

QUESTION

From: Loring Webster [<mailto:NLW01@charter.net>]

Sent: Monday, February 13, 2017 1:50 PM

To: Israel Piedra

Subject: Question Regarding Library Staffing Rules

Hi Israel,

We have a question regarding staffing and confidentiality. Many small libraries rely heavily on volunteers, especially at the checkout desk. Others take a stand on “only paid staff should perform checkout since they have had a background check prior to being hired. All this has to do with confidentiality rules covered under RSA 201-D:11. Since the RSA is sufficiently vague as to who might have access during the course of the checkout, what would be your take on the above situation of volunteer vs. paid staff?

Happy snow day,

Loring

ANSWER

From: Israel Piedra [<mailto:ipiedra@lawyersnh.com>]

Sent: Tuesday, February 14, 2017 12:26 PM

To: Loring Webster

Subject: RE: Question Regarding Library Staffing Rules

Loring, after reviewing the law on this, I agree with the recommendations of the New Hampshire Department of Labor (~~attached~~)[[see page 2](#)].

In sum, there are two considerations. One is that libraries must make sure that the volunteer “task” at issue (in this case, manning the check-out desk) is an appropriate volunteer duty: i.e., the volunteer is not functionally taking the place of an employee, the volunteer himself/herself is not essential to day to day operation (essentially making them an employee), etc.. This is a labor law issue – distinct from the confidentiality question.

As far as confidentiality goes, the statute doesn’t prohibit volunteers from accessing confidential information, as long as it’s part of their proper role as a volunteer and in accordance with proper operational procedures of the library. As the DOL notes, however, best practice may be to prevent volunteer access to confidential information for a practical reason: volunteers have much less incentive than employees to protect confidential information, because they don’t have a job at stake.

So, with regard to RSA 201-D:11, volunteers aren’t prohibited from covering the check-out desk from time to time. However, preferably libraries would restrict those duties to paid employees for practical reasons. I would certainly recommend (I assume it’s being done already) that all libraries have volunteers sign a confidentiality agreement — regardless of whether they’re checking out patrons, and especially if they are.

Let me know if you have further questions,

Israel

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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.