

Massachusetts and Federal Statutory Limitations on Liability for Charitable Organizations and their Directors or Trustees, Employees and Volunteers

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NONPROFIT SUMMARY MEMORANDUM

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This memorandum provides a summary analysis of the extent to which charitable organizations, their officers, directors or trustees, employees, and volunteers are exposed to liability under Massachusetts and federal law. Should you require legal advice as to how the law applies to a particular set of circumstances, we would be pleased to provide you with a more detailed discussion of the law, and answer any questions you may have.

In Massachusetts, charitable corporations, trusts and associations are not liable for more than \$20,000 in damages for injuries (“torts”) caused by the organization while engaging in charitable activities. An organization will be categorized as charitable if “the dominant purpose of its work is for the public good.” Its activities will be characterized as charitable if they contribute directly to its charitable purposes. Activities incidental to an organization’s charitable purposes, particularly activities carried on for the primary purpose of producing revenue, will be considered commercial and not charitable. This exception includes revenue-producing activities that are held for the benefit of the charitable organization, such as bake sales or dances, unless the activity of baking or dancing itself contributes to the corporation’s mission. The \$20,000 limitation does not apply to causes of action other than common law torts, so, for example, a claim for breach of contract, or a claim arising under the state consumer protection act, may result in damages exceeding \$20,000.

Officers, directors and trustees serving charitable corporations in Massachusetts as *uncompensated* volunteers are protected by statute from any personal liability for negligent acts or omissions undertaken in connection with the individual’s corporate duties. Intentional torts and grossly negligent acts or omissions are explicitly excluded from this protection. Nor does the statute provide immunity against suits that do not arise in tort. For example, an officer responsible for the corporation’s payroll tax withholdings may be liable for nonpayment under Massachusetts tax laws. Also, the statute does not provide *any* protection for *compensated* employees of charitable corporations. As in the case of charitable corporations, the officers, directors, or trustees activities from which plaintiffs’ claims arise must be non-commercial and must directly further the corporation’s goals to receive protection. Further, under a separate section of the Massachusetts statute, uncompensated officers, directors and trustees of *educational* institutions that are exempt from federal income tax by reason of being described in Section 501(c)(3) of the Internal Revenue Code also enjoy protection from liability for claims other

than tort, and the protection is not limited to claims arising out of the individual's conduct of non-commercial activities.

Volunteers for charitable organizations are not given special protection under Massachusetts law, but the federal Volunteer Protection Act of 1997 fills this gap by providing sweeping immunity to volunteers. It shields them from any claim arising from acts performed within the scope of the volunteer's responsibilities in the organization, provided the conduct was not of a particularly egregious variety. The VPA includes no specific limitation to claims in tort. To date, the VPA has been invoked in only one recorded case (not in Massachusetts), and it is only rarely cited in published commentaries.

Despite the broad terms of the statute, the absence of definitive case law interpreting them suggests care in relying on the protections they afford to charitable organizations and their officers, directors and trustees. Also, as a result of longstanding judicial disaffection with charitable immunity, courts tend to construe portions of the statutes' protections narrowly. Charitable corporations are therefore well-advised to consider procuring insurance coverage to supplement the charitable immunity. Notable gaps include liability not arising out of tort, and liability for activities that do not directly further a charitable purpose, such as most fund-raising events. Compensated employees of charitable corporations should be aware that they have no special protection against liability. Plaintiffs' lawyers will seek ways to remove or avoid the protections provided, so charities need to be careful, to obtain insurance when appropriate, and to follow risk management policies. Unfortunately, despite the statutory provisions described above, insurance companies do not appear willing to take them into account when calculating the cost of insurance for charitable organizations.

This memo provides general information only and does not constitute specific legal advice or legal opinion on any facts or circumstances.