

Best Practices for New Hampshire Libraries

VOLUNTEERS

REVISED 9/2011

Volunteers are an integral part of many New Hampshire libraries. Besides undertaking tasks to assist librarians with ongoing library activities, volunteers are a major source of community support for libraries at annual Town Meetings and during the budget process. This guide is intended to generate a greater awareness of the laws that exist on the state and federal level regarding volunteers so that New Hampshire libraries can make informed choices about how, when, and why they use volunteers in their libraries. The Best Practices highlighted in each section are what every library should strive towards as they review and revise their policies and procedures. All libraries are encouraged to communicate with their legal counsel, the New Hampshire Department of Labor, and the United States Department of Labor as volunteer policies and procedures are reviewed and revised to ensure compliance with current state and federal laws.

New Hampshire Department of Labor (NH DOL)

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U.S. Department of Labor (US DOL)

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YOUTH VOLUNTEERS

While [NH RSA 276-A](#) specifies age 12 as the minimum age for employment, [US DOL Child Labor Bulletin 101 WH-1330](#) specifies age 14. Federal law takes precedence over state law, so New Hampshire libraries should not have volunteers under the age of 14. If a US Department of Labor inspector visited your library and found volunteers under the age of 14, the fine is a minimum of \$600 per underage volunteer per instance of volunteering.

Youth volunteers have specific hours/days that they can work/volunteer. For 14 and 15 year olds, see [US DOL Child Labor Bulletin 101 WH-1330](#). For 16 and 17 year olds, see [NH RSA 276-A](#).

A Youth Employment Certificate, specified by [NH RSA 276-A:5](#) for youths age 12 to 17, ***is required*** even if the work is “casual.” “Casual” is defined in [NH RSA 276-A:3-VII](#) as “...employment which is infrequent or of brief duration or productive of little or sporadic income or not commonly held to establish an employer or employee relationship.” Volunteer work should fall into this category. However, if a youth is performing community service due to a court order, that youth does not have to obtain an employment certificate based on

[NH LAB 1002.01](#). Other Best Practices outlined below for youth volunteers do apply to youth court-ordered community service volunteers.

Outside organized non-profit groups who volunteer to carry out a specific project at a library have the burden of complying with federal and state labor laws. For example, if a Boy Scout troop asked if they can paint the library's shed as part of a badge project, the Boy Scout organization would be responsible for complying with child labor laws for that volunteer project.

BEST PRACTICES:

1. To comply with both state and federal laws, the following items **must** be on file for any youth volunteer that is volunteering under the auspices of the library:
 - A copy of a Youth Employment Certificate for any volunteer under the age of 18 (except for youth performing community service through a court order).
 - Proof of age (photocopy of birth certificate; driver's license if 16 or 17) that shows the volunteer is 14 years old or older.
2. The NH Department of Labor suggests that each volunteer have a volunteer agreement signed by the youth, the parent(s), and the library director on file at volunteer organization that specifies the volunteer duties and states that no monetary payment for the completion of those duties is expected. Volunteer agreements should be updated on a regular basis (annually is ideal). A sample agreement is available at http://www.labor.state.nh.us/sample_volunteer_svc_agr.pdf.
3. If a library's Friends group utilizes youth volunteers to do projects on library property, verify their compliance with state and federal labor laws.

ADULT VOLUNTEERS – GENERAL

It is very clear in both state ([NH RSA 275.42-I](#); [NH RSA 279:1X](#); and [NH LAB 803.05](#) Exemption) and federal law ([29 CFR 553.100-.106](#) and [WH Publication 1297 "Employment Relationship" of the Fair Labor Standards Act](#)) that a volunteer cannot take the place of a paid worker who is already employed by the library. For example, a Town's Board of Selectmen would not be able to replace a paid library employee with a volunteer simply because they wanted to save money in a tight budget year.

The main issue surrounding adult volunteers in New Hampshire libraries concerns the amount of specificity regarding the type of work and when it needs to be performed. Volunteer work should be informal, meaning if the volunteer didn't show up, the library's regular operations would not be adversely affected. According to the US Department of Labor, if a volunteer is being told to be at the library to work on a specific day at a specific time for a designated amount of time, the volunteer is now defined as an employee by the US DOL. This is a critical issue for those libraries using volunteers to keep the library open in the absence of regular paid staff. If

volunteers are being told to open the library on a specific day at a designated time and to keep the library open for a set period of time, those individuals are not considered volunteers by the US DOL.

BEST PRACTICES: To determine if your library's volunteer duties and requirements are acceptable under state and federal law, ask these questions:

1. Is the volunteer taking the place of a paid worker already employed by the library? This is illegal under both state and federal statutes.
2. Are the volunteer's duties already a major portion of a paid staff person's job description? If so, that volunteer could be considered an employee by US DOL.
3. Is the volunteer being told to come in at a specific time for a specific duration on a specific day? According to US DOL, yes to all three of those criteria classifies them as an employee.
4. Would the non-arrival of a volunteer adversely impact the regular day-to-day operation of the library? If yes, then the volunteer is taking on duties that are already a major part of a paid staff person's responsibilities and would therefore be classified as an employee by US DOL.
5. Does your library need to have certain volunteer tasks done on a regular scheduled basis? These tasks should probably be done by a paid employee, not a volunteer. Examples of tasks that are ongoing yet unscheduled (and could be done by a volunteer) includes book covering, book repair, disc cleaning, shelf reading, etc.

ADULT VOLUNTEERS – LIBRARY TRUSTEES

According to [NH RSA 202-A:11](#), elected library trustees have certain responsibilities, including the appointment of a librarian (who is not a trustee) to oversee the day-to-day operation of the library. Elected library trustees have volunteered to hold their trustee positions, and have fiscal and legal responsibility for the library as a whole. According to [NH RSA 202-A:14](#), library trustees cannot be compensated for their trustee duties except for necessary travel expenses related to professional meeting attendance.

If a trustee wants to volunteer in the library in a capacity other than being a trustee, the volunteer duties should be clearly spelled out in a volunteer agreement in order to show that the volunteer duties are not related to the individual's duties as trustee. There is a potential for conflict of interest in this situation given that the trustee would be supervised by library employees that are either hired by the Board of Trustees or approved by the Board of Trustees to be hired by the Librarian.

A number of libraries in NH have indicated that they pay their library trustees to act as substitute employees when regular library employees are unavailable. This is not specifically prohibited by state law since the trustee is technically not getting paid to carry out their trustee duties, but does open up some potential ethical and legal conflict of interest issues for the library profession. According to [NH RSA 202-A:17](#), library employees can only be removed by library trustees. If the trustee is also paid as an employee, there is a definite conflict of interest if the performance of the individual as a library employee is problematic. What recourse would the

librarian have to recommend the removal of an individual as an employee if that employee is also a library trustee?

BEST PRACTICES:

1. If a trustee wants to volunteer in the library in a capacity other than being a trustee, their volunteer duties and supervision by library staff should be clearly spelled out in a volunteer agreement signed by the individual and the library director. This agreement should also be reviewed by the library's Board of Trustees so that the entire governing body is aware of the scope of the volunteer work and potential conflict of interest concerns.
2. Library trustees should amend their by-laws to include a statement that prohibits elected trustees to be paid employees of the library during their tenure as trustee, and that immediate family members of trustees cannot work as employees of the library for the duration of the elected trustee's tenure.

ADULT VOLUNTEERS – LIBRARY EMPLOYEES

[Federal law 29 CFR 553.101](#) is very specific about employees volunteering their time in their place of work: "An individual shall not be considered a volunteer if the individual is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer." This law is to prevent employers from coercing employees into "volunteering" their time to finish work under threat of hours reduction, job loss, etc. Even if coercion is not taking place, the perception of coercion exists if the employee is violating the law by performing their job duties outside of their normal work hours without pay.

BEST PRACTICE:

If any library employee is consistently volunteering their time to complete duties listed in their job description, they are putting the library at risk by violating federal law. If those employees have difficulty getting their work done in the designated time they are paid to work, the library trustees and library director need to re-evaluate the situation and potentially make adjustments to job descriptions, budgets, and employee work hours.

ADULT VOLUNTEERS – COMPENSATION

According to [Federal law 29 CFR 553.106](#), volunteers may be paid expenses or nominal fees for their service without losing their status as volunteers. Appropriate expenses include uniform allowance, transportation and meals reimbursement, tuition reimbursement, etc. [NH RSA 202-A:14](#) specifies that library trustees cannot be paid for performing their trustee duties, but may be reimbursed for travel expenses related to professional meeting attendance.

BEST PRACTICE:

Before compensating any volunteer, contact the library's legal counsel to determine if the compensation or reimbursement changes their status from volunteer to employee.

VOLUNTEERS AND LIABILITY

Federal law [42 USC Chapter 139](#) addresses the liability of volunteers during the performance of their volunteer duties. This federal law, called the Volunteer Protection Act (VPA) of 1997, states that a volunteer is immune from personal liability as long as the organization for which they are volunteering has a record of the volunteer and their scope of duties, and the volunteer was acting without willful or grossly negligent misconduct, and the incident does not include the operation of a motor vehicle. In 1998 New Hampshire took advantage of the “opt out” for the federal VPA. According to an article by Paul Sanderson, Esq. for the Local Government Center in 2007 (http://www.nhlgc.org/publications/item_detail.asp?TCArticleID=51), “...the VPA does not apply to any civil action against a volunteer in a New Hampshire court in which all parties are citizens of NH (see Chapter 129, Laws of 1998). Note that this federal law could apply to civil actions brought against a New Hampshire municipality or a New Hampshire volunteer in another state, or if the injured person or volunteer is not a New Hampshire citizen.”

[NH RSA Chapter 508:17](#) deals with the state’s special liability protection for volunteers. According to the same article cited above, “...volunteers are immune from civil liability for ordinary negligence, so long as they are acting within the scope of their duties for the organization. There are limits to the protection. The immunity does not extend to “transportation” activities, and does not protect against gross negligence or reckless criminal conduct.”

BEST PRACTICES:

1. Have a written, signed volunteer agreement on file for all volunteers, listing their status as a volunteer and a specific list of their volunteer duties.
2. Update volunteer agreements on an annual basis.
3. Determine what volunteer liability coverage exists through your Town’s insurance policy.
4. Speak to the library’s legal counsel about the library’s liability concerning volunteers.

VOLUNTEERS AND PATRON PRIVACY

[NH RSA 201-D:11](#) states that “records...may be disclosed to the extent necessary for the proper operation of such libraries.” While volunteers may not be specifically addressed in this statute, the phrase “proper operation of such libraries” is key to interpretation. Proper operation means full compliance with state and federal labor laws. If a library is asking a volunteer to a) perform duties that are already a major part of a paid employee’s job, or b) expects a volunteer to perform duties that, if not performed, would adversely affect the library’s day-to-day operation, the library is violating state and/or federal labor laws.

A library staff person violating [NH RSA 201-D:11](#) could be removed from employment and experience a potentially significant financial impact. If a volunteer violates the RSA, the only punishment would be prohibition from volunteering in the library. In each case the library’s reputation would be damaged, but the

removal of a staff person from employment is a more significant redress than simply prohibiting an individual from volunteering their time in the library.

It has been suggested that volunteers should sign a confidentiality agreement to remind them of the seriousness of [NH RSA 201-D:11](#). Unfortunately the same problem still exists – there isn't a significant impact on the volunteer if they violate the agreement.

BEST PRACTICES:

1. Do not allow volunteers to have access to patron records, including personal identifying information or circulation records.
2. Conduct an annual review of the duties your library volunteers perform to ensure that volunteers do not have access to patron records.