

## Workers Compensation and Disability Benefits for Emergency Volunteers

### Fact Sheet

#### Overview

A volunteer's ability to obtain workers' compensation or disability benefits for lost wages or injuries suffered during an emergency response is a significant issue to consider. Depending on the circumstances, workers' compensation and other benefits may be available to volunteers for injuries received while participating in the emergency response.

#### Workers' Compensation and Disability Issues

Whether a volunteer is eligible for workers' compensation or disability benefits depends on a number of factors, such as the construction and interpretation of a state's workers' compensation laws, the systems or programs under which the volunteer is registered or deployed, and the events surrounding the injury. Sick leave and disability insurance may provide additional or alternative sources of compensation for volunteers involved in emergency response activities, although all volunteers may not have access to these mechanisms.

#### Workers' Compensation

Workers' compensation laws are enacted and administered by states. Every state, the District of Columbia, and the territories have workers' compensation programs. Each program is unique; the coverage requirements and the types and amounts of benefits vary from state-to-state. In general, workers' compensation programs provide benefits to workers who are injured during the scope and course of their employment, as opposed to volunteers injured outside of their course of employment. Certain types of organizations or activities are often exempt from coverage under workers' compensation programs, including employees of nonprofit, charitable, or religious institutions, employees of small businesses under a specified size, and workers in hazardous occupations. Some states further exempt domestic service, agricultural employment, casual laborers, and state and local employees. Some of these groups are provided coverage through other mechanisms such as disability insurance, which is provided by an employer as a full or partial benefit, or negotiated through union agreements.

Persons who act as volunteers in an emergency response scenario may not be eligible for coverage under a state's workers' compensation law because they are not considered to be an employee while they are volunteering. On the other hand, an employee who volunteers at the direction of an employer may be acting within the scope and course of employment. Under the [Emergency Management Assistance Compact \(EMAC\)](#),<sup>1</sup> workers' compensation is the assisting state's responsibility and it is not an eligible reimbursement expense (i.e., the requesting state does not have to reimburse the assisting state for the costs).

#### Practice Notes

- Identify state law(s) that establishes worker's compensation.
- Identify state and federal compensation fund laws and programs.
- Is your state an assisting state or requesting state?

#### Compensation Acts and Funds

Federal and state laws have created mechanisms or funds to compensate groups of people based on their occupation or involvement in a specific injurious event. One such law, the [Federal Employees Compensation Act \(FECA\)](#),<sup>2,3</sup> provides workers' compensation to civilian federal employees who are injured or killed during the course of their duties. For example, Medical Reserve Corps volunteers who are appointed to serve as intermittent disaster-response personnel are entitled to work injury benefits under FECA. See [42 USC § 300hh-15](#) and [42 USC § 300hh-11](#).

## Sick Leave and Disability Insurance

Some volunteers may have coverage for injuries through paid sick leave, temporary disability benefits, and long-term disability insurance. Companies typically provide sick leave and disability insurance voluntarily, although it can be a negotiated benefit through union contracts; it is mandatory in only a few states. These benefits may provide an additional or alternative source of compensation for volunteers who may not be eligible for a state's workers' compensation program. A person will not have access to these additional resources, however, unless an employer offers them or a person obtains an individual disability policy.

A disability policy's specifics will dictate whether coverage is available for only work-related injuries or will also cover injuries sustained while volunteering during an emergency. Personal life insurance tends to not cover emergency volunteer activities. Supplemental life and disability insurance that covers emergency response activities may be available for the volunteer to purchase.

## Key Issues Regarding Volunteer's Workers' Compensation in Emergency Response

An analysis of volunteer eligibility for workers' compensation in the context of an emergency response scenario must consider a number of factors. Such an analysis is highly dependent on state law and the facts in a specific case. Questions to consider include:

### Practice Questions

- Who is the volunteer?
- What organization is the volunteer affiliated with?
- Which state's workers' compensation law applies?
- What if the volunteer was deployed to another state?
- Can the volunteer be deemed an "employee"?
- Who would be considered the "employer" during the deployment?
- Who was the scope of the volunteer's responsibilities?

<sup>1</sup> National Emergency Management Association. EMAC. Available at <http://www.emacweb.org/>. Accessed on 11-1-2012.

<sup>2</sup> FECA. Available at <http://www.dol.gov/compliance/laws/comp-feca.htm#UJ2-lc26Sul>. Accessed on 10-22-2012.

<sup>3</sup> Szymendera, S. "The Federal Employees' Compensation Act (FECA): Workers' Compensation for Federal Employees." Congressional Research Service. Available at <http://www.fas.org/sgp/crs/misc/R42107.pdf>. Accessed on 11-9-2012.