



# Guide to Liability Issues for MRC Units

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*A Guide for Local MRC Units*



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**Note:** This guide is provided for information purposes only and does not constitute legal advice. Medical Reserve Corps (MRC) unit coordinators should not act on this information without seeking the advice of a lawyer.

## Glossary of Terms

Information regarding legal liability issues can be confusing. The following glossary contains legal terms that you may encounter as you work through these issues with your MRC unit:

**Tort:** A wrongful act, omission, or violation of the duty of care resulting in injury or damage to a person or property.

**Civil Liability:** Being subject to liability for damages or restitution.

**Criminal Liability:** Being subject to fine or imprisonment for having committed criminal acts.

**Vicarious Liability:** The liability of a superior entity for the acts of its subordinates (e.g., the liability of an organization for the actions of its volunteers).

**Negligence:** A specific tort that is the basis of many lawsuits. The four components of negligence are as follows:

- **Duty of Care:** A legal obligation (imposed on everyone) to act according to a standard of care when doing anything that could foreseeably cause harm to others. There are special duties of care for medical and health professionals.
- **Breach of Duty:** Failure to act according to a reasonable standard of care when doing something that could foreseeably cause harm to others.
- **Causation:** The determination of whether the breach of duty caused the loss or damage.
- **Damages:** Refers either to 1) loss, damage, or injury caused by the breach of duty; or 2) the compensation for loss, damage, or injury.

**Immunity:** Exemption from liability, or the defense of being exempt from liability.

**Charitable Immunity:** Immunity from liability granted to charitable or nonprofit organizations (varies by state).

**Sovereign Immunity:** Immunity of a state government or subunit of a state government from suit (some state governments can and do waive their sovereign immunity).

**Indemnity:** A form of security against loss, or an exemption from penalties.

## Federal Protection—The Volunteer Protection Act of 1997

Because liability issues are primarily handled at the state level, there has been very little federal legislation that protects volunteers. In 1997, however, the Volunteer Protection Act (VPA) was passed, providing some limited immunity to volunteers. Limitations include the following:

1. The VPA does not cover acts of willful or wanton misconduct.
2. The VPA requires that the volunteer be properly licensed, certified, or otherwise authorized to perform the act.
3. The VPA requires that the volunteer be acting within the scope of his or her duties as a volunteer.
4. The VPA does not cover the operation of motorized vehicles.
5. The VPA only covers volunteers for nonprofit organizations and government agencies; it does not cover the organization or agency itself.
6. The VPA does not prohibit lawsuits; it only provides a potential defense for the volunteer if he or she is sued.
7. The VPA defines “volunteer” as someone who does not receive compensation (or anything of value exceeding \$500 in lieu of compensation) for his or her services.
8. The VPA allows states to place additional conditions upon immunity for volunteers.
9. The VPA does not specifically include or exclude medical or health volunteers.

### ***State-Specific Liability Laws and Other Protections***

**Note:** Because every state’s liability laws and other protections are different, the general information below may not apply to your state. For more information on your state’s liability laws regarding volunteers, see the Public Entity Risk Institute Publication, *State Liability Laws for Charitable Organizations and Volunteers—4th Edition*, available for free download at the following Web site: <http://www.nonprofitrisk.org/library/state-liability.shtml>.

**Good Samaritan Acts:** Most states have some type of “Good Samaritan Act” that protects an individual who provides care in an emergency. However, it is important to have a legal professional review your state’s specific legislation before you act on this information, because in some states the following limitations apply:

1. The act only protects an individual who spontaneously assists at the scene of an accident or other emergency—it does not protect organized volunteer groups.
2. The act places licensure or training requirements on volunteers who provide medical aid and may even restrict the protection to specific categories of volunteers.

**Uniform Emergency Volunteer Health Practitioners Acts:** Some states have passed acts that specifically provide immunity to volunteer health practitioners in emergencies. A legal professional should review your state’s laws before you act on this information because in some cases:

1. The act is limited to licensed health professionals and will not cover those serving in supporting roles.

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2. The act only covers the volunteers in a declared emergency and will not cover training or exercises.
  3. The act may require pre-registration of the volunteers in a state database.

**Emergency Management Acts:** Many states have a set of laws that protect volunteers who respond to an emergency as part of an established response. Once again, obtain legal advice before acting on this information, because in some states:

1. Volunteers must be pre-registered with the division of emergency management or another state or local agency.
2. Protection may not cover the operation of a motor vehicle.
3. Protection will not cover wanton, willful, or intentional acts.

**Worker's Compensation:** In some states, volunteers (particularly volunteers who are registered with a state governmental agency) may be eligible for worker's compensation, which would compensate them or their families in the event they are injured or killed in the course of their service. However, in many states, volunteers are not eligible for worker's compensation. You should discuss this issue with your state's division of public health or emergency management agency. If your volunteers are not covered by worker's compensation, you will need to determine what compensation, if any, you can provide in the event that a volunteer is injured or killed. The agency that sponsors your unit may require that these volunteers sign a waiver of liability.

**Other Protections:** States handle volunteer liability issues in a variety of ways, including specific protections for free clinic volunteers, indemnification of volunteers acting as agents of the state, laws protecting public immunization volunteers, and even laws specifically protecting MRC and Community Emergency Response Team volunteers. Once again, these laws vary by state.

### ***Special Considerations for Out-of-State Deployment of MRC Volunteers***

While the MRC is intended to serve the needs of the local community, there may be times when MRC volunteers are given the opportunity to serve other communities, either in their own state or in another state. Before considering any opportunity to deploy your volunteers outside the local area, ask yourself the following questions:

**Mission:** Is there a specific identified need that can be appropriately met by MRC volunteers?

**Licensure:** Will the volunteers' licenses be recognized in another state?

**Liability:** Are the volunteers protected from liability for unintended harm?

**Worker's Compensation:** What happens if a volunteer is injured during the deployment? How will he or she be compensated?

**Health and Well-Being:** What steps are being taken to protect the volunteers' physical and emotional health?

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**Food, Lodging, Supplies, Transportation, and Security:** What will be provided for the volunteers and what will they need to provide for themselves?

Deployment of volunteers is dependent upon the missions required to meet the needs of the affected area. Depending on what resources are available in the affected area, there may not be many missions that require volunteer staffing. There are several existing mechanisms for out-of-state deployment of volunteers. Before sending volunteers across state lines, be sure that you are using an appropriate mechanism for the deployment of volunteers and that the liability issues have been carefully thought out. See the Technical Assistance (TA) Series guidance document *Guide to Emergency Operations for MRC Units* for more information on mechanisms for out-of-state deployment. In some cases, the MRC Federal Deployment Cadre may be called upon to augment the Federal response to public health and medical disasters. Special legal protections will apply to those members of the Cadre who deploy as part of the HHS response. For more information on the legal protections as they pertain to a Federal Deployment, please see the *MRC Federal Deployment Frequently Asked Questions* (<http://www.medicalreservecorps.gov/MRCDeployment>).

### ***Why Liability Protection is Not Enough***

Even if you feel as though your organization and your volunteers are sufficiently protected from legal liability for unintended harm, there are irreplaceable resources that cannot be protected, such as your organization's reputation and partnerships. A comprehensive risk management program can help you protect these priceless assets. See the TA Series guidance document *Guide to Risk Management for MRC Units* for more information.

### ***Additional Resources***

State Liability Laws for Charitable Organizations and Volunteers:

<http://www.nonprofitrisk.org/library/state-liability.shtml>

Health Resources and Services Administration's Emergency Systems for Advance Registration of Volunteer Health Professionals (ESAR-VHP)—Legal and Regulatory Issues:

<http://www.publichealthlaw.net/Projects/ESAR-VHP.php>

Centers for Disease Control and Prevention's Public Health Law Materials:

<http://www2a.cdc.gov/phlp/lawmat.asp>

Nonprofit Law's Volunteer Liability and the Volunteer Protection Act of 1997:

<http://www.nonprofitlaw.com/quicktipsvol.shtml>

The Uniform Emergency Volunteer Health Practitioners Act:

<http://www.uevhpa.org/DesktopDefault.aspx>

MRC Promising Practices Toolkit for Risk Management Policies:

<http://www.medicalreservecorps.gov/PromisingPracticesToolkit.asp?mode=ResourceDetails&ResID=196&RefID=Category&Category=21>

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The Emergency Management Assistance Compact:

<http://www.emacweb.org/>

2005 MRC Deployment Information (for the 2005 hurricane season):

<http://www.medicalreservecorps.gov/Hurricane/DeploymentInfo>

The Mid-America Alliance: Mutual Assistance for Public Health Preparedness:

[http://www.unmc.edu/apps/midamerica/index.cfm?L1\\_ID=1&CONREF=1](http://www.unmc.edu/apps/midamerica/index.cfm?L1_ID=1&CONREF=1)