

## FIRE CORPS LIABILITY GUIDE

# MANAGING the **Unexpected** in Fire Corps ACTIVITIES





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## Acknowledgements

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The author wishes to gratefully acknowledge the support and assistance of the organizations and individuals who provided information, support, and sample documents for inclusion in this *Guide*.

Association of Governmental Risk Pools

Bernalillo County Fire Department

California Department of Forestry & Fire Protection

City of Glendale Fire Department

Goochland County Fire – Rescue Association

Macomb Township Fire Department

National League of Cities – Risk Information Sharing Consortium

Ormond Beach Fire Department

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Utah Office of the State Fire Marshal

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# PART ONE:

## Managing the Unexpected in Fire Corps Activities

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### Introduction

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Emergency response is the core responsibility of fire and emergency medical services. Many fire and EMS organizations (“departments”) also offer fire prevention education, fire safety inspections, smoke alarm installation, and other community outreach programs. Departments’ need for personnel to support and deliver this challenging array of services often exceeds their resources. Consequently, emergency responders either find their time diverted to activities that do not require their training and experience or the department has to eliminate otherwise valuable programs.

Fire Corps programs help departments address this resource gap. A Fire Corps program supplements the department’s staff with non-emergency volunteers who enable the organization to both fulfill its core responsibility and expand its services to the community. Fire Corps volunteer activities may include administrative work, life safety education, fundraising, special projects, community outreach, rehabilitation, and many other functions that support and enhance the department’s mission.

Fire Corps programs offer substantial benefits to a department and its Fire Corps members but, like all department activities, can produce unexpected results — events that are not planned outcomes of the activity. Unexpected results include volunteer injury as well as harm to others caused by a department’s or a volunteer’s wrongful act or failure to act with reasonable care. The potential consequences include liability to compensate victims under state law. For the liable person or organization, this can mean loss of financial and other resources, as well as damage to partnerships and reputation in the community.

Concern about these consequences, especially the department’s potential liability for injury to a volunteer or a member of the public, is a barrier that discourages some departments from starting a Fire Corps program. Members of the public often have similar concerns and consequently are unwilling to volunteer if the department does not offer liability protection and injury benefits. These barriers are best addressed directly and early in the process of organizing a Fire Corps program, by adopting a plan to minimize liability and to pay for liability that does occur.

The management practices this *Guide* suggests will be familiar to many users. Some are likely already using these practices; in fact, many of the practices come from Fire Corps programs themselves. The purpose of discussing them here is to demonstrate how the liability barrier can be successfully addressed, and to provide tools and templates to assist. The *Guide* is divided into the following sections:

- A discussion about controlling liability in Fire Corps programs
- A collection of sample resources and documents.

This *Guide* is just one of the resources developed by the Fire Corps national office to help fire and EMS departments establish and operate successful Fire Corps programs. The information included here and in other Fire Corps resources can help any fire/EMS department that is using, or is interested in using, non-emergency volunteers. Fire/EMS chiefs, coordinators of non-emergency volunteer programs in fire/EMS departments, directors of Fire Corps programs that are separate nonprofit

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organizations, and anyone else who is interested in good practices for managing non-emergency volunteers in a fire/EMS department will all find this *Guide* and other Fire Corps resources useful. Any fire/EMS department that uses non-emergency volunteers is encouraged to register with Fire Corps to take full advantage of these resources.

The material in this *Guide* is offered for general informational purposes only. It does not provide legal advice, and the user is encouraged to seek out state-specific legal advice from a qualified attorney before taking any action. Keep in mind that, with a few limitations, anyone can file a lawsuit against anyone else. Following the recommendations in this *Guide* is no guarantee against being sued.

## The Benefits of Managing the Unexpected

Many departments have adopted a formal mission statement to describe their purpose. Although the wording of these mission statements differs, the foundation is similar: protection of life and property from the effects of emergencies through response and education. Fulfilling this mission requires resources: personnel, equipment, premises, funding, and relationships. Injuries, illnesses, accidents, unfair employment practices, inappropriate acts, property damage, and other unexpected adverse consequences diminish these resources and, thus, the department's ability to achieve its mission. A department that manages these consequences in all its activities – including its Fire Corps program – preserves and strengthens the resources it needs to achieve its mission. Some specific benefits include:

### Reducing liability costs

Avoiding unexpected adverse consequences helps the department avoid or reduce the cost of resulting claims and legal proceedings:

- Defense costs (paying an attorney and court expenses)
- Settlements (paying the claimant an agreed amount to resolve the claim)
- Judgments and awards (paying the amount ordered by a court or administrative agency)
- Medical and income replacement benefits to injured employees and volunteers (for injured volunteers who are covered by workers' compensation)

- Lost productivity (of employees who manage claims or participate in legal proceedings)

### Reducing insurance premiums

If a department buys insurance, the premiums charged may be based in part on the department's loss history. Reduction of insured losses is likely to result in lower premiums, saving the department's financial resources for other purposes.

### Preserving the department's investment in its workers

Departments make a substantial investment in their employees and volunteers. If the department loses an employee or volunteer due to an injury or illness, it loses the value of its investment in:

- Background checks and drug testing
- Training and exercises
- Uniforms and ID cards
- Maintaining an employee/volunteer web site
- Developing and maintaining a system to record employee/volunteer activity
- Printing employee/volunteer handbooks or materials
- Personnel time to administer the Fire Corps program

### Increasing the volunteer pool

Some potential non-emergency volunteers will be concerned about possible liability or about being injured or contracting an illness during Fire Corps work. Skilled workers who face liability in their regular occupation (such as health care professionals) and anyone who drives a motor vehicle as part of their volunteer work may decide not to participate if the department does not protect them from liability. Potential Fire Corps volunteers may decide not to participate if the department does not provide benefits for injury and illness. Liability protection and injury benefits remove a significant barrier to participation as well as convey the message that Fire Corps members are a valuable part of the department's team.

### Maintaining a positive public image

Maintaining a positive public image is important to a department's ability to achieve its mission. The department's public image affects its ability to recruit first responders and non-emergency help, build relationships with other organizations, and obtain funding, whether through public fundraisers or the local government for the community it serves. A reputation for safety also enhances the department's credibility in its public education efforts.

## The Five Steps to Managing the Unexpected

This section describes a five step approach to managing the unexpected by controlling liability in a Fire Corps program. The five steps are:

- **Step One – Secure management support**
- **Step Two – Assess the environment and history**
- **Step Three – Lay the groundwork: Identify department needs and establish Fire Corps members’ functions**
- **Step Four – Imagine the unexpected**
- **Step Five – Adopt strategies**

This five step approach can be used by any Fire Corps program, whether established or just beginning.

Throughout this process, consider the mix of activities offered (or to be offered) by the Fire Corps program. Some activities are more likely to result in liability than others, but greater liability exposure does not always mean that otherwise useful activities should be avoided. Effective liability control strategies can reduce the likelihood of an unexpected event, and raise the department’s comfort with a wider variety of activities.

Also keep in mind the structure of your program. Fire Corps programs are most often operated by public entity emergency services agencies or separately incorporated nonprofit volunteer fire/EMS organizations. Occasionally, Fire Corps programs incorporate as separate nonprofit organizations. For much of the following discussion, the type of organization is unimportant because the process for managing liability follows the same steps. In some cases – generally involving legal immunities, insurance, or mandates – the type of organization is important. Where the type of organization is a significant factor, the discussion so notes.

### Step One – Secure management support

Upper management support is critical. The discussion about liability often begins naturally during the process of establishing a Fire Corps program. Alternatively, a program coordinator may conclude that the department needs to address one or more issues after the Fire Corps program has been established and is operating. Either way, it is important that the coordinator secure the visible support of an appropriate leader, such as the Chief, before moving ahead.

### Step Two – Assess the environment and history

Do background work. Liability control is more successful if it is grounded in the characteristics and practices of the department and its Fire Corps or other non-emergency volunteer program, if one already exists. Also, the information gathered here forms the basis for Step Three.

Here are some beginning issues to learn more about. Gather written materials and conduct interviews, as appropriate. Build upon this foundation by following up on other issues or with other sources of information that are identified during the investigation process.

- **Does the department already have non-emergency volunteers?** If not, some of the documents and processes identified here will not yet exist.
- **Does the department have written position descriptions that document the functions performed by its non-emergency volunteers?** The job functions will help the department identify liability exposures and manage performance.
- **What is the application and screening process for non-emergency volunteers?** An application form, interview format, types of background checks performed and consent form for background checks, policies and procedures, and recruiting materials are all important tools for controlling liability.
- **Does the department have junior firefighters, Explorers, or other programs that use volunteers under the age of 18?** A program that hosts volunteers under 18 must comply with child labor laws, train its personnel about special issues related to interaction with minors, adapt its procedures to protect minors, and document parental consent for their participation.<sup>1</sup> If the youth program involves another organization – such as a Boy Scouts Explorer program – the allocation of responsibilities (for example, which organization provides insurance) must be clearly documented.
- **Does the department have bylaws, standard operating procedures, or other documentation that govern the operation of the non-emergency volunteer program?** These documents establish the department’s present expectations for management of the program. They may also determine whether non-emergency volunteers are protected by existing insurance.
- **Are non-emergency volunteers identified as “members” in the department’s bylaws?** Identification as “members” may entitle non-emergency volunteers to workers’ compensation benefits in some states or to accident and sickness



or accidental death and dismemberment benefits under some policies already maintained by the department for volunteer firefighters.

- **Does the department or the local government have a safety officer or risk manager who handles claims or injuries that involve non-emergency volunteers?** If so, this person can provide a thorough overview and documentation of the existing program for managing Fire Corps injuries.
- **Does the department provide non-emergency volunteers with standardized orientation, training, rules of conduct, and written guidance materials, and does it document in writing that it has provided this information and material?** This information establishes the baseline expectations of the non-emergency volunteers. A standardized process helps ensure that the department will not fail to provide a new volunteer with important information or provide inconsistent information.
- **If the department's non-emergency volunteers perform functions that present a risk of accident or injury, are they provided with appropriate safety training and personal protective equipment?** Non-emergency volunteers are seldom exposed to the same hazards as emergency responders, but if they are, they should receive appropriate training and personal protective equipment.
- **Are the department's non-emergency volunteers covered under the state's workers' compensation system?** State workers' compensation laws differ in their requirements for covering volunteers. Non-emergency volunteers may not be covered even if volunteer emergency responders are.
- **Are non-emergency volunteers covered by accident and sickness or other insurance that pays medical bills and provides lost income/disability benefits to volunteers who are injured, become ill, or are killed while working?** Either the department or the local government may have insurance that protects volunteers. Review the language of any policy carefully to determine whether it excludes non-emergency volunteers, either by limiting coverage to certain classes of volunteers or excluding volunteers in emergency services, and to identify the benefits provided.
- **Are non-emergency volunteers provided with liability protection?** Possible sources of protection include a local government self-insurance program, public entity liability and public official liability insurance held by the local government or the department, or liability insurance held by a department specifically for fire/EMS risks.
- **Does the department have an established procedure for termination of non-emergency volunteers?** Although non-

emergency volunteers are often unpaid and thus not covered by many employment laws, terminating a volunteer worker may result in liability or bad publicity if it appears to have been done unfairly or for a discriminatory purpose.

### Step Three – Lay the groundwork: Identify department needs and establish Fire Corps members' functions

An existing non-emergency volunteer program may already have identified non-emergency volunteer roles and prepared written position descriptions. If so, review this section to identify any possible adjustments. If not, take the time now and you will have a stronger basis for Steps Four and Five.

#### Needs assessment

Before a department takes on any worker – whether volunteer or paid – there should be an identified need for the worker's functions. A Fire Corps needs assessment identifies activities that non-emergency volunteers can perform to help the department achieve its mission and the resources required to manage the program's members. This enables the department to develop detailed position descriptions. The *Fire Corps Resource Guide*,<sup>2</sup> which is available on the Fire Corps web site, provides additional information.

Needs assessment is not just a one-time event. As departments and their communities evolve, needs change. Periodic review and adjustment of its Fire Corps program and position descriptions will help the department ensure that the program continues to serve its mission.

#### Position descriptions

Written position descriptions help a Fire Corps program avoid unexpected results and thus control liability in two ways:

- A department that has written job descriptions can better match potential volunteers' qualifications with its needs, and
- A written job description that identifies specific job functions (for example, driving a motor vehicle or mowing the lawn at the station) helps a department identify and address possible unexpected results from each function.

Written position descriptions offer other benefits as well:

- Position descriptions establish the qualifications and capabilities required for each position, thus providing an objective basis for a fair and consistent recruitment and screening process.

- Position descriptions provide information that helps potential Fire Corps volunteers make a fully informed decision about accepting the position, increasing the likelihood of satisfaction and good performance.
- The functions identified in a position description provide a foundation for position-specific training to help avoid unexpected results.
- Position descriptions establish supervisory authority and accountability for the position.

Position descriptions should include the following basic elements:

- Position title
- Narrative description of the purpose of the position (usually a sentence or two)
- The essential functions of the position (a brief description of each important function of the position)
- Required qualifications (education, licensure and certification, special skills, completion of program training, etc.)
- Required satisfactory completion of background checks (may include criminal record, driving record, professional licensure, etc.)
- Required time commitment (for example, the number of hours required per month)
- Required compliance with the department's rules of conduct
- The title of the position to which the Fire Corps volunteer position reports

Junior and Explorer programs face special issues. Fire Corps does not advocate minors participating in operational activities. In addition, state child labor laws may limit the hours that minors can work or volunteer, prohibit their involvement in specific hazardous activities, or require work permits. Older teens often have fewer legal limitations than younger teens. Some states have specific regulations for junior firefighter programs. Any department for which junior volunteers work should obtain legal advice about these restrictions and be sure they are observed. Any written description of junior activities should be carefully developed to comply with state requirements.<sup>3</sup>

It is never too late for an existing Fire Corps program to develop written position descriptions. In fact, the Fire Corps volunteer currently filling a position can be of great assistance. The *Fire Corps Resource Guide*,<sup>4</sup> which is available on the Fire Corps web site, provides additional information.

### Step Four – Imagine the unexpected

The next step is to identify how unexpected results from Fire Corps activities can result in liability. These unexpected results could include:

- Bodily injuries or illnesses: to the volunteer, other department personnel, or members of the public
- Property damage: to department's property, the volunteer's property, property owned by members of the public, or other property, including motor vehicles
- Personal injury and wrongful acts: including disclosure of confidential information, invasion of privacy, harassment (sexual or other), wrongful discrimination, false arrest or imprisonment, and defamation (libel or slander)

Building upon the information gathered and developed in Steps Two and Three, imagine how activities under the Fire Corps program could produce unexpected results.

- **Review the Fire Corps position descriptions or position assignments.** The functions performed by a Fire Corps volunteer often suggest the unexpected results that can occur. Consider what can result from the activities planned for Fire Corps teams. Some higher risk activities include driving motor vehicles, working at the scene of an emergency, handling confidential information, lifting heavy items, hosting fundraising events that prepare food and serve alcohol, accessing the department's computer network, providing home safety inspections and smoke alarm installation to members of the public, and providing professional services such as critical incident stress management for emergency responders and counseling for victims.
- **Review the procedures for screening, accepting, assigning, supervising, and terminating Fire Corps members.** Thorough, consistently followed procedures help ensure that the department selects the right non-emergency helper and controls performance to reduce the risk of liability. They also help avoid accusations of wrongful discrimination that can lead to bad publicity, and possibly even liability. If the department has no procedures, put this on the list of things to do in Step Five.
- **Review any previous incidents that involved Fire Corps members or others doing the same work.** An event that has occurred previously can occur again, especially if the underlying cause was not addressed. In most departments, there will have been few or no prior events.
- **Review other documents.** Orientation and training materials, volunteer handbooks, and rules of conduct instruct Fire

Corps volunteers how to do their jobs; reviewing these documents can help the department anticipate problems.

- **Brainstorm.** Assemble several interested persons who understand and support Fire Corps to discuss the jobs planned for Fire Corps members, how events might unfold in unexpected ways, and how unexpected results would affect the volunteers, the department, the program, and the public.
- **Discuss with peers in other Fire Corps programs.** Pooling knowledge allows Fire Corps programs to benefit from others' experiences.

Continue the process by evaluating the consequences of these unexpected results, including:

- liability for judgments or settlements of lawsuits seeking civil damages or claims for workers' compensation benefits
- the cost of legal defense
- the cost to repair or replace the department's property
- the lost productivity of the department's trained Fire Corps members and personnel
- an increase in the department's insurance costs
- bad publicity or damage to the department's reputation

Some events have small consequences but occur often, thus producing a large cumulative effect. Other events occur infrequently but can produce large consequences. Identify events that can cause the most harm – either through their frequency or the size of their consequences – and address those first.

Step Four often looks at negative unexpected consequences, but don't let that convince you that using non-emergency assistance is too "risky." Liability can arise from an activity whether it is performed by a Fire Corps volunteer or department personnel. Properly selected, trained, managed, and insured Fire Corps members pose no more risk of liability than do other personnel performing the same activity.

### Step Five – Adopt strategies

Good planning and preparation is critical to controlling liability in a Fire Corps program, but there is no single correct approach. Fire Corps programs are often the descendants of non-emergency volunteer programs that were founded years before. Thus, practices used by Fire Corps programs differ significantly and generally reflect the needs and culture of the sponsoring department.

This diversity of practice provides an opportunity for Fire Corps programs to learn from one another. In a perfect world, strategies for managing a Fire Corps program are implemented before

the first volunteer application is accepted. In the real world, they are often adopted over time as the need appears. Whatever a program's current state of development, these strategies are worth considering.

Recall that many of the recommended strategies are not unique to controlling liability. They are simply good management practices, which are included here because they help manage unexpected results. Many draw upon strategies being used currently by Fire Corps programs. Where further discussion or examples are available, they are either included in Part Two of this *Guide* or readers will be provided with a link to the information in another Fire Corps resource.

### Work conduct rules

As public safety organizations that operate in high-risk environments, fire/EMS departments have strong management practices designed to help them safely achieve their missions. Although Fire Corps members do not face the same dangers as emergency responders, strong management practices can help departments control unexpected results and resulting liability in their Fire Corps programs. These management practices include clear written work and conduct rules for Fire Corps volunteers.

Work and conduct rules help these volunteers know what is expected of them and provide the department with an objective basis for supervision, performance evaluation, progressive discipline, and, as a last resort, termination. Work and conduct rules should include even the obvious – such as prohibiting sexual harassment or disclosure of confidential information. Give each Fire Corps member a copy of the rules and have him or her sign an agreement acknowledging receipt and agreeing to obey them.

Work conduct rules could address:

- **Confidentiality and privacy.** Fire Corps volunteers may become aware of confidential or private information while performing their duties, so work and conduct rules should prohibit disclosure of confidential or private information, including information about the department, its members, other non-emergency help, department employees, members of the public, and others.
- **Wrongful discrimination.** Fire departments serve, and have members and Fire Corps volunteers drawn from, the entire community, so work and conduct rules should prohibit discrimination based on race, gender, religion, color, national origin, age, marital status, disability, and sexual orientation.
- **Harassment (sexual and other).** The department may be

legally responsible for sexual or other harassment by one of its workers against another. Work and conduct rules should prohibit all harassment as well as the display of sexually suggestive or other offensive materials.

- **Alcohol and drug use.** Prohibit the use of alcohol, drugs, or substances that can impair physical or mental functioning on the job.
- **Smoking.** Prohibit smoking on the job and on the department's premises.
- **Procedures for reporting injuries, illnesses, accidents, and property damage.** Require Fire Corps members to report any injuries or illnesses they believe to be related to their work, as required by the department's procedures. Give them detailed instructions (when, how, and to whom). Also require them to report any accidents they have in a department motor vehicle and any injuries or property damage they cause while working.
- **Cell phone usage.** The use of personal cellular telephones on the job, other than on designated breaks, can interfere with performance. If the non-emergency volunteer operates a department motor vehicle, it can cause an accident for which the department could be liable. Work and conduct rules can address this by adopting reasonable restrictions on personal cell phone use while on duty and prohibiting personal cell phone use while driving.
- **Photography restrictions.** Digital cameras and the Internet increase the chance that a photo taken by a Fire Corps volunteer could be widely published in violation of the subject's privacy rights, and the department could be liable to the subject for damages. A rule of conduct can address this risk by prohibiting photography on the job unless it is ordered by the volunteer's supervisor and taken with department equipment, requiring the supervisor's approval for any publication or distribution of the photo, and prohibiting the Fire Corps member from using any photographs taken on the job for private purposes. Departments should also obtain a release from the subjects in a photo before public use.
- **Personal use of department computers/email.** Personal use of department computers and email interferes with performance and can expose the department to liability from many different sources. Work and conduct rules can reduce this by limiting or prohibiting personal use of department computers and email.
- **Compliance with safety rules, including use of required personal protective equipment.** Fire Corps members usually do not engage in activities that require the kind of personal protective equipment used by firefighters. However, their

functions may occasionally require protective headgear, goggles, gloves, or dust masks. If the department has Fire Corps positions that require the use of personal protective equipment, make its use an explicit requirement in the position descriptions and work and conduct rules.

- **Statements to media.** If the department limits media statements to designated public information officer(s), require that Fire Corps volunteers refer any media representatives that contact them to the designated person(s).
- **Hours and timekeeping.** Require that Fire Corps volunteers meet the program's minimum time commitments and record their time.
- **Periodic retraining and background check requirements.** Require that Fire Corps volunteers meet the program's periodic retraining and background check requirements.
- **Carrying weapons.** Prohibit Fire Corps volunteers from bringing weapons to the job.
- **Reporting changes in driving record, criminal background, or professional licensure status.** Require Fire Corps volunteers to report to their supervisor any change in their driving record, criminal record, professional licensure, or other record required for the position they hold.
- **Uniforms and department issued identification.** Require that Fire Corps volunteers wear department-issued uniforms and identification while they are working and/or when they are interacting with members of the public, and prohibit them from using department-issued uniforms or identification when they are off duty. The "uniforms" may be simple – a department logo t-shirt, for example. Uniforms and identification help the department prevent unauthorized persons from accessing restricted areas and posing as department representatives.

Identify within the work and conduct rules those infractions that warrant immediate dismissal. Refer to the program's progressive discipline and termination procedures.

### Recruitment, application, interview, screening, and selection procedures

A thorough, consistent, and non-discriminatory recruitment and selection process helps reduce potential liability in two ways.

- First, the department collects the information it needs to match a position with a volunteer who has the right skills and interests. Placing the right person in the right position reduces the chances of liability due to inadequate performance.



- Second, a poorly managed recruitment and selection process may itself result in liability and bad publicity by wrongfully discriminating against some applicants.

Thus, a consistently followed recruitment and selection process is one of the most important tools a department has to avoid liability.

### Recruitment

Consider recruiting community members for specific positions. This is especially important where specific skills will be required – such as accounting, research, fundraising, mechanical, GIS, public relations, training, etc. A good match between the volunteer’s skills and interests and the department’s needs increases the chances of a good outcome.

### Application

Complete and accurate information about potential Fire Corps volunteers is a powerful tool for reducing the chances of an unexpected result. Using a standard application form helps the department collect consistent information about each applicant. Application forms that require the applicant to sign a statement agreeing that the information provided is accurate and complete (the language used may vary) may also discourage misrepresentation. In addition, the form can be used to:

- Notify applicants that the department will verify the information provided and reject the application if it is inaccurate or incomplete
- Obtain the applicant’s permission to conduct specific types of background checks, as discussed under Screening below
- Notify the applicant that any position offered will be “at will” and subject to termination at the department’s discretion

The content of application forms varies widely, because they must meet the needs of the particular department. Avoid including questions that could lead to actions that would be discriminatory in an employment setting, for example questions about age, race, religion, national origin, pregnancy, disability, health problems, and prior workers’ compensation claims. Several forms used by existing Fire Corps programs are included in Part Two as examples. Have your application form approved by an attorney or a human resources professional familiar with federal and state employment law prior to use.

### Youth volunteers

As part of the application process, programs that use volunteers under the age of 18 should require a parent’s or guardian’s writ-

ten permission to participate. It may also be helpful to require the youth and his or her parents or guardians to sign a written waiver of liability that describes the risks of the activities in which the youth will participate. These can both be included on the application form. Often waivers of liability are not enforceable under a state’s laws, especially against minors. However, waivers can be helpful in settlement negotiations. Also, a waiver that describes the activities and associated risks shows that the volunteer and his or her parents knew of the risks and chose to participate. Check with an experienced attorney for advice on the best language to use in your state.

### Interview

Interviews provide an opportunity to personally assess the applicant’s suitability for a position, beyond the list of qualifications on the application form. Conducted improperly, they are also a potential source of liability or bad publicity based on wrongful discrimination. Good practice is to conduct interviews for Fire Corps volunteer positions with the same caution used for paid positions.

A standardized list of interview questions based on each position description is one tool to reduce the likelihood of an unexpected result. The list helps the interviewer gather all the required information from each applicant. Applicants who are competing for a limited number of positions can be more easily compared if they have answered the same questions.

Standardized questions also reduce the chance that an interviewer will ask an impermissible question. But standardized questions alone are not sufficient, because inevitably additional conversation and follow up questions occur. Have standardized questions approved by an attorney or a human resources professional familiar with federal and state employment laws prior to use. Train Fire Corps interviewers about good interview practices and which questions are impermissible.

### Screening

Screening verifies the applicant’s representations and identifies any background or history inconsistent with the responsibilities of the position. The screening approaches selected will not necessarily be the same for all non-emergency positions. Consider screening approaches for each position based on that position’s functions and potential to do harm. Common screening approaches include:

- **Reference checks.** Contact employers for which the applicant has performed paid or volunteer work and personal references identified by the applicant.



- **Confirmation of credentials and professional competence.** Confirm current licensing with the state agency that regulates the specific profession.
- **Criminal conviction checks.** Follow the procedure used for employees or emergency response volunteers or check with local police to determine the appropriate agency, which may include a state law enforcement agency or department of justice.
- **Fingerprinting.** Contact the local police department.
- **Drug testing.** Contact a private vendor.
- **Driving record checks.** Contact the state department of motor vehicles.

Be sure to consistently screen all applicants for a position. Identify in advance the consequences attached to specific findings and equally enforce those consequences with all applicants.

For privacy reasons, do not perform any screening until the applicant has given written consent. Consent may be obtained on the application form or a separate form signed prior to screening. The consent should identify the specific screening to be performed and include an agreement that the applicant releases and holds harmless from liability the program and any person or organization that provides information about the applicant. Examples are included in Part Two.

There is no one correct time to perform a screening. It can be performed after the application is submitted but before the interview. Alternatively, it can be performed after the interview but before training. Screenings should be completed before the department makes an unconditional offer of a Fire Corps position and the volunteer begins work. If the department offers a position to an applicant before a screening is completed, the offer should be in writing and contingent upon the satisfactory completion of the screening.

Screening helps a department to identify Fire Corps applicants who are more likely to cause problems and produce unexpected results. However, the screening process itself can be a source of department liability if incorrectly managed. States may prohibit certain types of screening, and often will require written permission of the applicant for release of criminal and driving records. Knowing the state's laws and adopting a written screening procedure can reduce the likelihood of liability. Have the screening procedure approved by an attorney or human resources professional before adopting it.

### Selection

The procedures used to select Fire Corps volunteers from the pool of applicants differ among departments. Some programs are competitive; others make room for any applicant who satisfies their criteria. Fire Corps programs are not obligated to accept every applicant. Departments can decide what positions they want Fire Corps members to fill, how many volunteers they need, and which applicants best meet their requirements. Any process that is based on consistently applied objective criteria and is not wrongfully discriminatory will help the department avoid liability and unfavorable publicity.

The department can also avoid possible misunderstandings with the applicants they select by putting information about the position into a written offer. An offer letter signed by the department and the non-emergency volunteer (and an underage volunteer's parent or legal guardian) is one possibility. A service agreement signed by both the department and the volunteer is another. The information should include:

- Name, address, and contact information for the volunteer
- Title of position
- Effective date
- Term of the appointment (either a specific time period, a specific date of termination, or until terminated by either the department or the Fire Corps member)
- A statement that the volunteer's appointment is "at will" and can be terminated at any time by the department and by the Fire Corps member
- Any contingencies the Fire Corps member will have to fulfill before the appointment is official, such as screening or completion of training
- A statement of any specific requirements the Fire Corps member must fulfill after the appointment is official, which could include maintaining a license or certificate in good standing, participating in program activities a minimum number of hours per month, attending ongoing training, etc.

Other information and commitments may also be included:

- Description of benefits (such as workers' compensation or accident and injury insurance and liability protection) and privileges (such as use of department vehicle or personal vehicle on department business) that apply to the Fire Corps volunteer
- A waiver of department liability for injury, illness, or death sustained by the Fire Corps volunteer in connection with Fire Corps service

- An Oath of Allegiance, which may sometimes be required by state law for the Fire Corps member to qualify for liability and injury protection as an emergency or disaster volunteer
- Any requirement that the Fire Corps member must meet to use a personal vehicle on department business (for example, to maintain liability insurance)
- Acknowledgement that the Fire Corps member has received a copy of the department's Fire Corps policies and procedures (or Fire Corps handbook) and will comply with their terms
- A commitment by the Fire Corps member to maintain the confidentiality of certain information

Any statements made in the offer letter or service agreement will be a binding commitment by the department. Consequently, use great care in describing benefits. For example, do not refer to accident and sickness insurance as workers' compensation coverage. The department should secure legal or human resources approval of the offer letter or service agreement before adopting it for use with Fire Corps volunteers.

#### Privacy of volunteer records

The recruitment and selection process generates written information about a potential volunteer that can include highly confidential information. Disclosure of this information can harm the individual and expose the department to significant liability. Consequently, the confidentiality of all volunteer records, including information about unsuccessful applicants, should be given the same protection as the records of department personnel.

### Orientation and training

Training tells Fire Corps members what is expected of them, thus reducing the likelihood of unexpected events. Both general orientation and job-specific training are important. The formality will vary, depending on the size of the program and the functions that volunteers perform. Some departments provide regularly scheduled group training, while others train on-the-job.

The setting is less important than careful development and consistent delivery of the information, along with an opportunity to ask questions and receive answers.

#### General orientation

General orientation gives Fire Corps members basic information about the program and its requirements. Important topics to consider include:

- The mission and goals of the department and the Fire Corps program
- The chain of command in the department and the Fire Corps program
- Standard operating procedures
- Work and conduct rules (see discussion on page 11)
- Benefits of participation, including any liability and injury protection provided to Fire Corps volunteers
- Periodic retraining requirements
- Volunteer evaluation and termination

Distribute a handbook as part of orientation. It will both help Fire Corps members remember this information and serve as an important foundation for the department's performance evaluation, progressive discipline, and termination procedures. The Fire Corps handbook can summarize the information provided during orientation and include the portions of standard operating procedures, work rules, standards of conduct, or by-laws that apply to Fire Corps. Have each Fire Corps member sign an agreement acknowledging receipt of the handbook and agreeing to comply with its requirements.

#### Job-specific training

Job-specific training addresses the requirements of an individual position to ensure that the Fire Corps volunteer's work produces the expected results. Important elements of job-specific training include:

- The goals and functions of the volunteer's position
- The interaction of the volunteer with others
- The volunteer's authority and the limits on that authority
- The volunteer's reporting channel
- How to use special equipment, tools, or computers
- Specific procedures (for example, telephone greeting, filing, handling and accounting for funds)
- Hazards of the position (for example, ladders or dangerous chemicals) and the safety procedures and personal protective equipment required to protect the Fire Corps volunteer

Job-specific training is often provided one-to-one, on-the-job. Training about hazards, safety procedures, and personal protective equipment is specific to the nature of the job, but may also include standardized information that is provided in a classroom setting with other Fire Corps volunteers or department members.

### Mandatory training

State and federal law mandate certain types of employee training, usually on safety or discrimination issues. For example, federal and state occupational safety and health laws (“OSHA”) require employers to train employees about safety issues relevant to their jobs.<sup>5</sup> Some states require training of employees about sexual harassment. Statutes that mandate training often require that certain information be included and that trainees have an opportunity to ask questions and receive an answer.

Mandatory training laws often apply to volunteers only if they are considered to be employees under their state’s law, but this is not absolute. Some training requirements may specifically apply to volunteers. A few states extend their occupational safety and health laws to volunteer emergency response personnel.<sup>6</sup> Environmental Protection Agency regulations require that volunteer firefighters receive hazardous materials training. Even where training requirements apply only to employees, the line between employee and volunteer under state law is not always clear. For example, non-emergency volunteers are sometimes “members” of their department or are covered by workers’ compensation, which might tip the balance in favor of “employee” status. Check with an attorney before concluding that Fire Corps volunteers are not subject to mandatory training requirements.

Training decisions should not be driven solely by legal requirements. Train volunteers if the department would train an employee performing the same functions. The relatively small training investment is offset by the benefits of reducing the chance of costly liability. An injured Fire Corps member may seek recovery through workers’ compensation, accident and sickness benefits, or a lawsuit against the department for medical expenses, lost income, pain and suffering, and other damages. A member of the public who is injured by a Fire Corps volunteer may sue the department or the local government for similar damages. The department’s failure to adequately train the Fire Corps member increases the chances that lawsuits and claims will succeed.

### Training documentation

Mandatory training laws usually require employers to document who was trained, when they were trained, and the topics covered. It is a good practice to maintain training records for Fire Corps members even if the training is not mandatory. Records help the department manage its training schedule and ensure there are no training gaps. If the department’s training of its volunteers becomes an issue in a lawsuit, the records will document the department’s position.

### Supervision, performance evaluation, progressive discipline, and termination

All Fire Corps volunteers, even those whose positions require special expertise and provide significant autonomy, should report to a department member who can understand and effectively supervise their work. Supervisors should be familiar with the volunteer’s position description and able to carry out the department’s performance evaluation, progressive discipline, and termination procedures.

A department invests significant time and resources in each Fire Corps volunteer it accepts. Initial orientation and training are just the beginning. They set the stage for ongoing learning, which takes place through informal teaching on-the-job and sometimes in additional classes. This helps Fire Corps volunteers acquire necessary skills.

Regrettably, an occasional Fire Corps member will be unable or unwilling to perform as expected. A procedure for progressive discipline and termination will help departments manage these situations consistently and successfully. The department should develop the procedure with the advice of an employment attorney or skilled human resources professional. It is important that the progressive discipline and termination process include:

- Clear identification of actions that warrant immediate dismissal rather than progressive discipline (often those that present an unacceptable risk of damage to property or injury to a person, or that evidence intent to do harm or break the law)
- Consistent communication with the volunteer of any deficiencies in performance, the reasons for any disciplinary action, and expected changes
- Written documentation of each step
- Administration in an objective, consistent, and non-discriminatory manner

A department that has adopted progressive discipline and termination procedures for its employees and/or volunteer emergency responders but does not intend to apply those procedures to Fire Corps members should consult with an attorney. It is important to clearly differentiate procedures that apply to volunteer emergency responders but not to non-emergency volunteers.

Privacy is important in the disciplinary and termination process. Avoid making written or oral public statements that could damage the volunteer’s reputation and possibly provide grounds for a lawsuit. Administer discipline and termination in a private

setting, with only the volunteer, the supervisor, and a witness (who will maintain confidentiality) present. Keep volunteer files in a secure place at all times, providing them with the same protection as personnel files. If contacted for a reference on the volunteer, follow the department's or the local government's procedures for employee references.

### Protection from the financial effects of unexpected results

Even the best liability control program cannot eliminate all potential unexpected results. There remains a small but real chance of an injury, property damage, or other harm. A department has this "residual" risk from all of its activities – whether or not it has a Fire Corps program.

The cost of damages, defending a claim or lawsuit, and providing benefits to injured workers can be substantial. Thus, no program is complete until the department adopts a plan to pay these costs. The department must know how it will pay for its own liability, the liability of its employees, and workers' compensation benefits for employees. Recruiting volunteers – both emergency responders and non-emergency volunteers – will be easier if the department also has a plan to protect volunteers from liability and to provide them with benefits if they are injured or become ill.

An emergency services organization can take many forms, including local government agency, unincorporated association, special districts, incorporated nonprofit organization, or joint venture, to name a few. A Fire Corps or other non-emergency volunteer program can be an activity within an emergency services organization or a separately incorporated nonprofit organization. Thus, more than one legal entity<sup>7</sup> can be involved in delivering such services to a community, and each is responsible for its own protection and that of its officials, employees, and volunteers from the financial effects of liability. Protection for one person or legal entity – whether by law or insurance – does not automatically protect others.

### Providing benefits for injured Fire Corps volunteers

#### Workers' compensation

A paid employee who suffers a work-related injury, illness, or death usually receives from the employer "no-fault" workers' compensation benefits, including replacement for lost wages and medical expenses. Most state laws require employers to have workers' compensation insurance or an approved self-insurance plan to protect their employees. Paid firefighters and EMS workers are "employees" and are covered under their employer's workers' compensation coverage. To avoid double compensa-

tion, state laws usually limit an injured employee's right to sue an employer that provides workers' compensation benefits.

State workers' compensation laws vary greatly in their general treatment of volunteer workers. Volunteers often do not qualify for protection under state workers' compensation laws because they are uncompensated. Some states permit, but do not require, organizations to provide workers' compensation benefits for volunteers. An injured volunteer who does not receive workers' compensation benefits may be able to sue the organization for lost wages, medical costs, and other damages from the injury.

Volunteer emergency responders are more frequently covered by workers' compensation than are other volunteers. Some states require workers' compensation for volunteer emergency responders and others allow local governments to provide benefits. Mandatory workers' compensation coverage for volunteer emergency responders may be limited to "line-of-duty" situations.

Non-emergency fire/EMS volunteers are less likely to be covered by workers' compensation than are volunteer emergency responders. Terminology used in the statute is important. A state law that requires or authorizes workers' compensation benefits for "volunteer firefighters" is less likely to protect non-emergency volunteers than is a law that protects "members." In states that mandate or authorize workers' compensation for "members" of volunteer fire companies or departments, an amendment to the department's by-laws classifying Fire Corps volunteers as "members" may entitle them to workers' compensation benefits. Local ordinances can also be a factor. Be sure to consider youth volunteers in the assessment. In states that do not mandate workers' compensation, a department may choose to provide accident and sickness insurance instead (see next section) if the level of benefits provided under state mandated workers' compensation exceeds what the department can afford to provide to non-emergency volunteers.

Talk to an experienced risk manager or attorney and the department's workers' compensation insurer for additional information and options.<sup>8</sup>

#### Accident and sickness insurance

In states that do not mandate workers' compensation for volunteer emergency responders, or that limit benefits, some fire/EMS departments buy "accident and sickness" insurance to ensure that volunteer emergency responders receive benefits if injured. These policies may also cover Fire Corps volunteers if the department defines them as "members."

The local government served by a fire/EMS department may also have accident and sickness insurance for its regular volunteers. This insurance may automatically cover the department's Fire Corps members, or the department may be able to add them. Compare the coverage provided under such insurance with the benefits the department wants to provide (disability, lost income, medical expenses, funeral, etc.) Volunteer accident and sickness insurance sometimes covers only medical expenses, not lost income, has a relatively low maximum payment, and pays only what the volunteer's regular health insurer does not pay. Be sure it meets the department's needs. Finally, be sure that the insurance policy does not exclude fire/EMS or public safety volunteers.

#### **Emergency management and homeland security laws**

Emergency management and homeland security statutes often provide emergency/disaster volunteers with workers' compensation or other protection for injuries and illnesses. One consistent requirement is that the volunteer be engaged in emergency or disaster work as defined by the law. Some states include participation in drills and exercises, but others limit coverage to emergencies or disasters declared by the governor. Generally Fire Corps volunteers have limited involvement in the activities that trigger this protection, but they may be covered if they support emergency responders in significant events or in exercises or drills. Check with an attorney. Fire Corps volunteers who respond as members of Citizen Corps programs such as Community Emergency Response Teams (CERT) or the Medical Reserve Corps (MRC) are more likely to be protected by these laws.

#### **Waiver of liability**

If the department cannot provide any injury or illness benefits to non-emergency volunteers, or if the benefits it does provide are low, a written waiver signed by an adult volunteer can help limit the department's potential liability. The waiver documents in writing that the volunteer understands the risks of the position and his or her agreement to waive the right to bring a claim for an injury or illness. Consider including on the waiver form written notice of the benefits that are provided, if any.

The enforceability of waivers is governed by state law, and they are not equally effective in all states. Waivers for injury to minors are even more problematic than waivers for adults because state law often permits minors to avoid their obligations under contracts they have signed. Waivers of liability on behalf of minors should be signed by the minor's parents or legal guardians and the minor. Check with an attorney for advice on how to craft a waiver that meets state requirements.

#### **Protecting Fire Corps members from liability**

Liability law enforces the critical social value of accountability by encouraging individuals and organizations to use reasonable care and discouraging them from committing wrongful acts. However, concerns about liability can discourage volunteerism, which is another important social value. If these social values remain in balance, society benefits from volunteerism without sacrificing accountability. Thus, state and local governments and organizations that use volunteers or promote volunteerism seek solutions that balance these values. In most states, protective laws have been adopted over a period of many years to address current needs.

Volunteer liability protection takes two basic forms: immunity (legal exemption of the volunteer from liability) and indemnity (payment of the volunteer's costs arising from a liability claim – such as attorney's fees, judgments, and settlements). Immunity and indemnity are complementary. Immunity limits an injured person's legal right to recover damages from the volunteer. Indemnity provides the volunteer with a legal defense and pays judgments and settlements, if necessary.

Some immunity laws are statutory, and others are part of the state's common (case) law.<sup>9</sup> Indemnity may be provided by statute, by agreement, or a combination of both. For the volunteer, it is ideal to have both immunity and indemnity.

The critical points to remember are that immunity and indemnity vary greatly from state to state and that they are helpful but do not provide complete liability protection. Most immunity and indemnity laws have threshold requirements that the volunteer must meet – such as type of activity and registration as a volunteer. Almost all exclude protection for gross negligence, willful misconduct, and similar extreme conduct. Many also exclude protection for volunteers when they are driving motor vehicles.

The following are general categories of volunteer liability protection. An attorney can provide complete information about the scope of protection available in a particular state.

#### **Volunteer protection laws**

The federal and many state governments have adopted volunteer protection laws that provide certain volunteers with limited immunity. The protection offered by state laws can differ, so this discussion is based on the federal Volunteer Protection Act of 1997 (VPA).<sup>10</sup>



The VPA gives individual volunteers who are working without compensation for government or nonprofit organizations limited immunity from liability for harm based on the volunteer's actions. The VPA does not protect the organization that uses the protected volunteers. If otherwise permitted by law, a fire/EMS department can still be sued, even if its volunteer cannot.

The VPA and its state equivalents do not provide complete immunity. The VPA excludes protection for volunteers who are operating a motor vehicle or other vehicle for which the state requires an operator's license or insurance. It also excludes volunteers who are performing acts for which the volunteers are not appropriately licensed or are not within their area of responsibility. It does not provide for payment of legal defense costs, judgments, and settlements. The VPA and its state cousins do not protect liability for gross negligence, willful and wanton negligence, or similar extreme conduct.

Despite these (and other) limitations, volunteer protection acts may be the best source of immunity for Fire Corps volunteers and youth volunteers who are not providing aid in emergency situations, as required by many Good Samaritan, emergency management, and homeland security laws.

### How states can modify the VPA

The federal VPA overrides state law, but permits a state to:

- Provide additional protection for volunteers
- Decide not to apply the VPA in a lawsuit in which all parties are citizens of that state
- Condition protection on the nonprofit organization or governmental entity using risk management procedures, including mandatory training of volunteers
- Require the nonprofit organization or governmental entity to be liable for the acts or omissions of its volunteers as it would be for its employees
- Make the limitation of liability inapplicable to civil actions brought by an officer of a state or local government
- Condition limitation of liability on the nonprofit organization or governmental entity providing a financially secure source of recovery (such as insurance or a self-insurance program) for individuals who are harmed by their volunteer

### Volunteers acting in emergency situations

There are laws that provide liability protection to volunteers who assist in emergencies. They are worth keeping in mind because they may be helpful in some situations. Check with an attorney to determine the scope of protection in your state.

*Good Samaritan laws:* "Good Samaritan Law" is the popular name for statutes that provide limited immunity to individuals who, in good faith, without a duty to do so, and without compensation, help a person who is experiencing a health emergency in a setting where there is no ready access to professional care. They are unlikely to protect most Fire Corps volunteers in their assigned duties, but may provide limited immunity if a Fire Corps member uses first aid skills at the scene of an accident. Every state offers some form of Good Samaritan protection, but there may be significant limitations.<sup>11</sup>

*Volunteer emergency responders:* Some states give limited immunity to fire/EMS volunteers and occasionally their organizations. The language of the statute determines whether protection is also available to non-emergency volunteers. A statute that gives immunity to "all persons providing voluntary service to a fire department, ambulance service, or rescue squad" is more likely to protect non-emergency volunteers than a statute that limits protection to "volunteer firefighters." Often such immunity laws limit their application to active fire/emergency response situations.

*Emergency management and homeland security laws:* State emergency management and homeland security statutes may provide emergency or disaster workers with limited immunity from liability. They sometimes provide indemnity as well. They protect organizations occasionally, and there is increasing attention to the need to protect organizations that volunteer their resources in emergencies. If the Fire Corps program has Fire Corps members that support emergency responders at significant events, or in exercises or drills, check with an attorney to determine whether this protection is available in your state.

### Liability insurance/self-insurance

Liability insurance is a form of indemnity and is an important tool for protecting Fire Corps volunteers. It does not prevent the injured party from suing and recovering damages, but from the volunteer's perspective, the protection of good liability insurance is actually broader. Liability insurance is less likely to have some of the exclusions and limitations that leave gaps in the protection offered by immunity statutes. Unlike immunity, liability insurance provides funds to pay defense costs, settlements, and judgments.

Some states require or allow political subdivisions to provide their volunteers with liability protection: payment of the costs of legal defense and the award of damages. This protection may be in the form of liability insurance or inclusion under a government's self-insurance plan. In states where government volunteers also have limited immunity, this provides two-part protection. However, Fire Corps members are only protected if they volunteer for a local government or agency that provides this protection.

Fire Corps programs may be operated by or affiliated with many different types of emergency services organizations, including local government fire/EMS departments, fire districts, incorporated nonprofit volunteer fire companies, to name just a few. They may also be operated by multiple emergency services organizations working together under contract. Some Fire Corps programs are independent nonprofit corporations. Youth volunteers may be part of a program sponsored by another organization – such as the Boy Scout Explorers. Any of these legal entities may have existing liability protection that covers Fire Corps members, or to which they could be added. Here are some possibilities to investigate:

- A local government or fire district's public entity liability and public officials liability insurance policies
- A local government's self-insurance plan
- The coverage document from the public risk pool that provides insurance to the local government or fire district
- A volunteer liability insurance policy held by the local government or one of its departments (it may be possible to add fire/EMS department non-emergency volunteers to a volunteer liability insurance policy held by another department)
- A nonprofit volunteer fire company or a separately incorporated Fire Corps or auxiliary program's general liability and directors and officers liability insurance policies
- A contract for fire/EMS services in which Fire Corps volunteers may participate, including a nonprofit volunteer fire/EMS company's contract to provide services to a local government
- Mutual aid agreements
- Insurance available to volunteers through other affiliations – for example CERT or MRC – where the volunteers will respond in a dual capacity
- Insurance for youth volunteers who are sponsored by an organization other than the department

The protection afforded by liability insurance, self-insurance plans, public risk pools, and contracts is not all the same. With a knowledgeable risk manager or an attorney, identify and review available insurance and other coverage to confirm that it includes the activities of the Fire Corps volunteers you want to protect. Be sure that **non-emergency volunteers** are included in the language of coverage maintained by a fire/EMS agency – not just employees and volunteer emergency responders. Review liability coverage maintained by local governments to be sure they include volunteers and do not exclude fire/EMS and public safety activities. Identify any special coverage required to protect Fire Corps volunteers' activities in your Fire Corps program; for example professional errors and omissions coverage may be required for Fire Corps members that perform professional activities. If no insurance coverage or other protection is available, consider investigating commercially available volunteer liability insurance policies.

### Protecting Fire Corps sponsors from liability

The best liability protection for an organization sponsoring/operating a Fire Corps program is the five-step process described above because it focuses on controlling the losses that result in liability. Immunity and indemnity do not prevent a loss. If they are available, they only shift the cost back to the injured party or to an insurer. Everyone wins if the loss is prevented.

Whether immunity and indemnity protection is available to Fire Corps sponsors depends on state law, the form of the organization, and the coverage provided by the sponsor's insurance or other insurance that may cover it. The following are general categories of protection. Contact an attorney or an experienced risk manager for complete information about the scope of protection available in a particular state.

#### Immunity

Governments and their agencies often have some governmental immunity, especially during emergency operations. Non-governmental emergency response organizations are less likely to have immunity. The scope of immunity varies substantially from state to state, and its application is likely to depend on factual issues, which makes the outcome unpredictable. It is good practice to obtain legal advice before relying on immunity as protection from claims by injured volunteers or by third parties who are harmed by volunteers. It is important to have a source of indemnity even if immunity is available, because that immunity almost certainly has limitations.

### Indemnity

Fire Corps sponsors may be protected by the local government's self-insurance plan or liability insurance. They may also have their own liability insurance. A sponsor that buys separate insurance designed for emergency response organizations is likely protected. Review the policy and consult with a risk management or legal advisor to understand the limits of the protection provided. A fire/EMS organization that is included in the local government's insurance or self-insurance plan should talk to the local government's risk manager or attorney to be sure there are no significant limitations, for example an exclusion for fire/EMS or public safety activities. When relying on inclusion under another organization's insurance or self-insurance plan, require written documentation of coverage for the fire/EMS organization, such as a current insurance certificate.

### Workers' compensation and accident and sickness insurance

A sponsor that provides statutory workers' compensation benefits to Fire Corps members may be protected under the workers' compensation law from a lawsuit for the same injury (referred to as "exclusive remedy" protection). Organizations that provide Fire Corps members with accident and sickness insurance do not receive exclusive remedy protection, but combining accident and sickness insurance with a waiver of liability signed by the volunteer may reduce the chances of being sued. State laws differ on the exclusive remedy protection they provide and in their recognition of waivers of liability, so be sure to check with an advisor experienced in your state's law before adopting a strategy.

## Maintaining the Momentum

Managing the unexpected is an ongoing process. A program's activities, partners, and environments change, and so must its strategies for managing the unexpected. Some adopted strategies will be less effective than expected, and so must be revised or replaced. The keys to successfully managing the unexpected are monitoring changes in the Fire Corps program, evaluating the effectiveness of adopted strategies, and making changes as needed.

The five step process discussed above helps in the ongoing management of the unexpected in two ways. First, it provides structure for a regular, fresh look at the Fire Corps program's activities and efforts to manage the unexpected. Working through the five steps every few years – especially with new participants

– gives the program a fresh perspective on vulnerabilities and new ideas about strategies. Secondly, the five steps suggest how the organization can incorporate managing the unexpected into its ongoing operations, ensuring that everyone from the chief to the newest volunteer thinks about unexpected results when doing their job. Here are some examples.

**Step One – Secure management support.** Changes in priorities – and even in upper management personnel – can derail the effort to manage unexpected results if it does not maintain visibility and demonstrate its value. One useful tool is regularly scheduled reports to upper management about activities and outcomes.

**Step Two – Assess the environment and history.** The environment of a Fire Corps program is not static. Changes in seemingly unrelated matters – for example, a reduction in paid department administrative staff – can affect the operations and resources of the Fire Corps program. Stay alert for changes by reading reports, budgets, and proposals for new activities and maintaining contacts throughout the department. Empower Fire Corps volunteers to advise program leaders of changes they observe.

**Step Three – Lay the groundwork.** Identify department needs and establish Fire Corps members' functions. Communities' needs change over time, and Fire Corps volunteers can help the department meet those needs. Identify new opportunities for the Fire Corps program and document significantly expanded functions either in new position descriptions or by expanding existing positions. When new positions and functions are added, examine them under Steps Four and Five and adopt appropriate strategies.

**Step Four – Imagine the unexpected.** Encourage everyone associated with the Fire Corps program to think every day about unexpected results – not as a separate task, but as part of their regular activities. Empower Fire Corps volunteers to immediately correct problems within their authority (anyone can wipe up liquid spilled on the floor to prevent a fall) and to report to their supervisors problems that must be addressed by someone else (for example, changes to money-handling procedures at fundraisers).

**Step Five – Adopt strategies.** When a new potential for unexpected results is identified, work within the system to develop and adopt a strategy. The information in this *Guide*, other Fire Corps publications, the Fire Corps web site, and networking with other Fire Corps programs are all resources that can help identify solutions.

Fire Corps programs that consistently follow the five step process described in this *Guide* benefit themselves, their departments, their Fire Corps team, and the public. Programs that successfully manage the unexpected are more likely to have long term viability because they are more useful and pose less risk to their departments. They are also more attractive to volunteers, especially if they offer injury and liability protection. Departments are able to expand their services to the community without paying additional salaries. Fire Corps volunteers work in a safer environment, have clear responsibilities, and may benefit from injury and liability protection. Finally, the public benefits from the additional services performed by Fire Corps members, and is protected from harm by the program's screening and training procedures.

Fire Corps welcomes thoughts, comments, suggestions and additional contributions to support local programs. If you know of a resource that would be helpful or an innovative program effort, or if you have comments or suggestions about anything in this *Guide*, contact Fire Corps at [info@firecorps.org](mailto:info@firecorps.org) or 1-888-FC-INFO1 (324-6361).

# PART TWO:

## Resources

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Fire Corps would like to thank all of the departments and programs whose ideas, experience, and input have helped shape this *Guide*. To access the documents included in this section, click on the titles below or visit the Fire Corps web site at [www.firecorps.org](http://www.firecorps.org).

### PowerPoint Presentation

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Managing the Unexpected in Fire Corps Activities  
[www.firecorps.org/files/documents/FC\\_Liability\\_Guide\\_Presentation.ppt](http://www.firecorps.org/files/documents/FC_Liability_Guide_Presentation.ppt)

### Sample Documents

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**Bernalillo County Fire Department**  
**Bernalillo County, New Mexico**  
Volunteer Section Manual  
[www.firecorps.org/files/documents/Sample\\_docs/Bernalillo\\_Manual.pdf](http://www.firecorps.org/files/documents/Sample_docs/Bernalillo_Manual.pdf)

**California Department of Forestry and Fire Protection**  
Volunteer in Prevention Application, Service Agreement, Parental Consent for Minors  
[www.firecorps.org/files/documents/Sample\\_docs/CA\\_App\\_Service\\_Agreement\\_Parental\\_Consent.pdf](http://www.firecorps.org/files/documents/Sample_docs/CA_App_Service_Agreement_Parental_Consent.pdf)

**City of Glendale Fire Department**  
**City of Glendale, Arizona**  
Agreement and Confidentiality Statement  
[www.firecorps.org/files/documents/Sample\\_docs/Glendale\\_Confidentiality\\_Statement.pdf](http://www.firecorps.org/files/documents/Sample_docs/Glendale_Confidentiality_Statement.pdf)

Auto Accident  
[www.firecorps.org/files/documents/Sample\\_docs/Glendale\\_Auto\\_Accidents.pdf](http://www.firecorps.org/files/documents/Sample_docs/Glendale_Auto_Accidents.pdf)

Communications and Technology  
[www.firecorps.org/files/documents/Glendale\\_Communications\\_Technology.pdf](http://www.firecorps.org/files/documents/Glendale_Communications_Technology.pdf)

Discipline Policies  
[www.firecorps.org/files/documents/Glendale\\_Discipline\\_Policies.pdf](http://www.firecorps.org/files/documents/Glendale_Discipline_Policies.pdf)

Drivers License Information Request  
[www.firecorps.org/files/documents/Sample\\_docs/Glendale\\_License\\_Information.pdf](http://www.firecorps.org/files/documents/Sample_docs/Glendale_License_Information.pdf)

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**Safety Policy**

[www.firecorps.org/files/documents/Sample\\_docs/Glendale\\_Safety\\_Policy.pdf](http://www.firecorps.org/files/documents/Sample_docs/Glendale_Safety_Policy.pdf)

**Substance Abuse, Conduct, and Harassment Policy**

[www.firecorps.org/files/documents/Sample\\_docs/Glendale\\_Conduct\\_Policy.pdf](http://www.firecorps.org/files/documents/Sample_docs/Glendale_Conduct_Policy.pdf)

**Volunteer Agreement**

[www.firecorps.org/files/documents/Sample\\_docs/Glendale\\_Volunteer\\_Agreement.pdf](http://www.firecorps.org/files/documents/Sample_docs/Glendale_Volunteer_Agreement.pdf)

**Volunteer Application**

[www.firecorps.org/files/documents/Sample\\_docs/Glendale\\_Volunteer\\_Application.pdf](http://www.firecorps.org/files/documents/Sample_docs/Glendale_Volunteer_Application.pdf)

**Volunteer Fire Duties**

[www.firecorps.org/files/documents/Sample\\_docs/Glendale\\_Volunteer\\_Duties.pdf](http://www.firecorps.org/files/documents/Sample_docs/Glendale_Volunteer_Duties.pdf)

**Volunteer Roles and Responsibilities**

[www.firecorps.org/files/documents/Sample\\_docs/Glendale\\_Volunteer\\_Responsibilities.pdf](http://www.firecorps.org/files/documents/Sample_docs/Glendale_Volunteer_Responsibilities.pdf)

**Waiver of Liability**

[www.firecorps.org/files/documents/Sample\\_docs/Glendale\\_Liability\\_Waiver.pdf](http://www.firecorps.org/files/documents/Sample_docs/Glendale_Liability_Waiver.pdf)

**City of Las Vegas Department of Fire and Rescue****Las Vegas, Nevada****Waiver of Liability/Indemnification Agreement**

[www.firecorps.org/files/documents/Sample\\_docs/Las\\_Vegas\\_Liability\\_Waiver.pdf](http://www.firecorps.org/files/documents/Sample_docs/Las_Vegas_Liability_Waiver.pdf)

**King of Prussia Volunteer Fire Company****King of Prussia, Pennsylvania****Bylaws**

[www.firecorps.org/files/documents/Sample\\_docs/King\\_of\\_Prussia\\_Bylaws.doc](http://www.firecorps.org/files/documents/Sample_docs/King_of_Prussia_Bylaws.doc)

**Macomb Township Fire Department****Macomb Township, Michigan****Certificate of Training**

[www.firecorps.org/files/documents/Sample\\_docs/Macomb\\_Training\\_Certificate.doc](http://www.firecorps.org/files/documents/Sample_docs/Macomb_Training_Certificate.doc)

**Instructor Prerequisites**

[www.firecorps.org/files/documents/Sample\\_docs/Macomb\\_Instructor\\_Prerequisites.doc](http://www.firecorps.org/files/documents/Sample_docs/Macomb_Instructor_Prerequisites.doc)

**Operating Guidelines**

[www.firecorps.org/files/documents/Sample\\_docs/Macomb\\_Operating\\_Guidelines.doc](http://www.firecorps.org/files/documents/Sample_docs/Macomb_Operating_Guidelines.doc)

**Photographer Agreement**

[www.firecorps.org/files/documents/Macomb\\_Volunteer\\_Application.pdf](http://www.firecorps.org/files/documents/Macomb_Volunteer_Application.pdf)

**Volunteer Application**

[www.firecorps.org/files/documents/Macomb\\_Volunteer\\_Application.pdf](http://www.firecorps.org/files/documents/Macomb_Volunteer_Application.pdf)

**Volunteer Background Check Authorization**

[www.firecorps.org/files/documents/Macomb\\_Background\\_Check.pdf](http://www.firecorps.org/files/documents/Macomb_Background_Check.pdf)

**Ormond Beach Fire Department****Ormond Beach, Florida****Fire Corps Policy**

[www.firecorps.org/files/documents/2006-fire-corps-policy.doc](http://www.firecorps.org/files/documents/2006-fire-corps-policy.doc)

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**Russell Township Fire Department**

Russell Township, Ohio

Russell Auxiliary Force Manual

[www.firecorps.org/files/documents/Sample\\_docs/Russell\\_TWP\\_Manual.pdf](http://www.firecorps.org/files/documents/Sample_docs/Russell_TWP_Manual.pdf)**Sheppton–Oneida Volunteer Fire Company**

Sheppton, Pennsylvania

Membership Application

[www.firecorps.org/files/documents/Sample\\_docs/Sheppton-Oneida\\_Application.pdf](http://www.firecorps.org/files/documents/Sample_docs/Sheppton-Oneida_Application.pdf)

## Links to Resources

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**Citizen Corps Volunteer Management Page**[www.citizencorps.gov/councils/volunteer\\_mgmt.shtm](http://www.citizencorps.gov/councils/volunteer_mgmt.shtm)

On this page you will find resources for liability guidance for state liability laws and how to manage spontaneous volunteers in times of disaster.

**Emergency System for Advance Registration of Volunteer Health Providers Legal and Regulatory Issues Draft Report**[www.publichealthlaw.net/Research/PDF/ESAR%20VHP%20Report.pdf](http://www.publichealthlaw.net/Research/PDF/ESAR%20VHP%20Report.pdf)

This publication provides a thorough discussion of liability, licensing, and volunteer injury issues relating to volunteer health providers in emergencies. Includes state–by–state details on some issues.

**Fire Corps Resource Guide**[www.firecorps.org/files/documents/FC\\_Resource\\_Guide.pdf](http://www.firecorps.org/files/documents/FC_Resource_Guide.pdf)

A discussion of how to create a Fire Corps program or enhance an existing program, including sample documents.

**Fire Corps Web Site – Resources Page**[www.firecorps.org/page/623/Resources.htm](http://www.firecorps.org/page/623/Resources.htm)

Links to Fire Corps resources.

**Fire Corps Web Site – Sample Documents**[www.firecorps.org/page/733/Implement\\_a\\_Program.htm#sampledocs](http://www.firecorps.org/page/733/Implement_a_Program.htm#sampledocs)

Links to sample Fire Corps sample documents.

**National Volunteer Fire Council State Workers’ Compensation and Benefits Guide**[www.nvfc.org/index.php?id=871](http://www.nvfc.org/index.php?id=871)

A state–by–state summary of the application of workers’ compensation laws to fire and rescue volunteers.

**State Liability Laws for Charitable Organizations and Volunteers – 4th Edition**[www.nonprofitrisk.org](http://www.nonprofitrisk.org)

Beginning with an overview of the liability environment, this publication provides a state–by–state review of the evolving landscape of charitable immunity and volunteer protection laws. This document is found in the online Library of the Nonprofit Risk Management Center.

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**Volunteer Firemen's Insurance Services Resource Web Page**

[www.vfis.com/resources.htm](http://www.vfis.com/resources.htm)

Check under Risk Control Communique and Employment Practices Update for materials on general and employment practices liability.

Risk Control Communiques include – but are not limited to – the following topics:

- [Determining Discipline and Termination Administration](#)
  - [Electronic Communication Systems\(Internet & E-mail Usage\)](#)
  - [Exit Interview Procedures](#)
  - [Fidelity](#)
  - [Grievance Procedures](#)
  - [Harassment and Discrimination Prevention Training](#)
  - [Job/Position Descriptions](#)
  - [Performance Management / Evaluations](#)
  - [Pregnancy Discrimination and Accommodations](#)
  - [Progressive Discipline and Terminations](#)
  - [Sexual Harassment](#)
  - [Weapons in the Workplace](#)
  - [Workplace Violence/Threats of Violence](#)
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## Endnotes

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<sup>1</sup> For information about junior firefighter programs, see the NVFC National Junior Firefighter Program webpage at [www.nvfc.org/juniors](http://www.nvfc.org/juniors).

<sup>2</sup> Fire Corps Resource Guide, Section Two, Getting Started, Assess Your Needs, Page 9, [www.firecorps.org/files/documents/FC\\_Resource\\_Guide.pdf](http://www.firecorps.org/files/documents/FC_Resource_Guide.pdf).

<sup>3</sup> Among activities that may be prohibited or inadvisable are entering a burning structure, using ladders longer than a specified height, using certain types of hoselines, riding on fire apparatus except in the cab with seatbelt fastened, operating hydraulic powered rescue tools, and working on energized electric equipment. *Junior Fire and Emergency Services Programs*, VFIS, 2007, Page 13.

<sup>4</sup> Fire Corps Resource Guide, Section Two, Getting Started, *Define Citizens' Roles*, Page 9, [www.firecorps.org/files/documents/FC\\_Resource\\_Guide.pdf](http://www.firecorps.org/files/documents/FC_Resource_Guide.pdf).

<sup>5</sup> For information about the application of OSHA to state and local government employees, see [www.osha.gov/dcsp/osp/public\\_sector.html](http://www.osha.gov/dcsp/osp/public_sector.html) and [www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=19659](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=19659). For information about the application of OSHA to volunteer firefighters, see <http://nvfc.org/index.php?id=762>.

<sup>6</sup> See for example Michigan Department of Labor and Economic Growth, General Industry Safety Standards, Part 74 Fire Fighting Rule 408.17401 [www.michigan.gov/documents/CIS\\_WSH\\_part74\\_35544\\_7.pdf](http://www.michigan.gov/documents/CIS_WSH_part74_35544_7.pdf); New York, OSHA Opinion Letter December 30, 1991 at [www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=20513](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=20513).

<sup>7</sup> A legal entity is an organization that is recognized by law as having a separate identity – much like that of a person – and thus is legally permitted to enter into contracts and to sue or be sued in its own name. Organizations often become legal entities by incorporating under their state's law. Special districts may also be separate legal entities.

<sup>8</sup> Additional state-by-state information is available through the National Volunteer Fire Council web site, [www.nvfc.org/index.php?id=871](http://www.nvfc.org/index.php?id=871).

<sup>9</sup> “Common law” is law based on decisions of federal and state courts in individual lawsuits, which is relied upon to decide the outcome in later cases.

<sup>10</sup> A good beginning point for identifying state volunteer liability laws is *State Liability Laws for Charitable Organizations and Volunteers – 4th Edition*, available in the online Library of the Nonprofit Risk Management Center, [www.nonprofitrisk.org](http://www.nonprofitrisk.org).

<sup>11</sup> A good beginning point for identifying Good Samaritan Laws and other laws that provide liability protection to volunteers in a specific state is the table in Appendix D to the *Emergency System for Advance Registration of Volunteer Health Providers Legal and Regulatory Issues* draft report dated May 2006, which is available free online through a link on the web site of the Centers for Law and the Public's Health, at [www.publichealthlaw.net/Projects/ESAR-VHP.php](http://www.publichealthlaw.net/Projects/ESAR-VHP.php). This report was prepared by the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities in partnership with the U.S. Health Resources and Services Administration.