

# 2019 Webinar Series



## Who *Not* to Hire!

Presented by:

- ▶ Kerry Horne, Executive Director, New Hampshire Recreation and Parks Association
- ▶ C. Christine Fillmore, Attorney, Drummond Woodsum

May 14, 2019

[nhmainfo@nhmunicipal.org](mailto:nhmainfo@nhmunicipal.org) / 800.852.3358 / [www.nhmunicipal.org](http://www.nhmunicipal.org)

# Our Presenters



*Kerry Horne*  
**Executive Director**  
**New Hampshire Recreation and Parks**  
**Association**

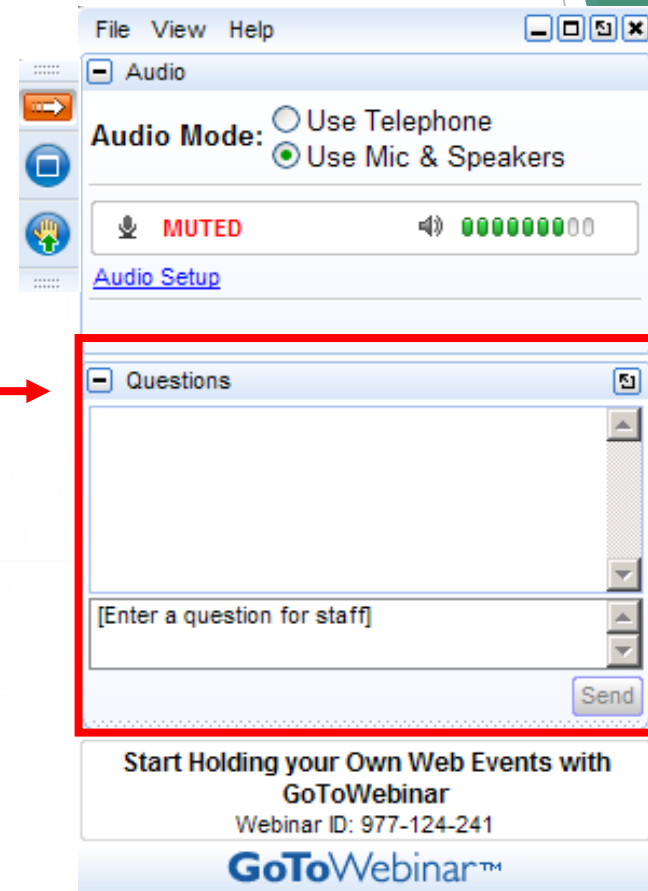


*C. Christine Fillmore*  
**Attorney, Drummond Woodsum**

# How to Participate Today



- Open and close your panel →
- Submit text questions
- Q&A addressed during the webinar session
- Poll questions for your entertainment



# Legal Considerations

- ▶ Volunteer v Employee - why does it matter?
  - ▶ Obligations toward employees (wages, taxes, employee rights)
  - ▶ Liability and immunities may be different
- ▶ When unclear, regulators usually say “employee”





# Legal Considerations



- ▶ **Who is a volunteer?**
  - ▶ **Federal law - Fair Labor Standards Act**
    - ▶ Freely offers services to municipality
    - ▶ Civic/humanitarian purpose
    - ▶ No expectation of compensation
    - ▶ “Nominal” compensation, reasonable benefits, reimbursement for expenses permitted
    - ▶ Don’t tie payment to hours/day worked or productivity
    - ▶ Same/similar services prohibition (can’t volunteer for your own job)

A photograph of the New Hampshire State Capitol building, featuring a prominent golden dome and classical architectural elements like columns and arches. The building is set against a clear sky with a few clouds. A flagpole with the New Hampshire state flag is visible to the right of the building.

# Legal Considerations



- ▶ **Who is a volunteer?**
  - ▶ **State law (RSA 275:4 and RSA 281-A:2, VII(b))**
    - ▶ Person who performs services for no “significant” compensation
    - ▶ Reimbursement for out of pocket expenses only
    - ▶ More restrictive than federal law

# Legal Considerations



- ▶ **Who is an employee?**
  - ▶ Person performing services for employer (municipality)
  - ▶ In exchange for compensation
  - ▶ May or may not have an employment agreement
  - ▶ Third possibility - independent contractor

# Legal Considerations



## ▶ Obligations Toward Employees

- ▶ Wage/hour requirements (RSA 279, RSA 275, FLSA)
- ▶ Minimum wage, regular payment of wages, final wages
- ▶ Overtime for non-exempt employees
- ▶ Workers' compensation benefits
- ▶ Family and Medical Leave Act - job protection, not paid leave
- ▶ Other protected leave time (military leave, maternity leave)
- ▶ Civil Rights protections



# Legal Considerations



- ▶ **Obligations Toward Employees**
  - ▶ At will employment?” Not always!
    - ▶ If no written employment agreement, collective bargaining agreement, statutory protection, supposedly at will
    - ▶ Can be terminated any time, for any reason
    - ▶ However - this concept gets narrower all the time.
    - ▶ Volunteers - truly “at will”



# Legal Considerations



- ▶ Special Rules for Youth Volunteers and Employees
  - ▶ “Youth” = under age 18
  - ▶ Federal - FLSA
    - ▶ Covers employees of local governments (not volunteers)
    - ▶ Generally sets 14 as minimum age for employment
    - ▶ Limits number of hours worked by minors below age 16
    - ▶ Prohibits hazardous activities (driving, most power equipment)

# Legal Considerations



- ▶ Special Rules for Youth Volunteers and Employees
  - ▶ State - RSA 276-A, N.H. Dept. of Labor Rules Lab 1000
    - ▶ 12 is minimum age, but follow federal minimum of 14
    - ▶ No “hazardous occupations” (power equipment, 30+ feet above the ground, driving)
    - ▶ Age 14-15:
      - ▶ Without certificate: “casual work” only (infrequent duration, produces little/sporadic income, not “employment” relationship)
      - ▶ With certificate: longer term employment relationship permitted
      - ▶ Restrictions on hours/week and time of day
    - ▶ Age 16-17:
      - ▶ Need parent/guardian written permission for work (unless high school grad)
      - ▶ Restrictions on hours/week and time of day (check for recent amendment RSA 276-A:4, IV)

# Legal Considerations

- ▶ Special Rules for Youth Volunteers and Employees
  - ▶ Additional considerations
    - ▶ Use common sense about the kind of work
    - ▶ Provide adequate training and supervision
    - ▶ Minors can't sign contracts - need parent/guardian



# Legal Considerations



## ▶ Background Checks:

- ▶ Mandatory: youth skill camps (RSA 485-A:24, NH Admin Rules Env-Wq 900)
  - ▶ Criminal record check for convictions involving physical injury to anyone or harm to any child
  - ▶ Owners, employees and volunteers who may be left alone with any child
  - ▶ Regulated by Dept. of Env. Services
- ▶ Optional: RSA 41:9-b
  - ▶ Background investigation and/or criminal records check
  - ▶ Employees and volunteers
- ▶ In all cases:
  - ▶ Must obtain consent of candidate
  - ▶ Coordinate with local law enforcement
  - ▶ Keep results confidential
  - ▶ When candidate is a minor, consider reference checks

# Legal Considerations



## ▶ Liability/Immunity Issues

Injury/Property Damage from conduct of employee/volunteer:

### ▶ Protections for employees

- ▶ RSA 31:105: If governing body adopts, municipality indemnifies municipal officials and employees for actions within scope of duties and in good faith
- ▶ RSA 31:106: Municipalities must indemnify officials and employees from loss for civil rights violations for actions within scope of duties and without malice.
- ▶ No protection for intentional, criminal actions

# Legal Considerations



- ▶ Immunity for volunteers: RSA 508:17
  - ▶ Record indicating person is recognized as a volunteer
  - ▶ They are volunteer, not employee
  - ▶ Acting in good faith and within the scope of official duties
  - ▶ Damage/injury not caused by transportation activities
  - ▶ Damage/injury not caused by willful, wanton, or grossly negligent misconduct of volunteer
  - ▶ No protection for intentional criminal actions

# Legal Considerations



## ▶ Liability/Immunity Issues

Liability of the municipality:

- ▶ Even if a volunteer or employee is immune, the municipality they volunteer or work for could still be liable for damages/injury caused by the volunteer or employee
- ▶ Why? Vicarious liability, and/or negligence (training, supervision, etc.)
- ▶ Statutory limits of liability (RSA 507-B)





# Legal Considerations

## ▶ Liability/Immunity Issues

### ▶ For injury to the employee/volunteer:

#### ▶ Workers' compensation (RSA 281-A): Mandatory contract between employer and employee

- ▶ Employee can recover for work-related injury
- ▶ Cannot sue employer for that injury
- ▶ Covers employees, not volunteers



# Legal Considerations



## For Injury to Employee/Volunteer Waivers

- ▶ Enforceable only if it (a) doesn't violate public policy, (b) is understood by the person signing it, and (c) the claim is within the scope of the agreement when it was signed.
- ▶ Will only provide protection for liability arising out of the activity described in the agreement.
- ▶ Construed against the municipality, so not a silver bullet.
- ▶ Requires understanding up front about what activities will be involved.



# Top Ten Suggestions for Seasonal Workers



1. Clearly define scope of each volunteer's and employee's services
2. Written agreement for volunteers
3. Background checks
4. Reference checks for minors working around children
5. Check with insurance carrier about what is/isn't covered, their suggestions for risk management
6. Don't have volunteers drive anyone anywhere
7. Review policies on any compensation for volunteers
8. Train seasonal volunteers/employees properly
9. Supervise them, too
10. Develop clear policies and procedures for them to follow

**TOP 10**

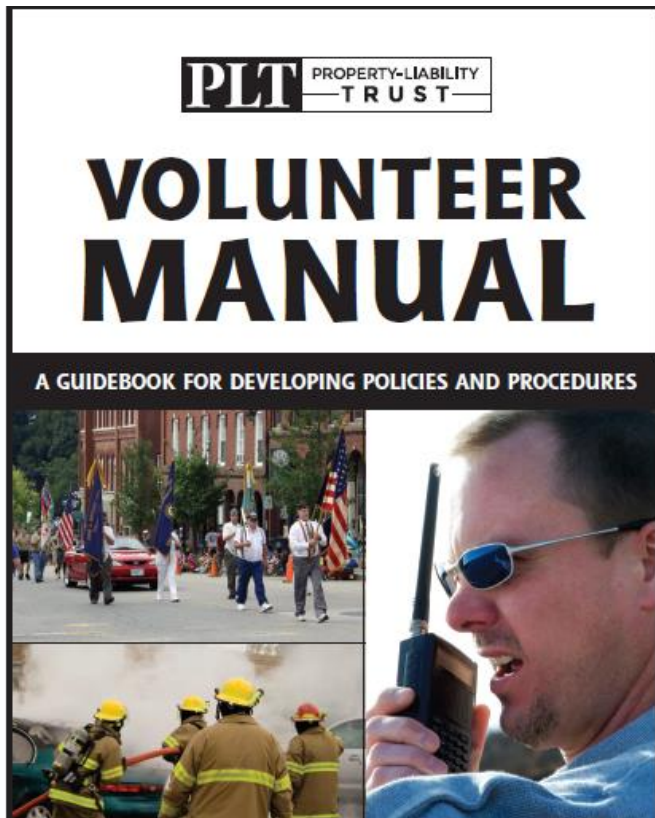
# Tips for Successful Hiring



## ► Put it in writing

- Distinguish the roles that paid employees and volunteers serve in your organization.
- Written job descriptions for paid employees
- Volunteer position descriptions and volunteer agreements that make it clear there is no compensation.
- If your paid employees also volunteer it is critical to have a volunteer agreement that is separate from their employment.

# Tips for Successful Hiring



- ▶ Document Policies in Separate Manuals
  - ▶ Employee handbook and manual for employees
  - ▶ Volunteer handbook and procedures for volunteers
  - ▶ Safety considerations should be put in both manuals

# Tips for Successful Hiring



## Identify Essential Abilities for Each Position:

- What is important to you and your team
- What skills are essential for the position to be successful
- Make your own list for each position **BEFORE** the interview.
- Create probing questions

# Tips for Successful Hiring

## Essential Abilities Example: Camp Counselor

- Put others needs first
- Do the right thing, even when it's hard
- Conflict resolution
- Ability to work for a long period of time in an active environment
- Ability to be spontaneous, change plans quickly!
- Ability to have FUN!



# Tips for Successful Hiring



- ▶ Important to Remember:
  - ▶ Never coerce employees to volunteer
  - ▶ DOCUMENT EVERYTHING!
  - ▶ Remember the Volunteer Service Rule of Three –
    - (1) “True” volunteers are those who: work toward public service, religious, or humanitarian objectives;
    - (2) do not expect or receive compensation for services; and
    - (3) do not displace any genuine employees.

Source: <https://www.nonprofitrisk.org/resources/articles/employee-or-volunteer-whats-the-difference/>



# Tips for Successful Hiring



- ▶ Start Early!
- ▶ Have a conversation with applicant before you start asking questions
- ▶ Have a good lead in question
- ▶ Have a solid closing question
- ▶ Google your applicants



# Tips for Successful Hiring

- ▶ Use Facebook and social media
- ▶ Use unique references - dig deeper than the ones listed
- ▶ Look for experience related to the position
- ▶ Have others involved in the process



# Tips for Successful Hiring



- ▶ Hiring process is not perfect process
- ▶ Watch for red flags
- ▶ ALWAYS CHECK REFERENCES
- ▶ Be consistent and treat everyone equally
- ▶ Go with your GUT

# Upcoming Webinars & Workshops



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# Upcoming Webinars & Workshops



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# Upcoming Webinars & Workshops





## SAVE THESE DATES

### Regional Right-to-Know Workshops



### The Right-to-Know Law and Governmental Meetings

Join Executive Director Margaret Byrnes and Legal Services Counsel Stephen Buckley who will discuss the requirements for holding a proper public meeting, as well the exceptions to the meeting requirement (the so-called "non-meeting"). Then the attorneys will discuss the purposes for which public bodies may hold a nonpublic session, as well as the procedural requirements for a proper nonpublic session. This workshop will also address difficult "meeting" issues, such as communications outside a meeting and electronic means of communicating.

**6:30 pm—8:30 pm**  
**Tuesday, July 23 2019**


**County Hall Building**  
**12 Court Street**  
**Keene, NH 03431**

For registration information, visit [www.nhmunicipal.org](http://www.nhmunicipal.org) under Calendar of Events.

Questions? Call 800.852.3358 or email [NHMAregistrations@nhmunicipal.org](mailto:NHMAregistrations@nhmunicipal.org).


*check this out!*

**Workshop Cost:**  
\$35 without book  
\$55 with book, *A Guide to Open Government: New Hampshire's Right-to-Know Law*



### The Right-to-Know Law and Governmental Records

Join NHMA's Executive Director Margaret Byrnes and Legal Services Counsel Stephen Buckley who will share strategies to assist municipalities in handling governmental record matters arising under the Right-to-Know Law.



Handling governmental records requests requires an understanding of all aspects of request processing including: the requirements for availability, storage, electronic records, redaction, cost estimates, mandated access for certain records and appointments for review of records.

Guidance will be provided on determining what is a governmental record, and when and how access and copies of public records must be provided. This workshop will also address what records are exempt from disclosure, along with whether a record request that would require a search for multiple documents must be fulfilled or whether a request impermissibly seeks to create a record that does not exist. In addition, guidance will be provided on the retention of governmental records and how claims under the Right-to-Know Law are enforced.

**1:30 pm—4:00 pm**  
**Tuesday, August 6, 2019**

**Moultonborough Safety Complex**  
**1035 Whittier Highway**  
**Moultonborough, NH 03254**

# Upcoming Webinars & Workshops



**SAVE THE DATE - OCTOBER 5**  
*Join NHMA and the New Hampshire Office of Strategic Initiatives for the*

**Fall 2019 Land Use Law Conference**  
(formerly known as the Municipal Law Lecture Series)

9:00 am—3:00 pm  
Saturday, October 5, 2019  
Holiday Inn, 172 North Main Street, Concord

Cost: \$100.00

Full day workshop for municipal land use officials including members of planning and zoning boards, planners, land use administrators, select boards, town and city councilors, building inspectors, code enforcement officers and public works personnel. Presentations will focus on the legal authority and procedures these land use boards must understand with content structured to be beneficial to both novice and experienced municipal officials.

**Registration to open later this summer!**

OFFICE OF Strategic Initiatives

NHMA  
NEW HAMPSHIRE MUNICIPAL ASSOCIATION

For additional conference details, go to [www.nh.gov/osi/planning/resources/conference/fall-2019/index/htm](http://www.nh.gov/osi/planning/resources/conference/fall-2019/index/htm)

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# Upcoming Webinars & Workshops







# for joining us today



The New Hampshire Municipal Association is a nonprofit, non-partisan association working to strengthen New Hampshire cities and towns and their ability to serve the public as a member-funded, member-governed and member-driven association since 1941. We serve as a resource for information, education and legal services. NHMA is a strong, clear voice advocating for New Hampshire municipal interests.

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