

Beware of the Liability Myth



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Fear of liability is rooted in the stigma of poverty

Our society places stigma around poverty, mostly visible in thoughts such as: *“Poor people are poor because they don’t work hard enough”,* etc.

When it comes to donating food, this stigma puts food insecure people at the center of the hoarding mentality practiced by capital accumulators: *“When a poor person eats food from the freedge, they will claim sickness to sue the freedge host and get money”.*

This stigma is also embedded in the Good Samaritan Food Donation Act, which protects food donors from liability, except in cases of gross negligence or intentional misconduct.

The act implies food insecure people can’t decide for themselves and will eat whatever you give them (including rotten food). It also implies that food insecure people will do whatever they can to get money, including faking sickness from food donations.

This needs to stop.

Freedges run on community responsibility and community care

All community members are responsible for taking care of the freedge. Even when community fridges are well managed and the volunteer cleaning schedule is followed, the food in the fridge is never 100% safe (like the food in a supermarket or restaurant).

If items that don't fit donation rules or that are no longer suitable for consumption are found at the freedge, they will be removed by any community member.

As we would do with when checking our fridge at home, when participating in a potluck, or when we pick fruit from a tree, people getting food from the community fridge always check (look, touch, smell, taste) any food item before eating it.

Getting sick from eating freedge food is as likely as getting sick from eating food from your home fridge.

Nobody gets sued for giving food away

According to one report from University of Arkansas School of Law (Food Recovery: A Legal Guide), “lawsuits arising out of the donation or provision of recovered food are **extremely uncommon.**”

The report says that “a thorough search of filings and review of reported decisions **did not turn up a single case that involved food donation-related liability**” and concludes that “the absence of litigation or other disputes related to food donation demonstrates that **fear of lawsuits** or other negative publicity related to mishaps with donated food **are overstated and largely illusory barriers to food recovery.**”

Avoid host locations with a strong focus on liability

We believe the focus on liability, more specifically financial responsibility, is misplaced and detrimental to the idea of community responsibility and community trust implied in community food sharing.

When looking for a host, try to avoid places that are insistent about their liability fears.

A host location that is too concerned about liability is more likely to accept a community fridge in their property because of image benefits associated with the freedge, expecting more clients and more profits, and not because they want to provide for their community.

Hosts that are too concerned about liability will be less willing to connect with community members in need and make sure they feel safe using the freedge. They will also be less willing to navigate common obstacles brought by community fridges, such as dealing with health inspectors and hostile neighbors. They will likely shut down the fridge when the first obstacle arises.

The Good Samaritan Food Donation Act doesn't really help community fridges.

In the United States, the Good Samaritan Food Donation Act protects food donors against liability, when the donation happens through a nonprofit (except in cases of gross negligence or intentional misconduct). Some states, such as California and Colorado, extend this protection to food businesses who donate directly to people.

So, you technically need to be a nonprofit (or donate food through a nonprofit) to be under the Good Samaritan Food Donation Act, but the reality is that liability from food donations doesn't exist (like if there was an act to protect someone from alien attacks). The Good Samaritan Act is made for corporations who are afraid of liability, helping them donate to nonprofit organizations.

This act reinforces the stigma of poverty and the grip of the nonprofit industrial complex in our society, forcing organizations to become nonprofits in order to be protected by it.

Thinking about moving to Canada? All Canadian provinces protect “person-to-person” food donations against liability.

You don't need nonprofit status or liability insurance to run a community fridge

Even so, we understand property-owners are often concerned about liability and this can be an obstacle when looking for a suitable location.

Nonprofit status is desired by projects who depend on grants and tax-deductible donations, but the great majority of community fridges rely on private, non-tax-deductible donations. Other projects are concerned that the volume of donations will move them to the next income tax bracket, but this can be avoided by spreading donations over different organizers.

If your best (or only) host option is a location that requires liability insurance or nonprofit status, or if your team decided this is the best route to scale your project, let us know and we will fiscally sponsor your fridge: you can act as a nonprofit or be under our insurance policy. Find more at freedge.org/legal

Fiscal sponsorship can also be offered by any local nonprofit. Check the Fiscal Sponsor Directory Database to find a local fiscal sponsor:
<https://fiscalsponsordirectory.org/>

Liability Insurance: how insurance companies make money from our fears

Insurance companies make money from risk. They calculate the risk of something happening, normally a loss, and guarantee protection against that loss.

For example, imagine you own a car worth \$5000, and you have an average accident risk of 1% per year. Assuming the accident would cause you to lose the total value of the car, your “expected” loss from owning and driving this car would be 50\$, or $\$5000 \times 1\%$. You may or may not get in an accident, but this accident rate implies that on average every group of 100 people will lose \$5000 per year.

If you were risk neutral, you would be willing to pay \$50 per year on insurance. But because we all tend to be risk averse, we would accept to pay more than the expected loss: \$55, \$60 or maybe \$100 per year. This is how insurance companies make money.

When it comes to donating food, the risk of getting sued is 0%, so the expected loss of donating food is \$0. In this case, paying liability insurance to get protection against liability from food donations is equivalent to giving free money to insurance companies.

*Liability from food donations is a
Myth*

*Financial compensation does not
replace community responsibility.*

Mutual aid is the solution!