Volunteers and Reporting



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Nonprofit Volunteers

- Today we'll cover:
 - Understanding the Value of Volunteers
 - Volunteers vs. Employees
 - Volunteer Management & Resources



Volunteer Attorneys

WE ARE VOLUNTEERS SERVING ON BOARDS

Where Nonprofit Law goes BUMP in the night with other practice areas:

- Real Estate Law (purchase, sale, property tax exemption)
- IP (copyrights, trademarks, patents)
- Employment Law (volunteers v. employees, EE v. IC, EEOC/MDHR)
- Business Law (ownership??, formation/dissolution, Articles & Bylaws, mergers)
- Tax Law (deductibility requirements, disclosures to donors, filings)
- Estate Planning (charitable bequests, family foundations, *cy pres*)
- Administrative Law (charitable gambling and other gov't licenses, government audits)
- Environmental Law (conservation, easements, pollution concerns with gifted property)
- Criminal (theft, embezzlement)
- Contracts (you name it!)
- Professional Responsibility/Ethics (conflicts of interest & fiduciary duties, advertising issues, authority to represent??)



Many Faces of Volunteers

- Board Members, Officers, and workers...a nonprofit's lifeblood!
- Volunteers are a vital resource to the nonprofit sector. The vast majority of nonprofits are governed by a volunteer Board of Directors. Plus, many nonprofits would not be able to fulfill their missions without the service of volunteers.
- Resources for recruiting, screening, training, supervising, and evaluating volunteers are necessary.



Volunteer Director Duties

- **Duty of Care** Board Members must actively participate in the management of the organization, including, but not limited to: attending meetings of the Board, evaluating reports, reading minutes, reviewing the performance and compensation of the Executive Director, and so on. Board Members of a nonprofit organization must discharge their duties in good faith, in a manner the Board Member reasonably believes to be in the best interests of the organization, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.
- **Duty of Loyalty** Board Members have an absolute duty of complete, undivided loyalty to the organization. This means that Board Members should avoid using their position, or the organization's assets, in a way that would result in a pecuniary or monetary gain for themselves or for any member of their family. A Board Member should put the good of the organization first and avoid engaging in transactions with the organization from which the Board Member will benefit. Any conflicts of interest between the organization and a Board Member should be resolved in favor of the organization unless the conflict of interest is waived by the Board as a whole (with the conflicted Board Member abstaining from the vote).
- **Duty of Obedience -** Board Members have a duty to follow the organization's governing documents (Articles of Incorporation and Bylaws), to carry out the organization's mission, and to ensure that funds are used for lawful purposes. Also, Board Members must comply with state and federal laws related to nonprofits and the way in which it nonprofit organizations conduct business.



Directors'/Officers' Liability in Minnesota

Minn. Stat. § 317A.257, <u>Unpaid</u> Non-profit Directors and Officers

The following people are not **civilly** liable for an act or omission if it was in good faith and within the scope of their official responsibilities:

- a person who serves without compensation as a director, officer, trustee, agent or member of a non-profit organization,
- a person who serves without compensation as a fire chief of a nonprofit fire fighting corporation or a municipal volunteer fire department.

Exceptions: 1.) An act or omission that constituted willful or reckless misconduct. 2.) An action or proceeding brought by the attorney general for a breach of a fiduciary duty as a director. 3.) A cause of action to the extent it is based on federal law. 4.) A cause of action based on the person's express contractual obligation.



Limited Liability

Nonprofit corporations generally provide limited liability for their Directors, Officers, Trustees, Members, employees, volunteers, etc.:

- Nonprofit corporations are independent entities with their own legal liability. This is to say nonprofit corporations have a separate legal existence apart from their Directors, Officers, Trustees, Members, employees, volunteers, etc.
- Directors, Officers, Trustees, Members, employees, and volunteers serving a nonprofit corporation WITHOUT COMPENSATION will have limited liability, and generally not be personally liable for the debts and obligations of the nonprofit corporation.
- Exceptions to limited liability, generally: If the Director, Officer, Trustee, Member, employee, and/or volunteer
 - is paid for his/her service (i.e., paid CEO, CFO, ED)
 - breaches his/her fiduciary duties while executing his/her official responsibilities
 - is sued by the Attorney General or Secretary of State for breach of fiduciary duty
 - is sued under federal law
 - is sued based on the person's express contractual obligation (i.e., he/she signs a contract without Board approval)
 - is NOT sued based on his/her activities as a Director or Officer (outside the scope)



Directors'/Officers' Liability in Minnesota

Semi-Recent Case Law

Rehn v. Fischley, 557 N.W. 2d 328, 1997 – An unpaid director at the Humane Society directed the use of a chemical to clean cages that caused injury to a worker. The court found that § 317A.257, immunity for a non-profit volunteer is a statutory defense, and cannot be waived by failing to mention it in responsive pleadings.

Immunity is provided by the statute to those who, by their status as uncompensated persons, qualify for its protection from facing suit. The broad wording protects all uncompensated persons acting on behalf of the non-profit, not just those acting within the specific scope of their job description. Thus, a director acting outside the scope of his duty as a board member, as the director in this case did, is protected from liability as he was acting on behalf of the non-profit.



Volunteers as Valued Assets

Why Track Volunteer Time?

- A.) Volunteer time has value in 2 separate contexts:
 - 1. In communications/Funding Requests: Funders and donors want to know what resources your nonprofit already receives and from whom. Volunteer hours should be recorded in annual reports, marketing materials, and grant applications to funders. Funders and donors want to know they are getting a bigger "bang for their buck" and that there are people in place to get the job well done.
 - 2. *Financial Statements*: Volunteer contributions may only be recognized (and MUST be recognized) in the financial statements as income (i.e., reviews, compilations, audits, Form 990) if the volunteer's labor meets this 3 part test:
 - a. Requires special skills;
 - b. Is performed by persons possessing such skills; and
 - c. Would typically need to be purchased if not provided by donation.

Among such services are those of "accountants, architects, carpenters, doctors, electricians, lawyers, nurses, plumbers, teachers, and other professionals and craftsmen." SFAS 116.

- B.) Volunteers appreciate appreciation Recognize them! Show them off!!
- C.) Liability protection



Volunteer Value – So What?

As a Director you should be examining the financial statements, audit reports, annual reports, etc. annually.

Review any listed "Donated Services" or "in-kind donations" reflected in the Statement of Activities. Does the number of volunteer hours on the financial statements seem very high? Discuss the sources of this revenue with the CFO or CPA who prepares the statements. This is an area where small nonprofits relying on inexperienced preparers may have trouble. Be sure the volunteers' in-kind hours are recorded properly on the financial statements versus the annual reports and grants.

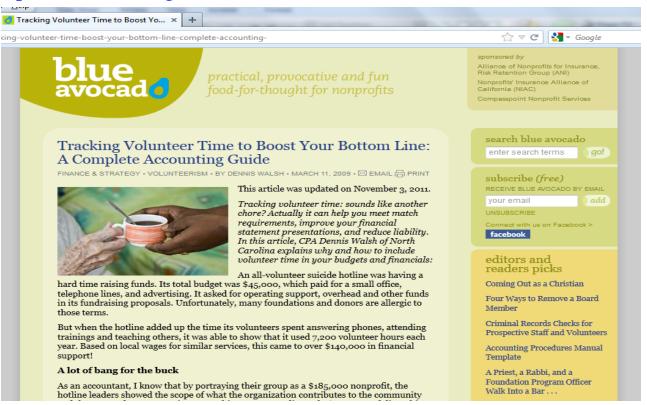
St	tatement of Activities (excerpt) e Year Ended December 31, 2008		
	Before including volunteer time	After including volunteer time	
Support:			
Contributions & grants	250,000	250,000	
Donated services		120,000	
Total support	250,000	370,000	



Volunteers as Valued Assets

Read Blue Avocado's tips for "Tracking Volunteer Time To Boost Your Bottom Line – A Complete Accounting Guide":

http://www.blueavocado.org/content/tracking-volunteer-time-boost-your-bottom-line-complete-accounting-





Volunteer Fair Market Value

Independent Sector publishes accepted rates for *non-specialized* volunteer time by State.

http://www.independentsector.org/volunteer_time#sthash.shY1xm7L.dpbs

Independent Sector's Value of Volunteer Time **National Value of Volunteer Time** The estimated value of volunteer time for 2013 is \$22.55 per hour. The estimate helps acknowledge the millions of individuals who dedicate their time, talents, and energy to making a difference. Charitable organizations can use this estimate to quantify the enormous value volunteers provide According to the Corporation for National and Community Service, about 64.5 million Americans, or 26.5 percent of the adult population, gave 7.9 billion hours of volunteer service worth \$175 billion in 2012. For the latest information, please see www.volunteeringinamerica.gov For more information on the economic impact of nonprofits by state, please visit our state profiles portal State Values for Volunteer Time Value of a Volunteer Hour, by State: 2013 Alabama: \$20.50 Illinois: \$24.08 Montana: \$19.64 Rhode Island: \$23.53 Alaska: \$26.50 Indiana: \$21.56 Nebraska: \$20.13 South Carolina: \$20.15 Nevada: \$19.05 Arizona: \$22.52 lowa: \$20.93 South Dakota: \$19.04 Arkansas: \$18.93 Kansas: \$20.88 New Hampshire: \$22.86 Tennessee: \$20.13 California: \$26.34 Kentucky: \$19.68 New Jersey: \$25.33 Texas: \$23.40 Colorado: \$25.10 Louisiana: \$22.13 New Mexico: \$19.77 Utah: \$22.65 Connecticut: \$26.43 Maine: \$20.10 New York: \$26.45 Vermont: \$21.65

North Carolina: \$21.04

North Dakota: \$23.92

Oklahoma: \$20.88

Pennsylvania: \$21.94

Oregon: \$21.35

Ohio: \$21.40

Virginia: \$24.49

Washington: \$26.72

Wisconsin: \$21.78

Wyoming: \$23.16

West Virginia: \$19.76

Maryland: \$25.43

Michigan: \$22.13

Minnesota: \$24.31

Mississippi: \$19.35

Missouri: \$21.17

Massachusetts: \$27.00

Delaware: \$20.29

D.C.: \$38.69

Florida: \$21.24

Georgia: \$22.25

Hawaii: \$22.16

Idaho: \$19.92



Volunteer v. Employee

Independent Contractor *or* **Employee**

Which are you?

For federal tax purposes, this is an important distinction. Worker classification affects how you pay your federal income tax, social security and Medicare taxes, and how you file your tax return. Classification affects your eligibility for social security and Medicare benefits, employer provided benefits and your tax responsibilities. If you aren't sure of your work status, you should find out now. This brochure can help you.

The courts have considered many facts in deciding whether a worker is an independent contractor or an employee. These relevant facts fall into three main categories: behavioral control; financial control; and relationship of the parties. In each case, it is very important to consider all the facts – no single fact provides the answer. Carefully review the following definitions:

Behavioral Control

These facts show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done – as long as the employer has the right to direct and control the work. For example:

Instructions – if you receive extensive instructions on how work is to be done, this suggests that you are an employee. Instructions can cover a wide range of topics, for example:

- how, when, or where to do the work
- what tools or equipment to use
- what assistants to hire to help with the work
- where to purchase supplies and services

If you receive less extensive instructions about what should be done, but not how it should be done, you may be an independent contractor. For instance, instructions about time and place may be less important than directions on how the work is performed.

Training – if the business provides you with training about required procedures and methods, this indicates that the business wants the work done in a certain way, and this suggests that you may be an employee.

Financial Control

These facts show whether there is a right to direct or control the business part of the work. For example:

Significant Investment – if you have a significant investment in your work, you may be an independent contractor. While there is no precise dollar test, the investment must have substance. However, a significant investment is not necessary to be an independent contractor.

Expenses – if you are not reimbursed for some or all business expenses, then you may be an independent contractor, especially if your unreimbursed business expenses are high.

Opportunity for Profit or Loss – if you can realize a profit or incur a loss, this suggests that you are in business for yourself and that you may be an independent contractor.

Relationship of the Parties

These are facts that illustrate how the business and the worker perceive their relationship. For example:

Employee Benefits – if you receive benefits, such as insurance, pension, or paid leave, this is an indication that you may be an employee. If you do not receive benefits, however, you could be either an employee or an independent contractor.

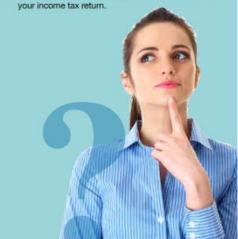
Written Contracts – a written contract may show what both you and the business intend. This may be very significant if it is difficult, if not impossible, to determine status based on other facts.

When You Are an Employee...

- Your employer must withhold income tax and your portion of social security and Medicare taxes. Also, your employer is responsible for paying social security, Medicare, and unemployment (FUTA) taxes on your wages. Your employer must give you a Form W-2, Wage and Tax Statement, showing the amount of taxes withheld from your pay.
- You may deduct unreimbursed employee business expenses on Schedule A of your income tax return, but only if you itemize deductions and they total more than two percent of your adjusted gross income.

When You Are an Independent Contractor...

- The business may be required to give you Form 1099-MISC, Miscellaneous Income, to report what it has paid to you.
- You are responsible for paying your own income tax and self-employment tax (Self-Employment Contributions Act – SECA). The business does not withhold taxes from your pay. You may need to make estimated tax payments during the year to cover your tax liabilities
- You may deduct business expenses on Schedule C of



See IRS Publication 1779



Volunteer v. Employee

Tempting But Confusing and Dangerous: Paying Volunteers "Just a Little Something" by George L. Head, Ph.D.

http://www.nonprofitrisk.org/library/articles/volunteer052004.shtml

Is the "little something" compensation? And, is giving it worth turning the volunteer into an employee??



Volunteer v. Employee

Nonprofit interns: http://www.councilofnonprofits.org/interns

Why is it Important to Understand Nonprofit Internships? Interns can be terrific additions to a nonprofit's capacity building journey, but it's important to clarify whether interns are unpaid volunteers or paid employees – or something in between. In particular, there could be unintended consequences if an intern receives a stipend that could transform a volunteer intern into what the Department of Labor would consider an employee, resulting in a risk that the nonprofit could owe back wages (to pay the intern at least minimum wage) and back taxes.

Download our Checklist for Nonprofits on recruiting interns.

Frequently Asked Questions about Nonprofit Internships

How does receiving a stipend turn an intern into an employee?

A stipend is compensation for services provided to the nonprofit. Those who perform work in exchange for compensation are either employees or independent contractors, their payments and tax withholdings from wages is regulated by the Department of Labor (federal and state).

If a nonprofit provides a "stipend" to a "volunteer" intern – that is sending a mixed message to the Department of Labor. (Compensation in excess of \$600 must be reported on an IRS Form 1099 per rules for independent contractors.)

While there are some exceptions, most employees must receive minimum wage in accordance with federal and state law. One exception under federal Department of Labor rules is for trainees, who, assuming they qualify, do not have to be paid minimum wage (and thus may receive a stipend that amounts to less than minimum wage). To be considered a "trainee" the internship must benefit the intern – not the employer. The requirements are described in Department of Labor Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act, issued last year. (While written primarily as guidance for for-profit business concerns, the Fact Sheet also applies to nonprofit workplaces that pay interns.) Nonprofits that pay interns a stipend below minimum wage should be familiar with this Fact Sheet and document how their internship program satisfies the criteria so that the intern can be classified as a trainee.

What if a nonprofit does not pay its interns?



Volunteer Management 101

Nonprofit Volunteers: Top Five Tips to Keep Them Coming

http://www.nolo.com/legal-encyclopedia/nonprofit-volunteers-top-five-tips-30075.html

Keeping nonprofit volunteers around for more than a few shifts can be a challenge. Learn the tricks to creating a loyal volunteer corps.

If you can maintain a loyal corps of volunteers, your nonprofit can get more done for less money (sometimes substituting for paid staff), create community involvement, and increase your organization's visibility.

Yet all too often, nonprofits spend long hours recruiting and training volunteers, only to have them leave after a few shifts.



1. Tap Into Volunteers' Motives

Don't volunteers just want to help your cause? Well, yes and no. They no doubt have good hearts and believe in your organization's work. But most volunteers have additional reasons for volunteering—perhaps looking to meet new people, to develop skills, and to feel needed. If you assign them to stand by a photocopier for long hours, it may not satisfy any of those motives.

Ask volunteers at the outset what they'd like to get from their experience, and look for ways to satisfy that. If, for example, a volunteer is hoping to use photography skills, ask her to build up a collection of photos ready for use in your newsletter, annual report, or website. If you have regular volunteers, try to schedule them so that they overlap and can talk with one another.



2. Tell Volunteers What You Expect

Start by giving each volunteer some formal training. Explain the work of your organization and the volunteer's place in it, including the importance of seemingly ministerial tasks. Discuss what you normally expect volunteers to do and what more interesting tasks they might "graduate" to after proven good work. You might also want to create a volunteer manual, explaining:

- what you expect of volunteers in terms of hours, behavior, notifying you of when they'll be late or absent, and so forth
- your commitment to making the volunteer experience a positive opportunity for community involvement, and
- basic office policies such as personal use of the phones and photocopiers.

Be ready to provide feedback on how your volunteers are doing, particularly if they're trying to develop job skills. At the initial training, tell the volunteer that you'll periodically sit down for a review—and make clear that the volunteer will then have a chance to tell you how he or she is enjoying the volunteer experience and what would make it better.



3. Make Volunteering Convenient

Most nonprofits want volunteers to commit to working a certain number of hours per week or month. But creating alternatives to this model can be a good idea. Your best source of daytime volunteers may be freelancers who have spare time—but not always at the same time each week.

Some organizations, for example, ask people to make a general commitment of hours, but then to call ahead and advise the organization of when they'll actually be putting in those hours. Others may recruit heavily for one-time events, or ask volunteers to take on a particular time-limited project.



4. Make Volunteering Fun

You don't have to create a party atmosphere for your volunteers, but realize that some tasks are innately more fun than others. For example, if you work with kids or animals, it's a fair bet that most of your volunteers are hoping for some contact with them too.

Of course, how much use you can make of unskilled help depends on the kind of work you do. Still, you can think innovatively about what tasks volunteers can do. For example, one organization that helps low-income girls prepare for college invited student volunteers to give talks about their college experience. Those volunteers weren't stepping into professional staff roles, but there were taking the pressure off the staff, and breathing new life into the program.



5. Show Appreciation

Every volunteer wants to know that he or she is making a difference and advancing the cause. It's your job to make sure the volunteer knows this, for example by:

- saying thank you, early and often;
- planning some organized volunteer-appreciation activities, particularly if you have a large volunteer corps;
- holding an annual volunteer party;
- inviting volunteers to your nonprofit's other events, such as a holiday party, lecture, or annual dinner; and
- giving little speeches at events saying how much particular volunteers have done for your organization, and accompanying this with awards, certificates, or small plaques.



Volunteers and Volunteering

The U.S. Bureau of Labor Statistics tracks the number and demographics of Americans volunteering in their communities.

- The volunteer rate declined by 1.1 percentage points to 25.4 percent for the year ending in September 2013.
 About 62.6 million people volunteered through or for an organization at least once between September 2012 and September 2013.
- The volunteer rates for both men and women (22.2 percent and 28.4 percent, respectively) declined in the year ending in September 2013. Women continued to volunteer at a higher rate than did men across all age groups, educational levels, and other major demographic characteristics.
- By age, 35- to 44-year-olds were the most likely to volunteer (30.6 percent, respectively). Volunteer rates were lowest among 20- to 24-year-olds (18.5 percent). For persons 45 years and over, the volunteer rate tapered off as age increased. Teens (16- to 19-year-olds) had a volunteer rate of 26.2 percent.
- Among the major race and ethnicity groups, whites continued to volunteer at a higher rate (27.1 percent) than did blacks (18.5 percent), Asians (19.0 percent), and Hispanics (15.5 percent). The volunteer rate fell for whites (by 0.7 percentage point) and blacks (by 2.6 percentage points) in 2013. The volunteer rates for Asians and Hispanics were little changed.
- Married persons volunteered at a higher rate (30.7 percent) in 2013 than did those who had never married (20.0 percent) and those with other marital statuses (20.5 percent). The rates declined over the year for each marital status category. In 2013, the volunteer rate of parents with children under age 18 (32.9 percent) remained higher than the rate for persons without children (22.7 percent). The volunteer rate of persons without children under age 18 declined over the year, while the rate for parents was little changed.
- Individuals with higher levels of education engaged in volunteer activities at higher rates than did those with less education in 2013. Among persons age 25 and over, 39.8 percent of college graduates volunteered, compared with 27.7 percent of persons with some college or an associate's degree, 16.7 percent of high school graduates, and 9.0 percent of those with less than a high school diploma. The rate of volunteering was about unchanged for people with less than a high school diploma, while the rate declined for persons in all other educational attainment categories.



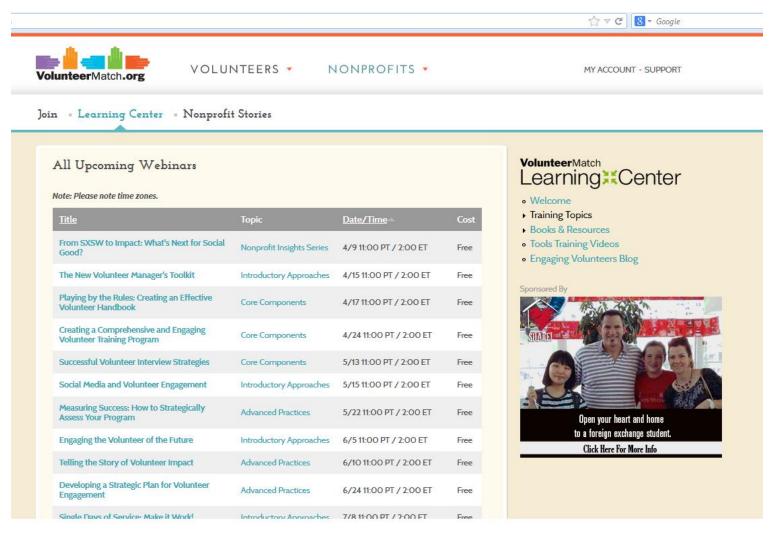
Volunteers and Volunteering

The Corporation for National and Community Service also reports data and trends relating to volunteerism at http://www.volunteeringinamerica.gov/.

- Top Five States for Volunteer Rate:
 - Utah
 - Minnesota
 - Idaho
 - Kansas
 - Iowa
- Top Five Large Cities for Volunteer Rate:
 - Minneapolis-St Paul, MN
 - Rochester, NY
 - Milwaukee, WI
 - Seattle, WA
 - Salt Lake City, UT



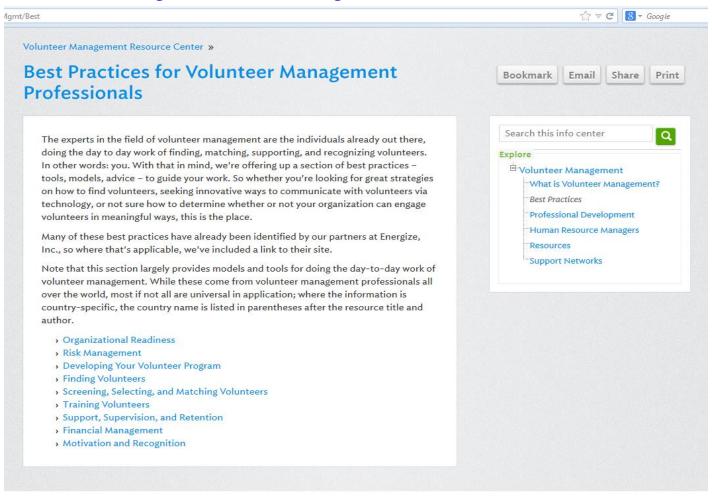
Volunteer Match - Learning Center - <u>http://learn.volunteermatch.org/training-topics</u>





Links to resources on effective practices for volunteer management:

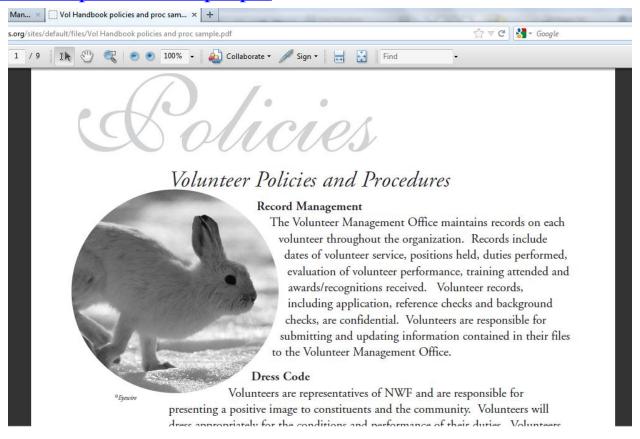
http://www.idealist.org/info/VolunteerMgmt/Best





Model Volunteer Policies Handbook from the National Wildlife Federation:

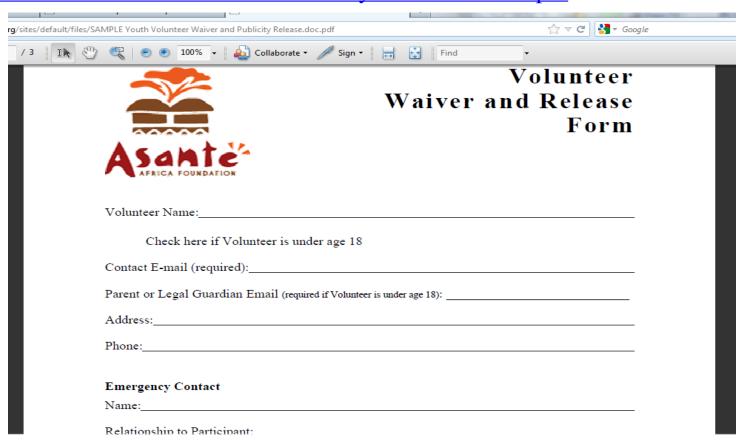
http://www.councilofnonprofits.org/sites/default/files/Vol%20Handbook%20policies%20and%20proc%20sample.pdf





Sample Youth Volunteer Waiver and Publicity Release:

http://www.councilofnonprofits.org/sites/default/files/SAMPLE%20Youth%20Volunteer%20Waiver%20and%20Publicity%20Release.doc.pdf





Sample Minor Waiver courtesy of Habitat for Humanity, San Antonio, Texas:

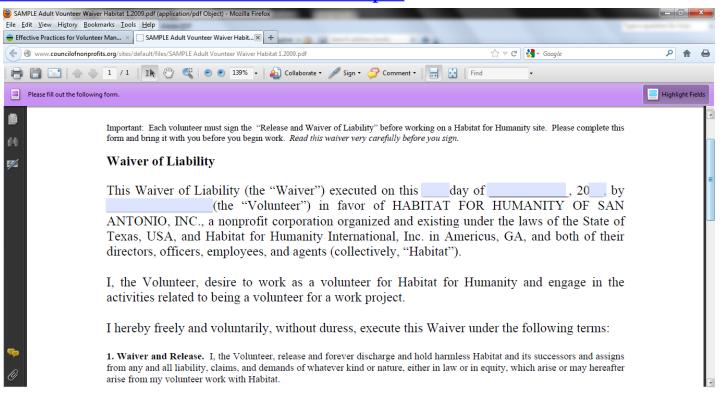
http://www.councilofnonprofits.org/sites/default/files/Sample%20Minor%20Waiver%20Habitat%201.2009.pdf





Sample Adult Waiver courtesy of Habitat for Humanity, San Antonio, Texas:

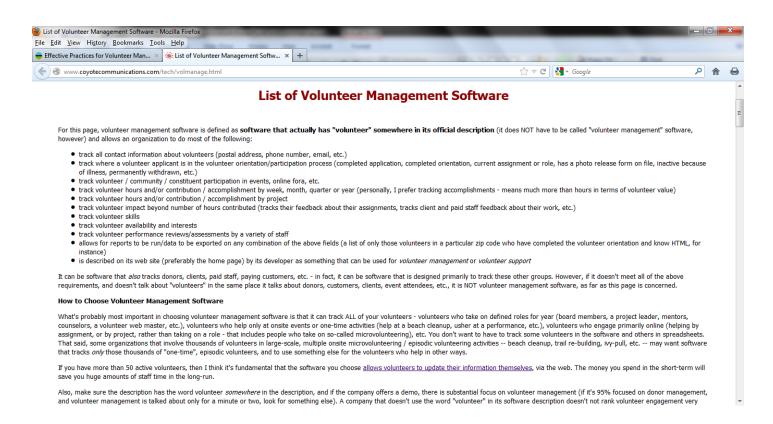
 $\underline{http://www.councilofnonprofits.org/sites/default/files/SAMPLE\%20Adult\%20Vounteer\%20Waiver\%20Habitat\%201.2009.pdf}$





List of free software tools for volunteer management:

http://www.coyotecommunications.com/tech/volmanage.html



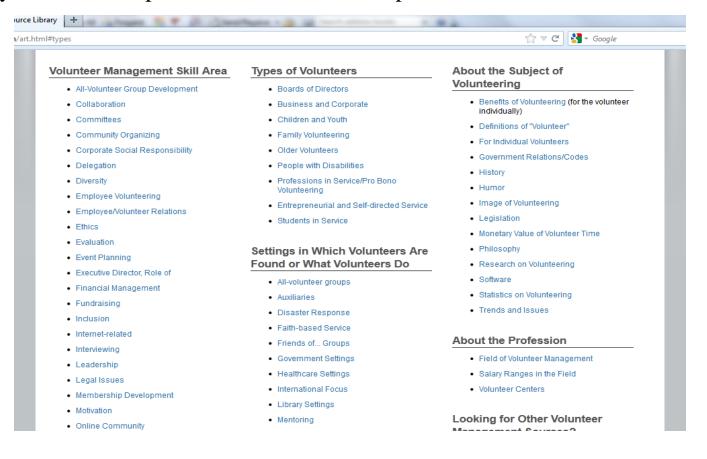


Volunteer Spot offers free tools for scheduling, coordinating, and organizing volunteers: http://www.volunteerspot.com/nonprofits/



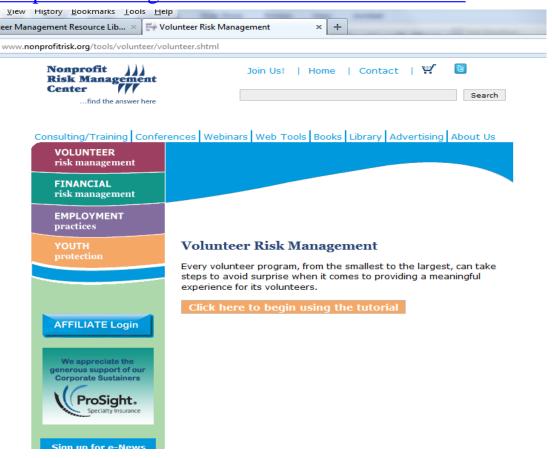


Energize, Inc. offers a variety of resources on volunteers and volunteering, including "Satisfying Staff First," an article by Ivan H. Scheier that presents an analysis of the complexities of the relationship between volunteers and staff.





Hone your volunteer and risk management skills with this online tutorial on Volunteer Risk Management from the Nonprofit Risk Management Center: http://www.nonprofitrisk.org/tools/volunteer/volunteer.shtml



Thank you!!!



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