**—Volunteers who are homeowners may enjoy some protection under their existing homeowners' policies. In some cases coverage is provided for volunteer activities without the need for any action on the part of the homeowner. In other instances the volunteer must request a broadening endorsement. Whether it's provided at no additional cost or minimal cost, this coverage is potentially valuable protection in the event the volunteer is named in a suit. Volunteers who have a renters' policy may enjoy similar protection. Many homeowners' and renters' policies

don't cover losses stemming from alleged "wrongful acts," but are limited to damages from bodily injury or property damage. Some policies include personal injury (libel, slander, defamation, invasion of privacy, etc.). Consequently, some homeowners' policies will only pay for your negligent acts that result in bodily injury or damage to the property of others—and won't respond if you are accused of violating someone's civil rights (e.g. in an employment practices suit) or mismanaging the organization (e.g. a suit alleging fraud by the board).

Since these policies differ to a large extent, urge your nonprofit's volunteers to check their policies and discuss their board or other volunteer service with their insurance agent to determine the extent to which these policies provide coverage.

□ **Volunteer Liability Policies**—Some volunteers don't have the option of relying on a homeowners' or renters' policy for coverage simply because they don't purchase such policies. Another option is Volunteer Liability coverage. This coverage is typically packaged with a Volunteer Accident policy that is purchased by a nonprofit. For example, one provider offers up to \$1 million in personal liability insurance and up to \$500,000 in excess automobile liability insurance above the volunteer's own insurance as part of its volunteer insurance package. The personal liability coverage provides protection for a personal injury or property damage liability claim arising out of the volunteer's duties on behalf of the nonprofit. Exclusions include alleged errors or omissions in connection with the volunteer's professional services and property damage to property in the care, custody or control of the volunteer. In some cases, a state agency or state-sponsored insurance program may offer volunteer coverage at a reasonable cost.

□ **Personal Auto Liability Policies**—A volunteer who will be driving his or her auto while providing service for a nonprofit should review his or her personal auto coverage. The volunteer's personal auto policy will extend protection to the nonprofit while the volunteer is driving for the nonprofit. Most states have laws that require the owner of a motor vehicle to purchase minimum levels of liability insurance. Volunteers should review their policy limits and consider the need to increase these limits depending on the nature of the services they provide to a nonprofit. ■

Risk Management MARKETPLACE

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