

AED Program: Worth the Risk?

Have you purchased an Automated External Defibrillator (AED)?

YES: If you have, make sure your program meets acceptable standards to maintain your organization's civil liability immunity and Good Samaritan protection.

NO: If your organization has not established an AED program, you need to evaluate if the benefits outweigh the risks. Benefits are clear and risks controllable when the proper steps are taken to implement an emergency response plan.

It's not surprising that owners and their staff are concerned about the legal implications of an AED program at their facility. Companies understandably fear negligence liability suits. In reality, the actual liability risk associated with owning an AED is very small and very controllable. Documentation provided by technical legal research has not yet provided any evidence of rulings with financial payouts caused solely from the improper use of an AED placement at an organization.

The evidence supporting AED programs is powerful and convincing. Over 300,000 deaths from cardiac arrest occur each year in the US; it is THE leading killer in the US (more than AIDS, Breast Cancer, Lung Cancer, Accidents and Stroke combined). Survival rates for cardiac arrests that occur outside a hospital have historically only been 3-5%. With an AED program in place, survival rates have reached 50-60% or EVEN MORE in some settings. It is well documented in the medical literature and elsewhere, that early defibrillation with an AED device saves lives.

Workplace or Facility / Public Access AED Program Evaluation

If sudden cardiac arrest is untreated, the victim will die. Only an AED can only help the victim. The AED must be maintained and ready for use. The AED must also be used within 2-6 minutes to have the greatest impact on survival of the victim. For every minute that goes by after the victim collapses there is a 10% chance less of survival.

It is very important to recognize that negligence law does impose a duty upon airlines and other transportation providers, hotel and innkeepers, and other business entities to provide reasonable emergency assistance to passengers, guests, and other members of the public who utilize their premises or facilities. And this may include the provision of AEDs for sudden cardiac arrest, especially as early defibrillation becomes more of an accepted standard care and adopted by private business. There is an ever increasing public expectation that AEDs are everywhere and should be in key places for public safety and protection.

The courts define what is "reasonable" based upon current standards or industry trends established in similar settings. Thus, businesses that fail to purchase AEDs and implement early defibrillation programs are likely to be at greatest risk of AED liability (from not having or owning one).

Interestingly, OSHA has recently published a technical information bulletin stating: "Employers should consider use of AEDs at their worksites to reduce the time to defibrillation with the goal of improving survival." This is not a compliance standard, yet it provides further support for what could be considered reasonable care for an employee experiencing a cardiac arrest when on the job.

In 2008, the US Supreme Court reinforced the duty of care on a large fitness club and rejected their appeal based upon the argument that it was not a required standard of practice (since all states do not mandate AEDs in these businesses). Due to these types of court rulings, insurers for health clubs are beginning to not renew GL insurance until an AED program is put in place at the business.

AED Acquirer Civil Liability Immunity Laws

When considering an AED program for your organization you must consider:

Good Samaritan (state) laws have become AED specific providing immunity for individuals that use the devices. These statutes have been adopted to encourage the use of AEDs and to specifically allay the liability fears of those who assist these victims. In addition, the Federal Cardiac Arrest Survival Act (CASA) of 2000 provides Good Samaritan limited liability coverage in those states without a Good Samaritan law. AEDs are safe and easy to use, even without any formal training. However, most states require a formal CPR or AED training program to be in place at facilities where AEDs are located or owned. These programs are not that expensive and can tie to instructor led training, online or a combination of these training methods.

States also have AED Acquirer laws in place that provide civil liability immunity to AED. However, this does not eliminate the associated risks of not using the AED or not maintaining it appropriately.

Minimizing the Legal Risk

You cannot eliminate the risk, but you can control it and therefore minimize the potential for a lawsuit. Attention to the following 6 essential elements is critical to maintaining your civil liability immunity protection and minimizing risk. Avoid cutting corners in any of these areas.

1. **Medical Direction / Oversight** – From the time of AED purchase, your AED program and emergency response plans should update to allow integration. All AEDs need a prescription (Rx) to comply with FDA regulations. Oversight is much more than a AED Prescription (Rx) however. Currently, **25 states** require medical oversight (sign off on the AED program at a facility). Call us at 888-473-1777 to see what your state or local law requires. Ask for Medical Oversight Technical Support, they will tell you if your location needs to have medical oversight for liability protection.
2. **Approved Training** – Use a certified and nationally accredited training program vendor. There are many training organizations to rely on such as: American Heart Association (AHA), Red Cross, ASHI, Medic First Aid, ECSI or IOHSA – some of which have quality low-cost programs that integrate technology and provide instructors or online components of training or both. Certain outlets such as www.firstvoicetraining.com has verified and compliant training starting at \$9.95 per person.
3. **Local EMS Notification** – Establish a working relationship with your local EMS, advise them of AED placements at your facility and register your AEDs, as required. To find out your local EMS contact person call Think Safe's EMS Notification Technical Support Team at 888-473-1777.
4. **Process / Implementation** – A process should be put in place to ensure correct documentation is put in place, review documentation is standardized, AED locations or info is properly communicated and that any new hires receive communication and procedures related to the AED program. Templates are available from First Voice for your use; examples of AED policies/communication templates and tools.

5. Maintain Equipment – Follow manufacturer’s and industry recommendations for maintaining AEDs and supplies. Use a checklist, keep logs and archives, and assign an AED site coordinator to regularly inspect the device. Use online tools such as www.firstvoicemanager.com to ensure your program remains in compliance at all times – affordably and efficiently. Call Think Safe at 888-473-1777 for more information on this inexpensive online “cloud-based” mobile inspection application!
6. Refresh - Give responders the opportunity to perform quarterly or monthly refreshers on skills by scenario training or online training refresher courses/quizzes. www.firstvoicetraining.com offers easy **and free** refresher trackable training for any AED program clients.

Summary

The liability associated with the implementation of an AED program is minimal. Legal fears should not deter you from considering the benefits of having an AED at your organization, as long as the 6 essentials for compliance are in place. In fact, companies that carefully adopt and implement a safety program that includes AEDs are at lowest risk for liability.

Note: Information provided in this article is not intended as your organization’s legal advice. While every effort is made to ensure accuracy of information, legal questions surrounding AED use can vary from state to state and even in local areas. Think Safe provides detailed information regarding your specific state and local AED laws or mandates and requirements, if contacted. Please reach out to Think Safe at the contact information below. If your organization needs specific insurance or legal advice, we suggest you contact your insurance carrier or attorney as well.

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