

Workers' Compensation Issues in Emergencies

Fact Sheet

Overview

Volunteers and others participating in emergency responses raise questions about their ability to obtain coverage under state workers' compensation programs for injuries received while participating in the response. Depending on the circumstances, workers' compensation and other benefits may be available to provide payments for injuries received while participating in the response. These protections, however, can be highly dependent on the nature of the services provided by the person (volunteer vs. paid employee) and the individual's access to alternative compensation resources.

Worker's Compensation and Disability Issues

A person's ability to obtain workers' compensation for injuries or lost wages is a significant question for those responding to emergency events. In deciding the issue, a number of factors can affect the analysis, such as the parameters of a state's workers' compensation laws, the person's status while responding (employee or volunteer), the systems or programs under which a person deploys, and events surrounding the injury. Sick leave and disability insurance may provide an additional or alternative source of compensation for persons involved in emergency response activities, although not all persons may have access to these mechanisms.

Workers' Compensation

Workers' compensation programs provide benefits to workers who are injured during the scope and course of their employment. Workers' compensation laws are enacted and administered by states. Every state, the District of Columbia, and the territories have a workers' compensation program. Each program is unique, and the requirements for coverage, types of benefits, and amounts of benefits vary from state to state. Although state workers' compensation programs cover a majority of workers, certain types of organizations or activities are exempted 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 that is provided by an employer as a full or partial benefit or negotiated through union agreements.

Workers' compensation is primarily an employer-funded system. Workers' compensation laws require employers to purchase workers' compensation insurance policies through state-sponsored or commercial insurance providers or provide coverage through self-insurance in which the employer demonstrates to the state its financial ability to cover potential liabilities. State compensation programs are administered by various regulatory bodies in different ways, including departments or divisions of labor, insurance departments or commissions, or freestanding commissions or special boards.

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 \(FECA\)](#), provides workers' compensation to civilian federal employees who are injured or killed during the course of their duties. Volunteers who deploy under federal programs like the [National Disaster Medical System](#) are covered under FECA.

Sick Leave and Disability Insurance

Some workers may have coverage for work-related or non-work-related 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 persons involved in emergency response activities whose status or activities during a response may not qualify or fully qualify them for a state's workers' compensation program. Not all persons have access to these additional resources, however, unless an employer offers

them or a person obtains an individual disability policy. The specifics of a disability policy dictate whether coverage is available for only work-related injuries or will also cover non-work-related injuries (e.g., while volunteering during an emergency).

Key Issues Regarding Workers' Compensation in Emergency Response

An analysis of 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.

- **Which state's law applies?**

When a person responds to an emergency in another state, an issue can arise as to what state's workers' compensation law should apply if the responder is injured—the state receiving the aid (host state) or the injured responder's home state. Some deployment mechanisms and mutual aid agreements determine this issue in advance; for instance, EMAC stipulates that the state providing assistance (the home state) is responsible for paying compensation and death benefits in the same manner and terms as if the injury or death were sustained in the home state. The [Uniform Emergency Volunteer Health Practitioners Act \(UEVHPA\)](#) provides that any volunteer health professional harmed or killed during an emergency may elect workers' compensation protections of the host state as a payer of last resort. State emergency response and other volunteer protection statutes may require the issuance of a state or federally declared emergency before compensation coverage is available.

- **Who is covered under a state's workers' compensation law?**

State workers' compensation laws can expressly exclude coverage for volunteers. In the absence of a state law extending workers' compensation to volunteers, unpaid persons involved in an emergency response are not covered because they are not "employees." Some state laws that address volunteer health professionals (VHPs) in emergencies may include compensation, but this benefit may be mitigated if coverage is optional and an employer exercises a right to opt out or if the VHP is not appropriately registered with a volunteer registration system recognized by the state.

- **Who is the employer?**

Determining who the "employer" of a volunteer or other person deployed in an emergency response situation is can dictate both which state law applies (if it is an interstate deployment) and what entity, if any, is responsible for paying compensation to an injured responder. A volunteer's regular employer is not likely to be responsible for injuries to the volunteer because the volunteer is acting outside the course of his or her employment unless the employer offers to provide coverage. The hosting employer (which may be the state or municipal government where the volunteer is deployed) or the host institution (e.g., hospital) may be responsible for paying workers' compensation.

- **What scope of activities are covered?**

Eligibility for workers' compensation benefits may be limited to injuries that occur within the scope of the responder's employment. Determining what activities are within that scope, especially since the activities may occur under extreme conditions, is important in assessing eligibility for coverage. Further, it may be necessary to determine if the injury occurred when the responder was actively engaged in the task for which he or she was deployed (e.g., providing healthcare, assessing sanitary conditions) as opposed to engaging in some other activity incident to the deployment (e.g., meeting, loading, training, cooking).

Sources

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