

VOLUNTEERS

#490

1.0 STATEMENT OF PURPOSE. Davis County and its citizens benefit from the voluntary participation of many people who wish to aid the community as volunteers in County government. Volunteers assist in a variety of areas through several departments and programs and often render invaluable services

Because of unavoidable issues such as liability, responsibility, the protection of both the County and volunteers, and in light of current law and other risks of litigation, it is wise to develop a countywide policy as to volunteers, their functions, and status. Some County departments have longstanding volunteer programs and traditions, while others do not use or anticipate using any volunteers. This policy is not intended to specify qualifications, operational rules, or guidelines for any specific department or program but rather to declare a general policy for volunteers in Davis County government that will apply to volunteers in all departments and programs.

Beyond actual statutes or specific case law, the appellate courts have emphasized increasingly that public entities ought to adopt policies regarding the various functions of the County, train its employees and other persons such as volunteers with respect to such policies, and then monitor compliance with those policies, therefore, in order to avoid effective legal challenges, the County ought to adopt a policy regarding volunteers.

2.0 SUMMARY OF CURRENT STATE LAW. Several Utah statutes provide for volunteers:

1. Section 63-30b-2, *Utah Code Ann.*, provides that any person performing volunteer services on behalf of a public entity is immune from liability unless the acts or any omissions of that volunteer were:
 - A. grossly negligent;
 - B. not made in good faith; or
 - C. made maliciously.

2. The *Volunteer Government Worker's Act*, as set forth in Title 67, Chapter 20, *Utah Code Ann.*, provides in Section 67-20-3 that a volunteer is considered a government employee for purposes of:
 - A. receiving workers' compensation medical benefits;
 - B. the operation of motor vehicles if the volunteer is licensed; or
 - C. liability protection and indemnification normally afforded paid government employees.

In addition, Section 67-20-4 provides that a volunteer and the services performed by the volunteer must be approved by the County in order to come under the provisions of this act. This of necessity requires a policy and procedure for the County to approve volunteers.

3. Sections 78-19-1 through 78-19-3, *Utah Code Ann.*, provide liability protection for volunteers performing services for non-profit organizations. Services provided to a public entity are specifically excepted from these sections.

There are a few cases addressing volunteers rendering services to public entities. However, there is a significant 1994 case to be considered. The Utah Supreme Court held in *Gourdin v. SCERA*, 845 P.2d 242, that volunteers are not covered by Workers' Compensation unless such coverage is specifically authorized by statute. Because of this case, it is important that all volunteers be approved and come within the provisions of the Volunteer Government Workers Act.

3.0 VOLUNTEER POLICY BACKGROUND. Davis County has not previously had an existing comprehensive County-wide policy for volunteers. However, Policy No. 190 of the *Davis County Personnel Policies and Procedures* does provide in Section 1.0 that:

Davis County provides Workers' Compensation benefits to all County employees and volunteers who become injured on the job and cannot perform their normal duties or who contract occupational diseases as covered under the Workers' Compensation Act.

Some of the departments have their own volunteer policies and arrangements. The Davis County Sheriff's Office has provided for its volunteer programs in Volume 1, Chapter 5, Section 01-05-00.00 of its *Policy and Procedure Operations Manual*. That section states guidelines and rules with regard to the Sheriff's reserve unit, search and rescue, mounted posse, special deputies, and auxiliary deputies. The Davis County Sheriff's Office has also provided for citizen volunteers in its *Corrections Division Policy and Procedures Manual*. The County Attorney's Office has a victims' program that involves volunteers and has adopted some operational guidelines for those volunteers. The Davis County Library Board has adopted a brief policy relating to the recruitment and utilization of volunteers in the Davis County Library system. The Office of Community and Economic Development has some policies regarding volunteers at the Antelope Island facility.

3.1 CONFLICTS WITH OTHER POLICIES. None of the current department or County policies will be detrimentally affected by the adoption of this policy. This policy shall, however, supersede any of the provisions of the above mentioned or other existing volunteer policies within Davis County government to the extent that this policy specifically contradicts or conflicts with any provision of those policies.

4.0 COMPENSATION. Volunteers shall not receive compensation for their services to or on behalf of the County. Subject to the budgets and policies of each department, volunteers may, however, be reimbursed for their per diem and travel expenses as well as other actual expenses

incurred in the performance of their volunteer services to the County or in County sponsored programs. Any such reimbursements shall be made in accordance with the *Davis County Financial Policies and Procedures* and Policy No. 210 of the *Davis County Personnel Policies and Procedures*.

5.0 STATUS. A volunteer is not, and shall not be deemed to be, an employee of the County nor have merit status except as provided by statute. Volunteers shall not be entitled to any employee privileges granted by the County to its compensated merit or other employees. Volunteers shall not be deemed to be nor are they authorized to act as deputies of the County with the exception of those volunteers qualifying and acting as reserve officers or auxiliary deputies in the Davis County Sheriff's Office under Section 01-05-05.00 of the *Davis County Sheriff's Office Policy and Procedures Operations Manual*.

6.0 APPROVAL PROCESS. Any person desiring to be a volunteer for any department or program of Davis County or to attain volunteer status under applicable State law must either submit a volunteer application which will include the volunteer's name, address, telephone number, contact person in the event of an emergency, department, and nature of the anticipated volunteer services and any other information required by the department, program, or Personnel Office that may be necessary for a background check or determination of the qualifications and suitability of the individual.

7.0 DEPARTMENT GUIDELINES REQUIRED. Each County department or program desiring to recruit and utilize volunteers shall establish written guidelines and procedures for applications, tests, qualifications, evaluations, and selection of volunteers. The guidelines and procedures must be reviewed by the Personnel Office and approved by the Board of County Commissioners.

7.1 VOLUNTEER JOB DESCRIPTIONS REQUIRED. Initial written volunteer job descriptions shall be prepared by each department utilizing volunteers. The volunteer job description shall set out, with particularity, the various duties and qualifications required of any particular volunteer position. The Personnel Office shall approve and maintain final versions of job descriptions. Volunteers must satisfy the minimum requirements of the job description.

7.2 CRIMINAL RECORD CHECKS. As a matter of safety and security, complete criminal records checks may be required of some volunteers and court-ordered community service volunteers before approving and accepting them as county volunteers and assigning them to a department. These volunteers will be required to sign a Criminal Records Check Request Form. Criminal Records checks will be conducted by the Personnel Office.

7.3 RECORD KEEPING REQUIREMENTS. Each County department and program accepting and approving persons as volunteers shall maintain a record of that approval and provide a confirmation to the Davis County Personnel Office of the approval of that volunteer. That confirmation shall contain the volunteer's name, address, telephone number, the department or program, date of approval, volunteer service period, and volunteer position or function and other

pertinent information identified by the Personnel Office.

7.4 REPORTING. Each department utilizing volunteers shall maintain records of volunteer activities. Such records should address recruitment, volunteer job descriptions, evaluations, and reports on activities and expenses. Records shall be maintained for three years after the volunteer serves and then shall be destroyed. This information shall be made available to the Clerk/Auditor or Personnel Director upon request. Each department utilizing volunteers shall report any changes in the department, program, or function of each volunteer to the Personnel Department, including the termination of the volunteer.

8.0 WORKERS' COMPENSATION. Workers' Compensation benefits, which shall be limited to medical benefits, are provided to all County volunteers who become injured on the job and cannot perform their normal duties or who contract occupational diseases as covered under the Workers' Compensation Act. Persons who are not duly approved as volunteers in the manner set forth in this policy will not qualify for any entitlements or benefits under the Workers' Compensation Act. Each department shall assure that any claimant for benefits under the Workers' Compensation Act is, in fact, documented as a volunteer for the County.

8.1 ELIGIBILITY. Volunteers are eligible for worker's compensation insurance when:

- A. the accident, injury, or occupational illness was incurred by the volunteer in the course of, or arising from, the performance of the duties of the volunteer's job description;
- B. the volunteer was supervised by a paid employee or officer of Davis County; and
- C. the volunteer completed a volunteer application form and was approved and accepted by Davis County as a volunteer.

9.0 AUTHORITY. Volunteers have no authority to officially represent or bind the County with respect to any contractual or enforcement matters. Volunteers represent the County to the public through their conduct and performance of services and must be circumspect and act competently and reasonably as circumstances may require.

10.0 BADGES AND UNIFORMS. Volunteers shall be required to wear a County volunteer identification badge during their voluntary service unless otherwise specified by the written rules and guidelines of the department for which they are volunteers. The identification badges shall be provided by the Personnel Office. Volunteers shall not wear any County uniforms unless specifically authorized by the written policy of the department for which they are volunteers.

11.0 FUNCTIONS. Volunteers will be utilized by the department and programs as the Administrative Officers and program administrators deem appropriate, reasonable and necessary. If any service or act in any capacity on behalf of the County is required by law or other County policy to be performed by a person who is a County officer or employee, then a volunteer, who is not a County officer or employee, should not perform such service or act except as authorized by law.

12.0 STANDARDS OF CONDUCT. The rules and standards of conduct which apply to County officers and employees shall also apply to all volunteers. If a volunteer conducts himself or herself in a manner which discredits the County or is in violation of those rules and standards of conduct, the Administrative Officer shall terminate that volunteer's status as a County volunteer and inform the County Personnel Office of that termination and the reasons for the termination. All volunteers shall receive a copy of the Volunteer Code of Conduct and shall sign in agreement to comply with all its provisions.

13.0 LIABILITY. Because the *Utah Governmental Immunity Act* as set forth in Title 63, Chapter 30, *Utah Code Ann.*, includes volunteers for purposes of liability, all County volunteers must be duly approved and given official status as a County volunteer as set forth in this policy.

13.1 DEFENSE AGAINST CLAIMS. The County shall, within the requirements of law, defend any action brought against the volunteer arising from any act or omission of the volunteer occurring during the performance of the volunteer's duties and within the scope of the volunteer's officially approved arrangement with the County for volunteer services. Before the County will defend any volunteer against a claim, the volunteer must make a written request to the County for a legal defense and submit it within ten days after the service of any process upon the volunteer. The request may be filed within a longer period if the delay does not prejudice the County in any manner in maintaining a defense of the volunteer.

13.2 DEFENSE DECLINED. The County may decline to defend any action against a volunteer if the County or a court determines that the act or omission in question did not occur during the performance of the volunteer's duties or within the scope of his officially approved volunteer arrangement or status; that the injury or damage resulted from the fraud or malice of the volunteer; or that the injury or damage on which the claim was based resulted from the volunteer's driving a vehicle or being in actual physical control of the vehicle:

- A. with a blood alcohol content equal to or greater by weight than the established legal limit,
- B. while under the influence of alcohol or any drug that rendered the volunteer incapable of safely driving a vehicle, or
- C. while under the combined influence of alcohol and any drug to the degree that rendered the volunteer incapable of safely driving a vehicle; or if the injury or damage on which the claim was based resulted from the employee being physically or mentally impaired so as to be unable to reasonably perform his volunteer function because of the use of alcohol, a controlled substance or the combined influence of alcohol and a controlled substance.

14.0 BUDGETS AND EXPENDITURES. If there is a fiscal impact attributable to volunteers within a department, that department's budget should include a fiscal plan within the general budget of that department stating the anticipated expenditures that pertain to that

department's volunteer programs.

15.0 TERMINATION. Any volunteer may terminate his or her volunteer status and relationship to the County at any time. The County also may terminate the volunteer's status as a volunteer and terminate any relationship with the volunteer, with or without cause, at any time. Departments shall notify the Personnel Office when a volunteer no longer serves.

16.0 EQUAL OPPORTUNITY. Davis County should be considered an equal employment opportunity resource for volunteers to the same extent that equal employment is provided to employees and applicants for employment. Persons shall be accepted for volunteer services by the County regardless of race, gender, or other protected status.

17.0 MINIMUM AGE. Federal and state laws and regulations establish restrictions on the types of work-related activities in which young people, from ages 10 to 18, may participate. The same minimum age standards will be used to govern the work activities of minor volunteers.

18.0 YOUTH GROUP VOLUNTEERS. Youth volunteer activities sponsored by a recognized group may be permitted. Minor volunteers must be supervised by responsible adults with at least 1 responsible adult for each 8 minors. Group-sponsored youth volunteer activities must be approved in advance by the Administrative Officer. Youth group volunteer leaders shall complete a form indicating who is responsible for the youth, the names of the leaders and youth, and other pertinent information. A copy of the form shall be forwarded to the Personnel Office. If parent consent is required, the form shall be filed in the Personnel Office.

19.0 COURT ORDERED COMMUNITY SERVICE. Davis County may provide volunteer opportunities, at its discretion, for court-ordered volunteers in community service. All court-ordered community service volunteers must be screened and interviewed by the Administrative Officer, or the authorized representative of the Administrative Officer, and approved before service begins. Court-ordered community service volunteers must sign a volunteer application form and disclose the charges for which the Court has ordered community service, the number of hours of court-ordered community service, the Court issuing the order, and the contact person for the Court. No County department or office is required to accept a court-ordered volunteer, especially if the circumstances under which the volunteer's services are inappropriate or undesirable.

20.0 VOLUNTEER SERVICES BY COUNTY EMPLOYEES. County employees may, under appropriate circumstances, volunteer to provide uncompensated services to Davis County. Employees who are subject to the *Fair Labor Standards Act* and volunteer to provide services to the County which are similar to activities within their compensated job descriptions shall have their volunteer service hours considered compensable hours. The provision of such volunteer services is subject to the approval of the Personnel Director. Volunteer services to Davis County which are unrelated to the employee's compensated job description or which are provided by employees who are exempt under the *Fair Labor Standards Act* shall not be considered compensable.

21.0 TRAINING. Departments utilizing volunteers shall develop volunteer training programs, materials, and sessions as appropriate for the volunteer position. Volunteers shall complete such training and the Administrative Officer shall track, record, and report on the training of each volunteer.

22.0 VOLUNTEER RIGHTS. Volunteers are entitled to a workplace which is free from discrimination and harassment, including sexual harassment. Administrative Officers should treat any complaints from volunteers of discrimination or harassment seriously and cause appropriate investigations to be conducted and remedies pursued. Davis County encourages volunteer activities by persons who may be considered disabled under the *Americans with Disabilities Act* and similar laws or regulations. Where deemed advisable, after consultation with the County Personnel Office and County Attorney's Office, Administrative Officers may provide reasonable accommodations to disabled volunteers to permit them to more effectively provide volunteer services to the County.

23.0 DRUG TESTING. Volunteers will be subject to drug testing in accordance with Davis County Personnel Policies and Procedures #350, Drug Free Workplace Testing.