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## VOLUNTEER PROTECTION LAWS vs. DIRECTORS' & OFFICERS' INSURANCE

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There is a growing belief by nonprofit organizations that directors' and officers' liability insurance is no longer an essential risk management tool for protecting an organization for a wrongful act or omission. This belief exists because of a growing awareness by nonprofit organizations of liability protection afforded to them due to the federally mandated "Volunteer Protection Act of 1997." This protection provided by federal and state statutes was created to encourage volunteerism among communities. At its core, the "Volunteer Protection Act" was a giant leap forward for the nonprofit community. However, the new protections afforded to the nonprofit community is deficient and does not address significant exposures faced by most nonprofit organizations.

### **What is the Volunteer Protection Act and what does it cover?**

*"No volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer acting on behalf of the organization or entity."*

Under this definition of coverage, protection is afforded to the volunteers unless one of the following occurs:

- The volunteer does something which is OUTSIDE their job description
- The volunteer does not have the required licenses or certificate for the job being performed
- The volunteer's act that caused the injury was as a consequence of the operation of a motor vehicle
- The volunteer caused the injury with willful, criminal or reckless misconduct or gross negligence.

While the new laws allow nonprofit organizations to feel secure that their liability against wrongful acts are reduced, the laws are also creating a false sense of security since they have significant limitations.

### **Why do I need Directors' and Officers' Liability Insurance?**

While extremely valuable, the intent of volunteer protection laws are to limit liability if a claim falls within the scope of the protection. However, the law does **not** prevent the volunteer from being sued. Furthermore, compensated individuals (the most obvious being compensated employees and directors or officers) are not provided protection under the law.

According to the laws, protection is also not provided if the misconduct is a crime of violence, hate, sexual in nature, committed while under the influence of alcohol, or if its a violation of civil rights, labor, or tax provisions. For example, according to a Watson Wyatt Worldwide Survey Report, 22% of all claims are based on discrimination. As this is a civil rights violation, coverage would not be afforded to the volunteer being sued.

More importantly, should a volunteer be protected under volunteer protection laws, nothing in the law acts as a protection against a claimant seeking a remedy against the entity itself. Currently, most claimants automatically name the entity itself into its suit.

Directors' and Officers' Liability Insurance serves to protect an individual and entity against significant exposures which may not be covered under volunteer protection laws, such as those highlighted above. Generally, a volunteer may not learn whether or not their situation is applicable until a court determines the law to be applicable. Until this determination is reached, directors' and officers' insurance indemnifies the association and volunteer against legal defense costs. Most directors' and officers' policies are duty to defend policies. This means the insurance carrier has an obligation to provide a defense on behalf of the named insured.

The Volunteer Protection Act is a valuable piece of legislation. However, the act was never intended to replace existing risk management techniques, such as directors' and officers' insurance. Appropriate risk management requires a nonprofit organization to take all appropriate steps necessary to insure a secure financial future, even if some precautions overlap.

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