



Frequently Asked Questions Risk Management, Liability, and Insurance

1. What kind of insurance should our organization have?

It depends on your organization's activities (and, of course, its budget). Your organization should consult an insurance professional – if possible, one who is familiar with the needs of nonprofit organizations. It is important to understand the potential losses your organization could suffer and what your insurance policies will and will not cover.

There are many types of insurance. General liability insurance covers claims by other people for bodily injury and property damage arising from accidents. Property insurance covers property that your organization owns or leases. Your organization may be able to purchase a Business Owner's Policy ("BOP"), a package of insurance policies that cover bodily injury, property damage, crime, and employee benefits errors and omissions. If your organization owns or leases an automobile, you also will need to purchase auto insurance.

Directors and officers ("D&O") insurance covers claims arising from the activities and decisions made by board members and officers in those capacities. Some people will require that an organization have D&O insurance before agreeing to serve on an organization's board.

If your organization has employees, make sure that your D&O policy includes employment practices liability coverage. Organizations with employees also need to purchase workers' compensation insurance.

Other activities such as child care, professional services, or food service may require additional or specialized coverage. It may also be appropriate for an organization to get "special events" insurance in connection with a particular event, trip, or fundraiser.

2. Should we require staff to provide copies of their drivers' licenses and proof of personal insurance if they are using their personal vehicles on behalf of our nonprofit?

Yes, organizations are well-advised to require paid and volunteer staff to provide proof of drivers' licenses and vehicle insurance prior to using their personal vehicles on the organization's behalf.

3. Are nonprofits or their donors who provide food to the hungry liable if someone becomes sick from the food?

No, unless they were grossly negligent or engaged in intentional misconduct. Under the federal Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. §1791), individuals, businesses, and nonprofit organizations that donate, recover, and/or distribute excess food are generally protected from both civil and criminal liability.

The Act immunizes donors, gleaners, and nonprofit organizations from liability arising from the nature, age, packaging, or condition of apparently wholesome food or fit grocery products received as donations. The only exception is for injury or death to an ultimate user resulting from gross negligence (which the statute defines as conduct which a person knew at the time was likely to be harmful to the health or well-being of another person) or intentional misconduct.

The federal law creates a floor which is a uniform minimum level of protection from liability for food donors, distributors, and gleaners nationwide. State laws may provide these good Samaritans with additional protection. New York (N.Y. Agric. & Mkts. Law §§ 71-y and 71-z), New Jersey (N.J.S.A. 24:4A-1 et seq.) and Connecticut (C.G.S. § 52-557I) all have laws that are similar to the federal law. Although the language of the state laws varies among the three states, the practical effect is the same – immunity from civil and criminal liability for apparently fit food unless there is grossly negligent or knowing misconduct.

4. We run a phone hotline and would like to record some of the calls for quality assurance and training purposes. May we do so?

Yes, provided that your organization complies with applicable federal and state laws.

Under federal law and most state laws, calls may be recorded for quality assurance purposes if one party to the call consents to the recording in advance. New York and New Jersey are one-party consent states. But in some other states, including Connecticut, all parties to the call must consent to the recording. If calls may cross state lines, it is advisable to comply with the more stringent applicable law and get the consent of all parties to the call.

If a party hears a message at the start of the call that says the call may be recorded for quality assurance purposes, and continues with the call, that is generally deemed to be consent.

Organizations should notify employees and volunteers that calls may be recorded and should include this information in their employee handbook and training materials.

5. Should schools, day care centers, summer camps, etc. permit staff members to babysit after hours for the children with whom they work?

The safest route is to prohibit such staff members from babysitting after hours. At a minimum, the nonprofit should inform staff and parents that after-hours babysitting is not sanctioned by, or done under the supervision of, the nonprofit. A nonprofit could also require parents to sign a form saying that use of staff members for after-hours babysitting is done at the parents' own risk and that the parents have expressly waived the right to hold the employer responsible for any accidents or wrongdoing.

6. Should we have a signed consent form/release before using photos of clients in our solicitation materials or on our website?

It is sound practice for an organization to obtain a signed consent from a person prior to using his/her image in any print or online materials. If the photo or video is of a minor child or someone who is mentally incompetent, a parent or guardian must sign the consent in order for it to be enforceable. The consent should also make clear that the organization owns the image and has the right to use the image in its marketing materials or in other specified ways.

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of: (i) avoiding penalties under the Internal Revenue Code or any other U.S. federal tax law; or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

This document is provided as a general informational service to volunteers, clients, and friends of the Pro Bono Partnership. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does distribution of this document create an attorney-client relationship.

Copyright 2010 Pro Bono Partnership, Inc. All rights reserved. No further use, copyright, dissemination, distribution, or publication is permitted without the express written consent of Pro Bono Partnership, Inc.

Revised September 2010.