

Insurance Coverage  
For Volunteers  
In California  
State Entities

November 1978



A publication of  
The Governor's Office for Volunteerism  
and  
The Department of General Services  
(Insurance Office division, Charles Scarcliff, Asst. Insurance Officer)

## INTRODUCTION

Volunteers, like paid employees, can have accidents on the job. They can be injured or, by their acts, others can suffer injury or property damage. Injuries and property damages can often lead to claims against the State, its agencies, its employees and even its volunteer workers.

Steps can be taken to avoid or prevent accidents to volunteers, but even with the best of safety programs some accidents will occur. Provisions need to be made in advance so that when accidents involving volunteers do occur, any claims which result will be treated efficiently and satisfactorily for all concerned.

This publication offers general guidance to state agencies utilizing the services of volunteer workers, although definitive answers can not be given to all questions. There may be specific situations or problems which are not discussed here. The Governor's Office for Volunteerism, the Insurance Office of the Department of General Services or the Legal Counsel for the particular state agency or department may be helpful in answering further questions and solving problems.

## INJURIES TO VOLUNTEERS

### Legal Background

By law all employers including the State must provide workers' compensation benefits to employees who are injured in the course of their duties. Volunteers who receive no "remuneration" for their work are not entitled to workers' compensation benefits unless the agency that they work for elects to provide these benefits. Section 3633.5 of the Labor Code allows public agencies to provide workers' compensation benefits, but it does not require that they do so.

If workers' compensation benefits are not provided, injured volunteers may make "tort" claims against the State. These claims are based upon the State's negligence in causing the injuries and first must be filed, by the injured person, with the State Board of Control. After that, if necessary, the injured person may bring suit against the State.

However, if workers' compensation benefits are provided, injured volunteers may not successfully make a tort claim against the State. They will receive the workers' compensation benefits that they are entitled to, but workers' compensation becomes their "exclusive remedy".

### Alternatives

Workers' Compensation: The Labor Code prescribes benefits payable to injured employees. For most state agencies, workers' compensation benefits are paid by the employing departments through self-insurance programs whereby claims are administered by the State Compensation Insurance Fund. For these agencies there would be no premium payments and no cost unless a volunteer is actually injured. Then the cost to the department would be the full medical expenses incurred by the injured person, plus possible disability income or death benefits prescribed by law.

Other departments buy workers' compensation insurance policies from the State Compensation Insurance Fund. Volunteers may be added to the insurance policies by contacting the SCIF and paying the additional premium. These costs are calculated by the SCIF and are based upon the type of work performed and the number of hours worked by volunteers.

Accident Insurance: Workers' Compensation benefits, from the standpoint of the injured worker, are probably the best benefits available. From the employer's standpoint however, workers' compensation benefits, whether insured or self-insured, can be expensive. Since such benefits for volunteers are not required by law, some departments that use volunteer workers may prefer a method of providing limited benefits at lower costs.

Accident insurance provides medical expense benefits for on-the-job accidents, but benefits are usually limited to relatively small amounts such as \$2,500 or \$5,000 per accident. Usually accidental death and dismemberment coverage is included, but disability income coverage is not. With lower benefits, the cost of insurance should also be lower.

An injured volunteer who receives accident insurance benefits, unlike one who receives workers' compensation benefits, can make a claim against the State and sue the State for his or her injuries. Workers' compensation serves as an injured person's exclusive remedy, but accident insurance does not.

Neither Workers' Compensation or Accident Insurance: Since the law does not require benefits for injured volunteers, it is permissible to provide no benefits to injured volunteers. The absence of either benefits means that in case volunteers are injured on-the-job they would have to look to their personal health or medical insurance to pay their bills.

When there is neither workers' compensation or accident insurance, injured volunteers can, of course, make claims and sue the State. To be successful the injured person will need to be able to show and prove negligence by the State or its employees. Accident insurance and workers' compensation benefits are paid regardless of who is negligent or at fault.

### Steps To Follow

Choosing Between Alternatives: Some factors which tend to encourage workers' compensation are:

1. The volunteers utilized by an agency or department may not be covered by personal health insurance.
2. Volunteers may be working on projects under federal grants requiring self-insurance.
3. Although there is not the legal obligation to provide workers' compensation benefits, some agencies may feel a moral obligation toward their volunteers and not wish to have them working "at their own risk".

4. By providing workers' compensation benefits, the State and its agencies will not be sued successfully in a tort claims action.

Reasons against workers' compensation include:

1. Workers' compensation benefits are expensive.
2. The Labor Code does not require workers' compensation.
3. Since workers' compensation laws were designed for paid employees and were not intended to cover volunteers, workers' compensation benefits (particularly disability income) are not always well suited for volunteer programs.

Factors favoring accident insurance include:

1. The cost for accident coverage is usually low.
2. Moral obligation toward volunteers can be discharged through this form of coverage.

Reasons against accident insurance include:

1. Although the cost may be low, the cost is one which is not required and can be avoided.
2. Even after benefits are paid, volunteers can sue for additional amounts.
3. Often the amounts of medical expense coverages are so low that they do not fully fill the injured person's needs.

Arranging For Benefits: Regardless of the alternative selected, once the selection is made the agency or department may need to make certain arrangements to be sure that if needed, the benefits will be available and payable without delay or difficulty.

1. Agencies that are self-insured and elect to provide workers' compensation benefits should formalize their election. A memorandum signed by the Director, declaring that workers' compensation benefits are to be provided will serve the purpose. Members of the departmental staff who work with processing or paying workers' compensation claims should receive copies of the director's declaration.
2. Agencies that are insured through an insurance policy issued by the State Compensation Insurance Fund will need to contact the SCIF to make arrangements for covering volunteers.
3. Accident insurance may be purchased from a commercial insurance company. The Department of General Services, Insurance Office should be contacted for that.

Informing The Volunteers: Volunteer workers should be told whether they will, if injured, receive workers' compensation benefits, accident insurance benefits or no benefits at all. They should be given this information when they begin their work before any accidents can occur.

## LIABILITY FOR AUTOMOBILE ACCIDENTS

### Personal Vehicles

In case of accidents, injuries to volunteers are treated through workers' compensation, accident insurance or personal health insurance, depending upon which of the alternatives discussed in the preceding section was selected.

But injuries to others can be more of a problem. The injured party can make a claim against the volunteer driver, the State or both. Under California Law, the owner of a vehicle has the primary liability for accidents arising out of the ownership, maintenance, or use of that vehicle. Any liability of the employer, in this case the State, is secondary.

This means that accidents, claims and suits must be reported to the insurance company that writes the liability insurance for the driver. That insurance company is obligated to provide defense and indemnification for claims up to the limits prescribed by the California Financial Responsibility Law (\$15,000 per person, and \$30,000 per accident for bodily injury; and \$5,000 per accident for property damage).

But accidents involving volunteers using their own vehicles must also be reported to the Insurance Office, Department of General Services. This office administers the State Motor Vehicle Liability Self-Insurance Program and needs prompt notice of accidents, through Standard Form 270, because the State may be secondarily liable. In other words, the State too can be sued for amounts exceeding the limits of the volunteer's policy. Even if only the volunteer is sued, the volunteer may be entitled to defense and indemnification from the State for amounts which exceed their own policy limits.

Sooner or later, the following question is bound to be asked: "Can insurance companies raise the rates for volunteers because they use their automobile in their volunteer duties?" The answer is, "Yes, they can." Among other factors, insurance rates are based upon the kind and extent of the vehicle's use. If a volunteer uses an automobile to make deliveries or to transport people, as a part of their volunteer work, higher rates can be charged. Whether or not higher rates are charged will depend upon the regularity and extent of the volunteer's work and can vary between insurance companies.

### State Vehicles

Accidents with state vehicles are covered by the State's Self-Insurance Program which will protect the State and the driver against claims or suits so long as the vehicle was being used on official state business when the accident occurred.

Accidents must be reported to the Insurance Office, Department of General Services.

There is no statewide prohibition preventing volunteers from driving state vehicles. However, some departments do have departmental restrictions or prohibitions.

#### OTHER LIABILITY

With a few exceptions the State generally self-insures its liability. Claims against the State are administered, defended and paid by the Attorney General rather than by insurance company adjustors or lawyers. The money to pay claims comes from an annual appropriation from the General Fund. However, Special Funds may be charged with claim payments and expenses for activities conducted through Special, rather than General Fund support.

The law is clear that state employees are entitled to be defended by the Attorney General and indemnified by the State if claims or suits are made against them personally. The law is not quite as clear in regard to volunteers. A court may or may not determine that a volunteer is an employee for the purposes of a claim, and therefore entitled to defense from the State. This is a legal issue which lacks a definitive body of law. Managers of state programs utilizing volunteers should consult their departmental staff counsel on this issue. There is no question that the State's legal liability is well provided for, but there can be questions towards the protection which will be afforded volunteers in case they are named as defendants in claims or suits.

#### NON-STATE PROGRAMS

Throughout this discussion, we have only considered volunteers working directly for the State. These volunteers carry out state programs and are supervised by state employees. For insurance purposes, they and their work are a part of state government.

However, not all volunteers have that kind of direct relationship with the State and the comments made in the preceding sections do not apply to them. Sometimes state funds or federal funds administered by the State go to local governmental entities or to nonprofit social service agencies. They, in turn, administer programs with volunteer workers. Although these public or private agencies often work very closely with state government, they are actually outside of state government. In fact, many either are or resemble independent contractors. Since these organizations are apart from the State, they must make their own arrangement for insurance. Although there can be exceptions with specific circumstances, the following general rules apply:

1. The responsibilities and liabilities of the State and the outside agency should be spelled out clearly in the written contract or agreement between the State and the agency. Hold harmless agreements should be inserted with the approval of departmental legal counsel. Ordinarily these agreements relieve the State of legal liability for the acts of these agencies, their employees and volunteers.

2. Employees and volunteer workers of outside agencies are not covered by state workers' compensation insurance or self-insurance.
3. State money may not be used to pay claims, suits or judgments against these agencies, their employees or their volunteers.
4. Property owned by these agencies (including vehicles) should be insured against fire, theft, and the like, by the owning agency even though the property may have been purchased by funds that came from the State.
5. If outside agencies hold state funds their employees and volunteers should be bonded.
6. The State should require evidence that liability, automobile, property insurance and bonds are carried by the agencies (and purchased at their expense). The contracts should prescribe the minimum amounts and conditions.

#### PREVENTING ACCIDENTS AND LOSSES

Accidents inevitably cost money; money that could be used for more productive purposes. But the dollar cost is not all. There is human cost that goes along with the physical and psychological trauma of accidents. Preventing accidents and their financial and human costs must be emphasized as strongly when the work is done by volunteers as when it is done by paid employees.

The list which follows is not an exhaustive list of safety measures, but it does mention some points to be followed:

1. Training: Like paid employees, volunteers need to be trained to do the job they will be doing. Training, of course, varies from job to job, but it is safe to say that inadequately trained employees or volunteers are more prone to having accidents than well trained ones.
2. Supervision: The fact that a volunteer gets no paycheck does not mean that he or she should not be supervised. Careless work habits often lead to accidents on the job and volunteers must abide by the safety standards of the job.
3. Driving Qualifications: Volunteers must be licensed and able to drive the kind of vehicle their work requires. Driving records (MVR's) should be obtained from the Department of Motor Vehicles to be sure that prospective drivers do not have unsafe records.
4. Drivers Training: Like state employees, volunteers who regularly drive vehicles should take the Defensive Drivers Training course offered by General Services and supervisors should periodically observe the driving habits and practices of volunteers.

5. Vehicles: If volunteers use personal vehicles in their work, the vehicles, including the tires, must be in safe operating condition and have seat belts. Supervisors should physically check these private vehicles.
  
6. Personal Insurance: State employees may be required to furnish evidence that they carry automobile liability insurance meeting the financial responsibility law requirements. Volunteers should be required to do so, too. Standard Form 261 is available and can be used for that purpose.