



RISK MANAGEMENT FREQUENTLY ASKED QUESTIONS

4-H Youth Development

April 2005

General

1. Who should sign contracts for county level 4-H programs?

4-H Youth Development staff members are not authorized to sign contracts. Doing so may make the staff member personally liable. The entity responsible for the charges and terms of the contract should have an authorized individual sign the contract.

Signature authority for **university contracts** is only delegated to a few individuals at our UW System institutions. If you have a contract that will be paid from university administered funds, send the contract and a transmittal form to Dan Malacara, Director, Cooperative Extension Office of Budget and Fiscal Operations, 623 Extension Building, 432 North Lake Street Madison, WI 53706. Dan will forward the contract on to the proper individual for signature. Contact Dan if you have questions: daniel.malacara@ces.uwex.edu, phone: (608) 263-7941.

Consult with your county department head if the contract is a **county responsibility**. He/she may direct you to contact your county's financial officer or the county's legal counsel to identify the appropriate individual with signature authority.

If the contract/charges fall under the responsibility of the **4-H Leader's Association**, a designated officer of the organization should sign the contract.

2. If there is a lawsuit naming staff, the 4-H Leader's Association and individual volunteers, is legal representation available?

Staff will be represented by their employer, either the university or the university and the county, depending on the situation. The 4-H Leader's Association may or may not be covered by the county. It is advisable for the 4-H Youth Development staff member to consult with the county insurance/risk manager on this question. Individual volunteers who sponsor activities at their personal residence will need to have their homeowner's insurance respond. If driving a personal vehicle for a 4-H activity, the driver's automobile coverage is primary. Otherwise the county program should respond.

3. What are the liability issues with parent involvement (not enrolled as volunteers)?

If parents are volunteering more than once or twice, they should seriously consider going through the Youth Protection process and enrolling as a 4-H volunteer to be formally recognized under the county's insurance program. Otherwise, the parent's homeowner or auto coverage will be their only liability coverage.

4. Should we be contacting anyone at the state level to report injuries or claims? If so, whom?

Serious injuries and accidents should always be reported. Contact your 4-H Youth Development Liaison, District Director or the 4-H Youth Development Program Leader. Try to exercise good judgment in determining what should be reported. If in doubt, consult with your 4-H Youth Development Liaison. Always document the incident on an accident/incident form and keep it on file indefinitely.

5. If our county creates its own health form, who/how should it be reviewed?

We encourage the use of the UW System form (Consent for Medication Administration and Medical Treatment and Health History Questionnaire). This form is located at: <http://www.uwsa.edu/oslp/rm/forms/forms.htm>. The form has been designed to collect the information needed and it has been reviewed by legal counsel. If there is a reason you need to create your own health form, contact your 4-H Youth Development Liaison for assistance in having the form reviewed.

It is important to handle all health information in a confidential manner. If there is a need to obtain additional health information due to ADA accommodations, contact Christine Curley, UW-Extension Civil Rights Compliance Specialist, christine.curley@uwex.edu, phone: (608) 265-2406. She will obtain and handle the additional information that is needed.

Remember that health forms should be retained according to the records retention policy in a secure location. The records retention policy is located at: <http://www.uwex.edu/ces/4h/resources/policies/uwex.cfm>.

6. Should we be collecting Social Security numbers on forms and applications?

Social Security numbers should not be collected unless there is a specific need for the information. Two cases where it may be needed are for security clearance in visiting some governmental agencies, and when there is the expectation that the application will result a payment to the individual that may be taxable. Forms with personally identifiable information must be handled confidentially and stored in a secure location.

7. What is "Agent of the State" status? When should we seek this status for volunteers? What is the process we need to follow in requesting this status for volunteers?

"Agent of the State" status essentially means an individual is serving as a representative of the state. Under special circumstances, 4-H volunteers may be covered by the university when they are assuming a role normally carried out by a staff member, and the role is documented and approved by the UW-Extension Risk Management Contact: Dan Malacara, Director, Cooperative Extension Office of Budget and Fiscal Operations, daniel.malacara@ces.uwex.edu, phone: (608) 263-7941.

8. What are the state statutes? How do they provide liability protection for volunteers?

State statutes afford protection for the counties, the UW System and the State of Wisconsin. Specifically Wis. Stats. s. 893.80 affords protection for claims against governmental bodies or officers, agents or employees; notice of injury; limitation of damages and suits.

Wis. Stats. s. 893.82 - Claims against state employees; notice of claim; limitation of damages and 895.46 - State and political subdivision thereof to pay judgments taken against officers.

The above statutes assist in protecting volunteers as agents of the county, or university when acting within the scope of their agency. Following national and state 4-H requirements and having a signed letter of agreement with the county, as well as presenting a list of 4-H activities and volunteers to the county should assure one of protection under the statute.

9. Is there value to having waiver forms for certain events i.e. horse shows?

Waivers are recommended, but the waiver should be a “mutual waiver.” This means both parties should be accountable for their actions rather than creating a waiver where the signer assumes all responsibility even for the negligence of the other party. Courts do not look favorably upon these types of waivers.

10. If we use a waiver, should the wording be approved by someone before using it?

Consult with the county’s insurance/risk manager, or the county’s insurer.

11. Our county horse committee is having an open show where 4-H members and adults from the community may enter. They always sign a liability waiver. How much validity does it carry? Should the 4-H Horse committee be seeking any extra coverage that covers spectators of the program, such as if a horse was spooked and someone in the audience was injured? If so, where and how is this available?

Waivers may be extremely valid and they may be worthless. They usually don’t stop a lawsuit or claim, but they can be very helpful in defending a claim. If the claimant admits to reading the waiver before signing it, waivers can be very helpful.

In answer to the second portion of the question, liability policies do not exclude bodily injury or property damage caused by domestic animals. “Additional” liability coverage is probably not needed to protect spectators in the scenario described. However, check with the county insurer/risk manager as policies can differ on what is or isn’t covered.

Wis. Stats. s. 895.481 Civil liability exemption; equine activities requires;

(4) Every equine professional shall post and maintain signs in a clearly visible location on or near stables, corrals, or arenas owned, operated or controlled by the equine professional. The signs shall be white with black lettering, each letter a minimum of one inch in height, and shall contain the following notice: “NOTICE: A person who is engaged for compensation in the rental of equines or equine equipment or tack or in the instruction of a person in the riding or driving of an equine or in being a passenger upon an equine is not liable of the injury or death of a person involved in equine activities resulting from the inherent risks of equine activities, as defined in section 895.481(1)(e) of the Wisconsin Statutes.”

12. What are some sample hold harmless and certificate of insurance issues we should watch for?

Since hold harmless issues normally show up in contracts, one needs to understand that only a few people have authority to sign such an agreement. The 4-H Youth Development staff member should know who has signature authority for the county. Things to watch for in a contract, even for personal use, follow with suggested language to change it to a more acceptable format.

A. Hold Harmless: Wrong

- i. The county shall indemnify and hold harmless XYZ CORPORATION and its subcontractors, consultants, agents, officers, directors, and employees from and against any and all liability which arises out of the treatment, storage, transport, or disposal of hazardous materials.
- ii. Facility agrees to defend, indemnify and hold harmless, BCBSUW, the member's plan (if different), BCBSA, and their respective officers, agents and employees from and against any and all liabilities, costs, claims, damages, settlements or expenses of any nature whatsoever, including attorneys' fees and related costs, which result from alleged or actual acts or omissions of facility, or its officers, employees or agents, arising hereunder or with respect hereto.

B. Hold Harmless: Compromise

- i. The county shall indemnify and hold harmless XYZ CORPORATION and its subcontractors, consultants, agents, officers, directors, and employees from and against any and all liability which arises out of the treatment, storage, transport, or disposal of hazardous materials, but only to the extent state law imposes that liability on the county, its agents, employees, or officers.
- ii. Facility agrees to defend, indemnify and hold harmless, BCBSUW, the member's plan (if different), BCBSA, and their respective officers, agents and employees from and against any and all liabilities, costs, claims, damages, settlements or expenses of any nature whatsoever, including attorneys' fees and related costs, to the extent Wisconsin law imposes liability therefore where the same result from alleged or actual acts or omissions of facility, or its officers, employees or agents, arising hereunder or with respect hereto.
- iii. To the extent authorized by Wis. Stats. s. 895.80, each party agrees to indemnify its officers, employees and agents from any and all liability claims, costs of whatever kind and nature, for loss and damage to any property occurring in connection with or in any way incidental to or arising out of the performance of this agreement.

C. Certificates of Insurance: Wrong

- i. The county pays for liability arising out of this project.

D. Certificates of Insurance: OK

- i. The county employees are indemnified for their liability under state law pursuant to the terms of Wis. Stats. s. 895.80.

13. Is it possible to put a hold harmless/waiver statement on the 4-H enrollment form at the start of the year to eliminate paperwork? What should a hold harmless statement say?

Blanket hold harmless agreements signed once and intended to apply to a variety of events are generally meaningless because they cannot describe the specific nature of the activity. One of the significant values of a waiver is in the communication of the potential risk to the participant. Waivers need to outline all of the activities involved in the event.

Transportation

14. Are there special rules about transporting youth?

Personal transportation to and from 4-H program activities is the responsibility of the 4-H member, youth participant, parent/guardian or volunteer. Drivers transporting youth must be at least 18 years of age with at least 2 years of successful driving experience, a valid driver's license and automobile insurance.

When 4-H Youth Development staff members are arranging for youth transportation, drivers must be at least 21 years of age with two years of successful driving experience, a valid driver's license and automobile insurance. Driving personal vehicles for 4-H events is the least recommended transportation option for 4-H Youth Development staff and volunteers as personal insurance will be primary. The state and/or county will be excess coverage depending on the situation.

When renting vehicles or chartering busses for transporting participants, it is recommended that insurance be purchased from the rental agency. Rental should be in the name of the 4-H club or county program. Insurance offered by the rental dealer may be secondary coverage. Additional coverage may have to be purchased. For assistance on rental of vehicles, please see: <http://www.uwsa.edu/fadmin/fppp/fppp36c.htm>

Use of 12/15-passenger vans for transporting youth is highly discouraged under any circumstance. Use of a university owned 12/15 passenger van for transporting youth is prohibited as is any 12/15 passenger van rented under a state or Big 10 contract. 4-H Youth Development staff members are prohibited from driving a 12/15 passenger van with youth passengers. While the practice is highly discouraged, prior to making a decision to transport youth in a county-owned, rental, or privately-owned van with a volunteer driver, staff members should verify insurance coverage through the county.

If a university employee is driving a 12/15 passenger van to transport adults, they must follow university policy. <http://www.uwsa.edu/oslp/rm/manual/part7d.htm>.

15. What are the suggested alternatives to use of a 12/15 passenger van?

Using 7-8 passenger mini vans is an alternative. You may need more vehicles to transport the same amount of individuals. By renting the mini vans, you can transfer the risk by purchasing the insurance. Another option is to arrange for bus transportation. Not only can all travel together, but again you can transfer the risk by having the bus company provide the insurance.

16. If seats are removed from a 12/15 passenger van, can youth be transported in the vehicle?

No, the issue is the vehicle, not the number of seats or passengers in the vehicle.

Volunteers

17. What are the liability implications if volunteers do not abide by our policies?

Assuming the 4-H Youth Development staff member is giving good, sound advice and clearly communicating policies and expectations to the volunteers, they should be covered if they are following Wisconsin 4-H policies and they are operating within the scope of their agency (volunteerism), meaning what is normally expected by the county/UW-Extension, or historically expected of the volunteers. However, volunteers knowingly violating Wisconsin 4-H policies or doing something outside of the scope of their volunteer role will likely not be covered.

18. When we have a professional (i.e. registered nurse) serving as a volunteer, are they liable if something happens to youth in their care?

Depending on the circumstances, they may be. They might be held to a higher degree of accountability when treating someone's injuries but otherwise, they would be looked at like any other volunteer for liability purposes. They may want to consult with their insurance agent to ensure they have proper coverage under their personal insurances.

19. Is a volunteer protected in any way from lawsuits or other legal action?

It is important to understand no one is immune from lawsuits. A volunteer's homeowner/automobile coverage will always be primary when they have an activity in their home, or are driving their personal vehicle while volunteering. The county's program would be secondary, meaning once the limits of the volunteer's personal liability coverage were used up, the county's program may come into play if the volunteer was acting within the scope of the mission the county wanted performed.

20. If a youth dies in a tractor accident after being certified, are all the volunteers who taught the class liable and can they be sued?

First, one needs to understand they can be sued at any time for any reason. It does not mean the party suing will win. In this example, the volunteer should be covered under the county's insurance program, or if instructed through a university program, such as the tractor driving program offered at Arlington, the university's self funded program would be primary as long as the instructor was acting within the scope of their agency.

21. If we sponsor a horse show and there is an accident, are all the leaders who put the show together liable and is the organization and the UW-Extension Office liable?

All may be liable dependent upon the circumstances; however one needs to keep in mind that if the activity was submitted and approved by the county at the beginning of the year, the county's insurance program should respond on behalf of the volunteer if he/she is trained, screened and currently enrolled as a 4-H volunteer.

Assuming this is an approved activity by the county, and notice is filed regarding a claim or potential claim, immediate contact should be made with the county insurance/risk manager. Once that is done, their insurance carrier will take responsibility for representing the leaders. The leader should not need to have personal representation unless they were advised by the county that they were operating outside of the scope of the program or the normal expectation when serving as a leader. The university's program will respond on behalf of the staff member assuming the staff member was within his/her scope of employment or agency.

4-H Leader Associations

22. What are the advantages and disadvantages of incorporation for the 4-H Leader's Association?

The advantage to incorporation is that the 4-H Leader's Association would have control over what is done under their scope and ownership of any assets they have purchased.

The disadvantage is, if there is a lawsuit and the 4-H Leader's Association is found negligent, they might have to relinquish/sell their assets to meet any judgment levied against them from the lawsuit. This would not be limited to just real property, i.e. land and all the things that are attached to it, this includes any buildings. It would also include any personal property the Association would own to meet the financial judgment. Anything that is not real property is personal property and personal property is anything that isn't nailed down, dug into or built onto the land.

23. How can I find out if the 4-H Leader's Association is incorporated?

The non-stock corporation list is available on the Wisconsin Department of Financial Institutions Corporate Registration Information System: <http://www.wdfi.org/corporations/crispix/>

24. If there are disadvantages to 4-H Leader's Association incorporation, why are so many Association's incorporated?

Many of the 4-H Leader's Associations were incorporated years ago. At the time these groups were incorporated, the secondary liability coverage provided through the county insurance programs and the state statutes to limit volunteer liability were not in place. Incorporation was a method of limiting the liability exposure of volunteers serving on the association board of directors. The circumstances are different today.

25. If the 4-H Leader's Association is incorporated, should they begin the conversation about losing that status? Are there print resources to help facilitate the conversation?

This is an area the Association's need to carefully evaluate with accurate information.

The extent to which the activities of a 4-H group, or the activities of 4-H volunteers are included under the county's insurance policy is a function of the 4-H relationship with the county UW-Extension office. A written agreement signed by the county board, or county executive must be in place that states the local 4-H group is recognized as an agent of the county and that the county assumes all liability for its activities.

The annual compilation of 4-H activities and volunteers will also assist in assuring that the activity and volunteers are covered under the county's program.

26. Should the 4-H Leader's Association take out board insurance and/or bonding for the treasurer?

Given the size of financial holdings for most of the associations, we would not recommend a bond be acquired.

27. What is the appropriate way to handle compensation to a volunteer? We give honorariums (much less than standard pay for the tasks) for some jobs no one wants or for jobs that require an exceptional amount of expense, time or energy. Is this legal? Are there things we need to consider?

If a volunteer is to be compensated for reimbursable expenses, they should always have a receipt and compensation should be made via check so there is a paper record of the transaction. It is always important to have the expenses pre-approved, either through a budget, or through action of the organization at a meeting before the expenses are incurred.

All charitable/educational organizations (including 4-H) must make Social Security contributions for each employee who is paid \$100 or more in a calendar year.

If an organization (such as a 4-H Leader's Association) provides an honorarium, stipend, or other form of compensation to an individual, the organization leadership should consult the organization's attorney or accountant to review the situation to meet appropriate legal obligations.

28. The 4-H Leader's Association is considering opening a credit card to make it easier for volunteers and staff to pick up supplies. Any advice?

Simply put, don't open a credit card account. This manner of handling the financial matters of the 4-H Leader's Association, county committees and 4-H clubs is highly discouraged. It's a situation that invites mismanagement of 4-H funds. Once the charges are made on the account, the organization is liable. Purchases should be pre-approved through a budget or by action of the organization in advance of the purchase. Receipts should be presented for reimbursement of the expenses.

Staff

29. What are the additional liability concerns if a staff member provides incorrect information?

As long as the staff member was acting in good faith, with no malice, the state's program will respond as the employee was acting within the scope of their employment.

30. If there was a lawsuit filed by someone against 4-H, what happens? How are we notified? What should we do? How long should we keep any records related to the incident?

Since lawsuits are usually filed against multiple parties, you are likely to be notified very quickly. If you are specifically named in a lawsuit, you should immediately contact your county Department Head and your District Director. Your District Director will engage university counsel. They will defend you. You will likely be asked for background information, beyond that you will be advised if you need to take any further action.

Records related to the incident should be maintained indefinitely in a secure location. Discuss the proper location to store the information with the county Department Head.

Thanks to the contributors:

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