

RFU Health and Safety Responsibility to Volunteer Workers:

Two main areas of law to consider

In terms of legal requirements, there are two main considerations for organisations with volunteers.

- Firstly, the 'duty of care' is a common law duty which applies to all individuals and organisations and has been developed by the courts.
- Secondly, health and safety legislation such as Acts of Parliament and regulations set specific duties for employers in order to limit the risks to anyone coming into contact with their organisation.

1. Duty of care

The duty of care is a general common law duty on all individuals and organisations to avoid carelessly causing injury to persons. It has been developed by the courts over many years. The duty is regardless of the size of the organisation, its income or whether the organisation has paid staff. If your organisation asks a volunteer to do a task which results in them injuring themselves or anyone else, the members of the governing body may be liable. No matter what activities your organisation is involved in, from running a major hospital trust to organising day trips to the seaside, you will have to consider the duty of care owed to your volunteers. Liability depends on establishing that the organisation failed to take reasonable care.

If your organisation has at least one paid employee it is considered an employer for the purposes of health and safety law.

Section 3 of the Health and Safety at Work Act: requires employers to ensure that, so far as is reasonably practicable, volunteer's workings for them are not exposed to risks to their health or safety. **The Management of Health and Safety at Work Regulations 1999** place a duty on employers to assess risks to the health and safety of voluntary workers.

Organisation with no employees:

Organisations with no employees must take all reasonable steps to ensure the safety of volunteers involved in any activity for which that organisation is responsible. This is known as owing a 'general duty of care' and it applies to all organisations, whether or not they have paid staff.

If you ask a volunteer to do a task and they suffer personal injury then the organisation may be legally responsible for the injury. Such liability depends on establishing that the organisation failed to take reasonable care of the volunteer.

Example: a volunteer using a hand drill is injured when masonry fractures, puncturing an eye. They were not wearing the supplied safety goggles. A Court would look at the training and supervision received by the volunteer. If there was no training or supervision then the organisation would probably be found negligent, and liable to pay compensation.

A duty of care can arise in ways that are not always obvious, e.g. loaning equipment to others; sponsored walks; running fetes; organising day trips and selling food.

Example: a young child was hospitalised after daubing themselves with a paintbrush left in a toilet of a cricket club. The executive members of the club were fined £8,000 between them for breaching health and safety regulations.

Health and Safety Executive Guidance

The HSE recommend that 'In general, the same health and safety standards should be applied to voluntary workers as they would to employees exposed to the same risks...HSE considers it good practice for a volunteer user to provide the same level of health and safety protection as they would in an employer/employee relationship, irrespective of whether there are strict legal duties.'



Principles of health and safety for volunteer workers

Most health and safety law and regulation applies to employers. As such it is not legally binding on organisations without employees. However using this as an excuse to leave volunteers exposed to danger should be unacceptable to an organisation and is a scurrilous defence of negligence.

Organisations without employees should achieve the same standards of health and safety required of employers. This demonstrates to volunteers that they are valued and enables the organisation to satisfy its duty of care.

Organisations with employees and volunteers should have the same standards of health and safety for both groups. Offering a lower standard of health and safety protection to volunteers is unacceptable and likely to conflict with equal opportunity policies.

Health and Safety Policy

A health and safety policy proclaims an organisation's commitment to protect its staff and volunteers. It should identify procedures and responsibilities, including those of particular relevance to volunteers. Employers with fewer than 5 employees are not obliged to have a policy, but are strongly advised to do so.

Organisations without employees are recommended to have a health and safety policy but are not obliged to do so. Including volunteers in policies provides evidence of an organisation's commitment to its duty of care. It also heightens volunteers' health and safety awareness and allows for the smooth running of the project.

Risk Assessment

Risk assessment is a technique for identifying and controlling hazards associated with an organisation's activities. Voluntary groups, without employees, should undertake risk assessments but are not obliged to do so. Undertaking risk assessments demonstrates commitment to volunteers and the duty of care owed to them. They are also an excellent way to identify and overcome health and safety problems.

Risk assessment involves identifying all hazards, assessing the risk and putting in place measures to control unacceptable risks. E.g. replacing the faulty socket.

Assessing risk requires knowledge of the work activities. This can be found in the people who do the work. The assessment should therefore involve employees and volunteers.

*A **hazard** is anything that has the potential to cause harm. E.g. a faulty electrical socket.*

***Risk** is the likelihood of it causing harm and the degree of harm it could cause. E.g. an electrical shock that could lead to a fatality.*

The Control of Substances Hazardous to Health (COSHH)

Employers must protect employees and volunteers from exposure to hazardous substances. Under COSHH they must assess the risks arising from the use of hazardous substances and take all necessary steps to control any risks identified. Organisations without employees are recommended to carry out COSHH assessments but are not required to do so. Undertaking COSHH assessments demonstrates commitment to volunteers and the duty of care owed to them.

Fire Assessment

All public and community buildings are obliged under various Regulations and Acts to reduce the risk of fire. You should seek advice from your local fire brigade.



Organisation with responsibility for premises

Anyone controlling non-domestic premises must take reasonable steps to provide volunteers with a safe place of work, including safe routes of entry and exit. This duty applies to all non-domestic premises including places such as community centres, scout huts, and attached car parks or playgrounds.

A safe and healthy place of work includes providing toilets, drinking water, clean air, a comfortable temperature, adequate lighting, cleanliness, enough workspace and safe workstations, sound floors and traffic routes, protection from falls and falling objects and washing and changing facilities.

Organisations responsible for premises have a duty to ensure that their buildings comply with health and safety regulations. E.g. duty holders must find out if their buildings contain asbestos by the 21st May 2004. If they find asbestos then they must establish what condition it is in, assess the risk and make a plan to manage that risk.

Insurance

Every organisation should check its insurance cover at least once a year. There are several insurance options and policies to consider. Law requires some while others are optional. The more common insurance policies are listed below. Please note this list is not exhaustive. Without insurance the individuals responsible for the organisation could be held personally liable for claims of compensation.

Employers Liability Insurance

All employers are required by law to take out this insurance to cover employees in the event of an accident, disease or injury. If it is to be extended to cover volunteers then this must be explicit in the policy.

Public Liability Insurance

This insurance covers the organisation in the event of injury, illness, death, and loss or damage to the property of members of the public. If this includes volunteers not covered by employer's liability insurance then it should explicitly say so. This insurance should also cover the acts of volunteers.

Organisations may also need to consider professional liability, personal accident, motor vehicles or product liability insurance.

Registering your organisation's activities

Any organisation employing staff, regardless of size or location, must register its existence with the Health and Safety Executive or the local Environmental Health Department.

Organisations without employees do not have to register their activities with the enforcement authorities unless they are involved in dangerous activities e.g. putting on a fireworks display.

All groups that control, or are responsible for premises and buildings, have to register with the local Fire Authority.

All groups that prepare, store, supply or sell food on five or more days in any five-week period must register with the local Environmental Health Department.

Always check with the authorities if in any doubt about the need for registering activities.

First Aid

All employers must provide minimum levels of first aid cover. There must be at least one first aid box and a notice displayed in the workplace telling staff:

- the location of the first aid box
- the name and location of the first aider or appointed person



An appointed person is someone who has basic first aid knowledge and is available whenever people are at work. They can take charge in an emergency and are responsible for calling the emergency services. First aiders are people who have been trained in administering first-aid and hold current first-aid at work certificates. Details of courses to train appointed persons or first aiders are available from the Health and Safety Executive.

Employers must assess their work activities to establish if additional first aid cover is required. The assessment should consider the existing level of risk, the number and distribution of workers, any lone or remote workers, and accident records, workers at other employer's sites, shift working and patterns of annual leave.

Organisations with no employees are not required to make a first aid assessment, although it is good practice to do so. In certain circumstances there may be a legal duty to provide first aid facilities e.g. arranging a large public fireworks display.

Organisations with no employees may wish to consider the potential consequence of undertaking work or holding public events without adequate first aid facilities. They may be found in breach of their duty of care in the event of a personal injury compensation claim.

Further information

Charity and voluntary workers *a guide to health and safety at work*. From HSE Books 01787 881165 or online www.hsebooks.com