

Volunteer Protection Act

The Federal Volunteer Protection Act, 42 U.S.C. § 14501, takes effect in late September, 1997. Its purpose is to protect volunteers from liability from their acts while performing services for nonprofit organizations without compensation. The nonprofit organization must be primarily for charitable, civic, educational, religious, welfare or health purposes.

Clearly, volunteers for fraternity-related educational foundations are protected by the Volunteer Protection Act. Similarly, people who volunteer on behalf of universities are protected by the new law. There may be circumstances where volunteers for fraternities are also protected.

The status of fraternity volunteers is more complicated than volunteers for the university or volunteers for the foundation. For example, a chapter advisor who is appointed by a college to carry out specified educational functions with a particular fraternity chapter is entitled to protection under the Volunteer Protection Act. The same volunteer appointed by the national fraternity is less likely to be protected. The probabilities of protection are enhanced if the general fraternity appoints the chapter advisor in order to comply with a request or regulation by the college. Similarly, the general fraternity can improve the chances of its chapter advisors being protected by the Volunteer Protection Act if it clearly defines the role of chapter advisors as educational rather than administrative or disciplinary.

While it is true that well-managed fraternities insure all of their volunteers against liability, it also should be true that a fraternity that is able to bring its volunteers under the Volunteer Protection Act may be able to negotiate lower insurance rates in the future.

Interesting aspects of the Volunteer Protection Act include the following:

- The federal law preempts state law to the extent that state law is in conflict with the federal law.
- There is a procedure whereby a state may opt out of the protection of the Volunteer Protection Act with regard to disputes involving only residents of the state.
- The protection is waived by criminal misconduct, gross negligence or reckless misconduct, or a flagrant indifference to the rights or safety of an individual. Thus, an advisor who passively or actively encourages unlawful behavior such as hazing or underage drinking is waiving protection under the Act.
- Injuries caused by a volunteer operating a vehicle are not covered by the Volunteer Protection Act if there is a state law requiring both licensing and insurance.
- There is no protection for harm caused through sexual misconduct.
- There is no protection for harm caused by violation of federal or state civil rights laws.
- There is no protection if the volunteer was under the influence of intoxicating alcohol or drugs at the time of the injury.

It remains to be seen what the practical effect of the Volunteer Protection Act will be. How it applies to fraternity volunteers can be influenced by the way in which the fraternity defines the role of the volunteer. Any volunteer can waive immunity through participating in or encouraging illegal conduct, through acting under the influence of alcohol or drugs, or through sexual misconduct.

Fraternities, universities and related foundations should examine the way in which they describe the activities of their volunteers. A clear statement of the educational role of the volunteer should help establish immunity. All organizations who hope to have immunity for their volunteers should consider a code of conduct for volunteers.

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