

How To Reduce Liability

1 Exercise sound reasonable judgment.

Volunteers are tremendous assets in emergencies; however, volunteers do not have the experience and expertise that professionals possess. Therefore, volunteers should recognize the limits of their abilities and obtain professional help as soon as possible.

2 Act in good faith.

The government wants volunteers to help others in an emergency; the Good Samaritan statute and the Federal Volunteer Protection Act were designed to protect volunteers from civil liability so citizens would not be dissuaded from acting because they were afraid of being sued. Therefore, if the volunteer was trying his or her best to help the injured person given the circumstances, the courts will be likely to side with a volunteer in the event that a lawsuit occurs.

3 Make decisions with appreciation of liability considerations.

Volunteers can greatly reduce their liability by registering, in writing, with the appropriate emergency management unit that is authorized to respond to emergency situations. Self-deployment is not recommended unless it is absolutely necessary in order to save someone's life. Volunteers will be less likely to make mistakes and more likely to have protection from civil liability if they are working under the direction of an authorized unit of government, agency or organization.

Bottom Line:

State and federal volunteer protection law does not mean that volunteers cannot be sued.

Volunteers are personally liable for criminal actions.

Volunteer Liability



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2006 Wisconsin Supreme Court Case Clarifies the Good Samaritan Statute
Mueller v. McMillian Warner Insurance Co.
(2006 WI 54, 290 Wis. 2d 571, 714 N.W.2d 183.)

The Court ruled that "emergency care" refers to the initial evaluation and treatment of an injured person until care can be transferred to medical professionals. In this case, the defendants did not seek assistance from medical professionals; instead, they provided care to the victims throughout the night. The care provided throughout the night was considered "non-emergency care" by the Court. Since the Good Samaritan statute only protects volunteers providing emergency care, the defendants did not receive immunity for their actions. See the *Wisconsin Lawyer* July 2007 article, "The Good Samaritan Statute: Civil Liability Exemptions for Emergency Care," for more information.

Civil Liability Brochure

Liability issues for businesses, organizations, and municipalities

Businesses and Organizations

- Businesses and organizations may be protected by Wisconsin Emergency Management Statutory Provisions depending on the circumstances
- Businesses and organizations should review their insurance and see what it does and does not cover
- Many volunteer organizations choose to get umbrella liability insurance to cover the actions of their volunteers
- It is important to know who your volunteers are

Municipalities

- What level of government is sponsoring the volunteer (i.e. federal, state, or local government)
- The sponsoring unit of government is responsible for providing worker's compensation and liability protection (subject to certain limitations)
- To the extent practicable and possible, municipalities should conduct background checks on volunteers to help reduce the municipalities' liability

What federal law provides volunteers with immunity from civil liability when responding to an emergency?

Federal Volunteer Protection Act (42 U.S.C. 14051 et seq.)

- Civil immunity for volunteers serving nonprofit organizations or government entities

Federal Volunteer Coverage Conditions

1. Acting within scope of responsibilities
2. Properly licensed or certified
3. No willful, criminal, or reckless misconduct

What state law provides volunteers with immunity from civil liability when responding to a disaster?

Wisconsin Statutory Provision- Emergency Management (Wis. Stat. § 166.03 (10))

- Civil immunity exemption for death or injury to persons or property damage
- Also covers equipment, materials, facilities, labor or services

Immunity Exemption Conditions (all required)

1. Under direction of appropriate authority (i.e. the governor, adjutant general, or governing body of county, town, municipality or tribe)
2. Actions are in response to enemy action or disaster or state of emergency
3. The conduct or omission was not reckless, wanton, or intentional misconduct

What state law provides volunteers with immunity from civil liability when responding to an emergency?

Good Samaritan Law (Wis. Stat. § 895.48)

- Civil liability immunity for "emergency care" given at the scene of emergency
- Applies to acts or omissions
- Care must be given in good faith
- Does not cover reckless, wanton, or intentional misconduct
- Generally, does not apply to employers trained in health care or health care professionals