

Maryland Tort Claims Act and Volunteers

The State of Maryland provides statutory protection for State government units, employees, and volunteers. Through the Maryland Tort Claims Act (MTCA), the State provides volunteers legal immunity from suit, when a claim results from proper performance of their volunteer duties. The MTCA does not protect or “insure” volunteers against all liability, but it does provide them a legal defense if they are sued for something that happens while they are performing their duties as a volunteer.

In order for a volunteer to invoke the MTCA protection against suit, they have to show that they were not negligent in performing their duties, and that they did not intentionally cause or allow the harm to happen.

- The MTCA defines “negligence” as “unintentional failure to exercise the care that a prudent or reasonable person usually exercises. It is doing something that a person using ordinary care would not do.”
- “Ordinary care” is “that caution, attention or skill that a reasonable person would use under similar circumstances.”

Certain actions, such as intentional infliction of harm or willful/intentional disregard, remain outside the scope of the MTCA protection. A volunteer who is found to have intentionally caused or allowed a harm to happen will not be protected under the MTCA.

A UME volunteer is a person who provides a service to or for the State, who is not paid in whole or in part by the State, who satisfies all other *requirements* for designation as a UME volunteer,* and who is performing within the scope of his or her duties. As such, he/she may be protected by the MTCA if the following requirements are met.

Requirements include:

- Screened, vetted and on-boarded as a Certified UME Volunteer or Episodic Volunteer by local UME faculty/staff according to the UME Volunteer Policies and Procedures and Onboarding Process,
- Current position description(s) on file with local UME Office. (Must have been signed within the last 3 years).
- Enrolled as a UME 4-H Volunteer in 4-H Online for current program year (4-H Only),
- Original appointment agreement and record of current appointment agreement on file with local UME Office. (4-H volunteers recertified annually through 4-H Online),

A tort is a wrong that harms an individual and can result from a particular action taken by the volunteer, whether or not intentional, or from a failure to act when there is duty to do so. Lawsuits by others seek to recover damages by the injured person. The volunteer and UME may be held liable for the torts for which the State has waived its sovereign immunity.

To qualify for personal liability protection, the incident in question must have occurred within the scope of the volunteer’s public duties and committed without malice or gross negligence. Each of these items are discussed in detail below.

Definitions:

Scope of duties – includes all matters within the delegated or instructed authority of the volunteer most often defined by the position description. In other words, if the individual committed the alleged tort in the course of official State duties, then the State will defend the action and accept the liability, and the individual will be protected.

NOTE: The Act does not protect individuals guilty of gross negligence, malicious acts, civil rights violation or criminal acts regardless of whether they were working within their scope of duties as described in their position description.

Gross negligence is defined as “carelessness which is in reckless disregard for the safety or lives of others, and is so great it appears to be a conscious violation of other people's rights to safety.”<https://dictionary.law.com/Default.aspx?selected=838>

Malice is a conscious, intentional wrongdoing such as a civil wrong which includes ill-will, hatred or total disregard for the other's well-being.
<https://dictionary.law.com/Default.aspx?typed=malice&type=1>

A volunteer that acts within their scope of duties, taking the proper care and caution to manage risks that may arise in the best way possible and maintaining a professional and dignified attitude should be eligible for protection.

Volunteers also have an interest in maintaining their privacy, which is a right recognized in Maryland. An individual may recover damages from another person, including a volunteer, for invasion of privacy. Therefore, the UME privacy disclosure statement should be used when collecting personal information, perceptions or opinions.

The MTCA does not address the issue of court representation, but separate statutory provisions deal with representation of State officers and employees for all types of suits. The Attorney General's office policy is to interpret the MTCA and these statutes in a parallel manner for volunteers. If a volunteer acts within the scope of authorized public duties and without malice or gross negligence, then he or she probably will be entitled to sovereign immunity (protection as part of the State) in a tort action under MTCA and to legal representation provided by the State.

Criminal charges are sometimes brought that relate solely to the performance of public duties. If the charges do not produce an adverse decision, the individual may apply through the Attorney General's office to the Board of Public Works for reimbursement of legal fees and costs incurred in defending against the charges. (Gov. Off. on Vol. & the MD Council of Dir. of Vol. Serv., Volunteer Management in MD: Legal Liability & Insurance Issues, Baltimore, MD 1992).

A volunteer should report any potential concerns and/or situations to their local UME faculty/ staff member as they arise. Documentation may be requested and should be completed in a timely manner. Follow-up communication may be required from either the local Extension office or State Program office.

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