



Best Practices for New Hampshire Libraries - VOLUNTEERS

Revised December 2019

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. The intention of this guide is 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 strongly encouraged to communicate with their legal counsel, the New Hampshire Department of Labor, and the United States Department of Labor as they review and revise library volunteer policies and procedures 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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Email web site contact form: <https://webapps.dol.gov/contactwhd/default.aspx>

ADULT VOLUNTEERS – GENERAL

It is very clear in both state ([NH LAB 803.05 Exemption](#); [NH RSA 275.42-II](#); [NH RSA 279:1-X](#)) and federal law ([29 CFR 553.100-.106](#)) 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 Library Trustees would not be able to replace a paid library employee with a volunteer simply because they want 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 did not show up, the library's regular operations would not be adversely affected. According to a US Department of Labor representative in a telephone conversation, if a volunteer is told to be at the library on a specific day at a specific time for a designated amount of time, the US DOL would define the volunteer as an employee. 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 because they are doing the major part of a paid employee's job (opening the library to the public).

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 the 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 the duties that are already a major part of a paid staff person's responsibilities and the volunteer 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? A paid employee, not a volunteer, should probably do these tasks. Examples of tasks that are ongoing yet unscheduled (and could be done by a volunteer) includes 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 operations of the library. Elected library trustees have volunteered to hold their trustee position, and have fiduciary and legal responsibility for the library as a whole.

If a library 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 a 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 ([NH RSA 202-A:14](#)) since the trustee is technically not getting paid to carry out their duties, but does open up some potential ethical and legal conflict of interest issues for the library profession and the municipality. According to [NH RSA 202-A:17](#), library employees can only be removed by the Library Board of Trustees. If a 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 library director 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 and reflected in their public minutes 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. Alternatively, the Library trustees could create and approve a policy regarding Trustees as employees/volunteers.

ADULT VOLUNTEERS – LIBRARY EMPLOYEES

Federal law [29 CFR 553.101](#) is very specific about employees volunteering their time in their place of employment: “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 hour’s 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 compensation.

BEST PRACTICES:

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 labor law ([29 CFR 553.101](#)). 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 adjust 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 expense related to professional meeting attendance.

BEST PRACTICES:

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

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. According to the Supremacy Clause within [Article VI of the US Constitution](#), federal law is the supreme law of the land (see article [The Supremacy Clause and the Doctrine of Preemption](#)), except when state law provides more protections for consumers, employees, and other state residents. If a US Department of Labor inspector visited your library and found volunteers under the age of 14, the minimum fine is hundreds of dollars per underage volunteer per instance of volunteering ([US DOL Child Labor Bulletin 101 WH-1330](#)).

Youth volunteers have specific hours/days that they can work/volunteer. For 14 and 15 year olds, see [US DOL Child Labor Bulletin 101](#) and [NH RSA 276-A](#). 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 15, ***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, the youth does **not** have to obtain a Youth Employment Certificate based on [NH LAB 1002.01](#). Other best practices (below) for youth volunteers do apply to youth court-ordered community service volunteers. For more information on the Youth Employment Certificate, see <https://www.nh.gov/labor/documents/youth-emp-certificate-and-information.pdf>

For youth ages 16 and 17, [NH RSA 276-A:4](#) specifies that an employer must have a signed written document from the youth's parent(s)/guardian(s) permitting the youth's employment. This holds true for youth volunteers ages 16 and 17. A Youth Employment Certificate is **not** necessary for youth volunteers ages 16 and 17. [NH LAB 2001.02](#) specifies what information the parental permission form must include. This parental permission form does NOT take the place of a volunteer agreement, since the employer (the library) is not signing the Youth Employment Certificate. This permission form must be on file with the library prior to the youth's first day as a volunteer. For a fillable Parental Permission form, visit <https://www.nh.gov/labor/documents/parental-permission.pdf>.

Outside organized non-profit groups who volunteer to carry out a specific project at the library have the burden of complying with federal and state labor laws. For example, if a Boy Scout troop asked if they could paint the library shed as part of a badge project, the Boy Scout organization would be responsible for complying with child labor laws for that volunteer project. Another example is a Friends of the Library group using youth volunteers to deal with donated books for the Friends' annual book sale. Since these groups are on library/municipal property while the volunteer work is being done, it is incumbent upon the library director and/or library trustees to verify with the Friends that they are complying with all federal and state labor laws, including age of volunteers, days of work, hours of work, and having the appropriate paperwork on file in their organization.

BEST PRACTICES:

1. To comply with federal law, youth volunteers should be 14 years of age or older.
2. To comply with state law, the following items **must** be on file for any youth volunteer that is volunteering under the auspices of the library:
 - **For youth 14 or 15 years of age:** a copy of a Youth Employment Certificate for any volunteer under the age of 16 (except for youth performing court-ordered community service). The Youth Employment Certificate is obtained by (1) the library completing the [Employer's Request for Child Labor form](#) and giving that form to the youth; (2) the youth brings the form to their school guidance office and/or their parents; (3) once the Youth Employment Certificate is issued, it is given to the library for child's personnel/volunteer file. Note that per NH law, a Youth Employment Certificate can be revoked by either the school or the child's parents at any time.
 - **For youth 16 or 17 years of age:** a Parental Permission form needs to be on file with the library. See [NH LAB 2001.02](#) for a list of specific information that needs to be included in this form, or use the [NH DOL Parent Permission form](#).
3. The NH Department of Labor suggests that each volunteer have a volunteer agreement signed by the youth, the parent(s)/guardian(s), and the library director on file 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 <https://www.nh.gov/dot/programs/scc/documents/SAMPLEVolunteerServiceAgreement-NHDOL10-28-101.pdf>
4. If a library's Friends group or other local non-profit organization utilizes youth volunteers to do projects on library property, verify the organizations' compliance with state and federal labor laws before they start volunteer work, and speak to legal counsel if there are doubts about compliance.

5. Be aware that [NH RSA 276-A:7-a](#) specifies that for violations of the NH youth employment law, the commissioner of the NH DOL may assess a civil penalty on the employer not to exceed to \$2,500 for each violation. Compliance with youth employment law is vital for the health of your library's budget!

VOLUNTEERS AND BACKGROUND CHECKS

NH state law requires background checks for anyone working or volunteering in a school (for more information about school employee/volunteer background checks, see [NH RSA 189:13-a](#) and a [NH Department of Education summary document about background checks](#)). While there are no legal requirements through the State of NH for criminal background checks of library employees or library volunteers, a number of Library Boards of Trustees are requiring a criminal background check as a condition of employment or volunteering, particularly if the employee/volunteer will be interacting with children on a regular basis.

For volunteer criminal record checks, two forms are needed: DSSP 256, [Criminal Record Release Authorization Form](#) and a [Reduced Fee Request Form](#). The reduced fee request form is authorized by [NH Administrative Rule Saf-C 5703.07](#), and allows any volunteers for public and non-profit entities, who will work with the elderly, disabled, or children, to pay a reduced fee of \$10 (usually fee is \$25). Both of these forms need to be submitted together. Visit <https://www.nh.gov/safety/divisions/nhsp/jib/crimrecords/> for a full description of how to submit (either by mail or in person).

There is no current NH law that specifies how to handle or dispose of criminal background check records once received. The only law in NH that refers to disposal of background checks is [NH Administrative Rule Saf-C 5704.06](#), which specifically refers to school transportation background checks. Further, there is no reference to the disposition of background checks in [NH RSA 33-A:3](#) as part of municipal records retention. Library Boards of Trustees should make sure to include the disposition of such background check records in an overall background check policy for library staff and volunteers, and should also consult with their attorney/the Town attorney to assess any other risk factors related to background check records and municipal liability.

BEST PRACTICES:

1. If background checks are desired, the Library Board of Trustees should implement a policy for background checks for the institution as part of overall library policy, as stated in [NH RSA 202-A:11](#). This way, any requirement for background checks is applied equally to all potential employees or volunteers who meet the criteria set forth by the governing body of the library.
2. Part of the policy adopted by the Library Board of Trustees should include who is paying for the cost of the background check: the potential employee/volunteer, or the Library. There isn't a NH law that specifies who pays the fee, so the Board of Trustees should make that clear in their policy and apply that equally to all potential employees/volunteers of the library.
3. Library Board of Trustees should, as part of an overall background check policy for library staff and volunteers, include a statement on the disposition of those records, and should consult with their attorney/the Town attorney to discuss municipal liability surrounding the disposition of background check records.

VOLUNTEERS AND LIABILITY

[Federal law 42 USC Chapter 139](#) addresses the liability of volunteers during the performance of their volunteer duties. Also called the Volunteer Protection Act (VPA) of 1997, the law 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, 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. titled Volunteers and Liability: An Overview of Legal Protections and Municipal Exposure \(see additional resources list\)](#), "...the VPA does not apply to any civil action against a volunteer in 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 and limits exists through your Town's property and liability policy, and share that information with your Library Board of Trustees.
4. Speak to the library's legal counsel about the library's liability concerning volunteers, particularly if the library is using volunteers to deliver books to homebound individuals (therefore taking part in transportation activities, which are exempted from the protections).

VOLUNTEERS AND PATRON PRIVACY

New Hampshire has two laws that refer to the privacy of library user records and information: [NH RSA 201-D:11](#), and [NH RSA 91-A:5](#) (paragraph 4). [NH RSA 91-A](#), also known as New Hampshire's Right-To-Know law, specifically exempts library user records from the provisions of the Right-To-Know law, meaning that they cannot be disclosed if anyone files a right-to-know request.

[NH RSA 201-D:11](#) states that library records "...may be disclosed to the extent necessary for the proper operation of such libraries." While the word "volunteers" is not specifically used in this statute, the phrase "proper operation of such libraries" is key to interpretation. Proper operation means full compliance with existing 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 operations, 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 that same RSA, the only punishment would be prohibition from volunteering in the library. In each case, the library's reputation in the community would be damaged, but the removal of the staff person from employment is a more significant redress than simply prohibiting an individual from volunteering their time in the library.

If a library patron felt that their library user record was disclosed in violation of [NH RSA 91-A:5](#), the town, library, and/or library director or other specific staff person or volunteer could be sued in superior court, potentially facing civil penalties of up to \$2,000. The library or town could also be required to pay attorney's fees. (See [NH RSA 91-A:8](#)).

It has been suggested that volunteers should sign a confidentiality agreement to remind them of the seriousness of [NH RSA 201-D:11](#). While that might serve as a good reminder, in reality the enforceability of the document

is very small since there isn't a significant legal impact on the volunteer if they violate the agreement. The major impact will be the tarnished community perception about the library if there is a problem that becomes public knowledge. With that in mind, it is a wiser course of action to prevent volunteer access to patron information/user records in the first place.

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 that your library volunteers perform, to ensure that volunteers do not have access to patron records.
3. Any library employees who supervise library volunteers should understand and enforce patron privacy as stated in [NH RSA 201-D:11](#) and [NH RSA 91-A:5](#).

ADDITIONAL RESOURCES:

“The Do’s and Don’ts of Supervising Library Volunteers” by Michelle J. Fernandez for *Public Libraries Online*, July 5, 2019: <http://publiclibrariesonline.org/2019/07/trashed/>

“Recruiting and Retaining Volunteers” by Kaitlin Throgmorton for *American Libraries*, May 31, 2016: <https://americanlibrariesmagazine.org/2016/05/31/recruiting-retaining-library-volunteers/>

“It’s All About the People: Obtain and Retain the Ideal Team” by Margaret Byrnes for *New Hampshire Town and City*, May/June 2015: <https://www.nhmunicipal.org/TownAndCity/Article/613>

“In the Public Sector, Volunteers and Interns are Not Employees” by Anne G. Scheer for *New Hampshire Town and City*, March/April 2013: <https://www.nhmunicipal.org/TownAndCity/Article/496>

“Volunteers and the Federal Fair Labor Standards Act” by Kimberly A. Hallquist, Esq. from *New Hampshire Town and City*, April 2009: <https://www.nhmunicipal.org/TownAndCity/Article/158>

“Volunteers and Liability: An Overview of Legal Protections and Municipal Exposure” by Paul Sanderson, Esq. from *New Hampshire Town and City*, March 2007: <https://www.nhmunicipal.org/TownAndCity/Article/51>

“Wolves in Volunteers’ Clothing: The Need for Background Checks” by Greg Langan for *New Hampshire Town and City*, Nov/Dec 2005: <https://www.nhmunicipal.org/TownAndCity/Article/6>

Maine State Library has a ton of templates and resources related to volunteers on their web site: <https://www.maine.gov/msl/libs/admin/vol/index.shtml>

This document was created in 2010 by Lori Fisher (Director of the Baker Free Library, Bow, NH 2008-2019; Assistant State Librarian, NH State Library, 2019-present); revised in 2013; and revised/expanded in 2019. Thank you to the following individuals for assistance with proofreading, editing, and legal consultation: Terry Knowles, retired Assistant Director of the Charitable Trusts Division of the NH Department of Justice; and Mary Searles, Law Librarian at the John W. King New Hampshire Law Library.