

NCVA Survey Of State Policies Affecting Volunteers

This survey was a joint project of the National Affairs Office of NCVA and the National Congress on Volunteerism and Citizenship, 1976. Eugene Goldman, consultant on legislation to NCVA, and Doron Henkin, a volunteer intern for NCVG, '76, did the major research on the survey. It was completed by Mr. Goldman with the support of the Alliance for Volunteerism Task Force on Advocacy.

NCVA often receives requests from the field for information on a state's policies affecting volunteers. Typical questions include: Does Virginia extend workmen's compensation and liability protection to volunteers? Can individuals receive civil service credit for volunteer experience in Oregon? Can a volunteer in New York deduct out-of-pocket expenses for charitable work from his/her state income tax? As volunteers realize the legal and financial ramifications which may be involved with their work, the impact of state policies affecting volunteers becomes an issue of growing importance.

In order to provide answers to those questions, NCVA sent letters to relevant offices in each of the 50 states requesting information on state policies affecting volunteers. Independent legal research on the laws of several states was conducted to supplement some of the responses. The questions in the survey and a brief background paragraph on each follows:

ACCESS TO STATE VEHICLES

"Do volunteers serving through state agencies have access to state vehicles?"

Volunteers may drive cars, buses, or other vehicles to transport clients of volunteer services to health care clinics, recreation areas, educational institutions, and other appropriate facilities. In some instances a vehicle is necessary for the delivery of services to clients at home. State governments may facilitate these services by permitting supervised volunteers to utilize state vehicles. When such access is available, the state's insurance plan covering the use of the vehicle often includes protection for volunteer drivers.

LIABILITY PROTECTION

"Are volunteers for the state considered state employees for purposes of liability protection?"

There are various ways volunteers serving through state agencies may be afforded protection against liability claims arising from negligent acts. Agencies of a state may be authorized to purchase private liability insurance for their volunteers. In some states, the volunteer is considered an employee of the state for the purpose of liability protection. Under such circumstances, if the state assumes the responsibility for the negligent acts of a paid employee and/or defends the employee during the course of the litigation, the same protective measures would be available to the volunteer.

VOLUNTEER EXPERIENCE

"Is voluntary service given credit on state civil service applications?"

Many volunteers want state civil service commissions to permit applicants seeking paid employment with the state to cite related volunteer work as a means of fulfilling the experience requirement of the position sought. This policy is already followed by the U. S. Civil Service Commission which considers relevant volunteer work as paid work experience of job applicants.

DEDUCTIONS

"May volunteers serving through charities deduct the amount of their out-of-pocket expenses from state income taxes?"

Several states permit individuals performing gratuitous services through tax deductible organizations to take a state income tax deduction for the amount of their out-of-pocket expenses. Some of these states simply follow federal tax provisions on this issue. Under federal tax policy, volunteers serving through charitable organizations are permitted to deduct their out-of-pocket expenses from the federal income tax if they itemize their deductions. Permissible deductions from the federal income tax include:

- 7¢-per-mile or your actual expenditures for gasoline and oil;
- parking fees and tolls;
- amounts you pay for transportation from your home to the place you serve (bus and taxi fares, etc.);
- payments for meals and lodging away from home if your function requires being away overnight; and
- expenses for underprivileged juveniles to attend movies, dinners, etc., by an adult selected by a qualifying organization whose goal is to reduce juvenile delinquency. The volunteer's own expenses are not deductible.

WORKMEN'S COMPENSATION

"Is state workmen's compensation insurance available to volunteers serving through state agencies?"

Most states provide their paid employees with workmen's compensation benefits for injuries sustained while at work. Medical expenses, a percentage of wages lost because of the injury and other benefits are extended to the paid worker. State volunteers are generally not covered by workmen's compensation laws because the definition of "employee" usually requires that an individual be "under hire." However, several states have recently adopted provisions which place "volunteers" under the definition of "employee" for the purpose of providing medical benefits to volunteers. A few states have statutes which mention volunteers serving through various state

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State	Access to State Vehicles	Liability Protection	Civil Service Credit For Volunteer Experience	Deductions For Out-of-Pocket Expenses	Workmen's Compensation	Energy (a) Emergency assistance for vol. agencies (b) Discussions w/state energy a/c. re use of volunteers
Alabama	No	No	No	No	No	No-No
Alaska	No	Yes ¹	Yes	Yes	Yes ²	No-Yes
Arizona	Yes, but access is limited	No	No	X	Yes, for certain types of volunteers ³	No-Yes
Arkansas	No	No	No	Same as federal	No	No-No
California	No	Yes ⁴	Yes	Same as federal	Yes, for certain types of volunteers ⁵	No-No
Colorado	X	X	X	X	Yes, for a few types of volunteers ⁶	X-X
Connecticut	Yes, agency's decision	No	Yes	No state income tax	No	No-No
Delaware	No	No	No	No	No	No-No
Florida	Yes	Yes, chapter 768.28 of the Florida statutes ⁷	Yes, if service is well documented	No state income tax	No	X-X
Georgia	Yes	Volunteers may be covered under private insurance plan purchased by state agency	Yes	Yes	State agencies may purchase private medical insurance for volunteers	Yes-Yes
Hawaii	X	X	Yes	No ⁸	Yes ⁹	No-No
Idaho	No	Yes, ch. 310 & 311, laws of 1976	No	No ¹⁰	No	No-No
Illinois	Yes	Yes ¹¹	Yes	X	Yes ¹²	No-No
Indiana	No	Yes, for mental health volunteers	No	No	No	No-No
Iowa	No	No	No	No	No	No-No
Kansas	Yes, but only in a few agencies	No	Yes	Yes, same as federal	No	No-No
Kentucky	No	No	No	X	No ¹³	No-No
Louisiana	No	No	No	Yes, same as federal	No, only for volunteers on state boards and commissions	No-No
Maine	No	No	Yes ¹⁴	No	No	No-No
Maryland	Yes	No	Yes	Yes, same as federal	No ¹⁵	X-X
Massachusetts	No	No	Yes	Yes	No ¹⁶	No-No
Michigan	No	No	No	X	No	No-Yes
Minnesota	Yes, for volunteers serving in state hospitals & correctional institutions	No	Yes	Yes, same as federal	Yes, Minn. Stat. Ann. sec. 176.011(09)	No-No
Mississippi	X	X	X	X	X	X-X
Missouri	No	Yes	Yes	No	Yes	No-No
Montana	No	Debatable ¹⁷	No	In a few rare cases	No, but some volunteers are	No-Yes

Nebraska	X	X	X	X	X	X-X
Nevada	Yes	No, but each agency must provide its own liability coverage	Yes	No state income tax	Yes, chapter 616, Nev. revised statutes ¹⁸	No-No
New Hampshire	X	X	X	X	X	X-X
New Jersey	Yes	Yes, opinion of attorney general, 4/29/75 ¹⁹	Yes, if volunteer work was performed on a full time basis	X	No ²⁰	No-Yes
New Mexico	No	Relevant statute is ambiguous; issue is before the courts	Yes, reprinted applications will provide for it	No	No	X-X
New York	Yes	Yes ²¹	Yes, in some instances ²²	Yes ²³	Yes ²⁴	No-Yes
North Carolina	Individual agency decision	No	Yes	Same as federal	No, but some agencies provide private medical insurance	No-No
North Dakota	No	No ²⁵	Yes	Same as federal	Yes, N.D. century code sec. 65-05, 65-07 ²⁶	No-No
Ohio	No	No	No	Same as federal	Debatable ²⁷	No-No
Oklahoma	No	No	No	No	No	No-No
Oregon	Yes	Protection limited to liability arising from use of a state vehicle	Yes	Yes	Yes, Ore. rev. stat. chap. 656.031	Yes ²⁸ -Yes
Pennsylvania	No	No	No	Income tax is a flat rate with no provision for deductions	Yes, for a few types of volunteers ²⁹	X-X
Rhode Island	No	No	No	No	No	No-No
South Carolina	No	No	No	No	No	No-No
South Dakota	X	X	X	X	X	X-X
Tennessee	No laws or regulations on the issue	No	No	No	No ³⁰	No-No
Texas	No	No, but some volunteers within dept. of mental health and mental retardation are covered by private insurance plan	No	No	No	Yes-Yes
Utah	No	No	Policy is in favor of it but it is not as yet expressed in actual application	No	No	Yes-No
Vermont	No	No	Yes	Same as federal	No	No-Yes
Virginia	Yes	No	No	Yes	No	Yes-X
Washington	Yes	Yes	Yes	No taxes from which deductions may be taken	Yes ³¹	No-Yes
West Virginia	No	No	No	No	No	X-X
Wisconsin	No	No	No	No	Yes, WSA chapter 102.07 (11) ³²	X-X
Wyoming	X	X	X	X	X	X-X

FOOTNOTES

- Volunteers under the supervision, direction or control of a state agency are, for liability purposes, considered to be state employees. (March 26, 1976 memorandum from Risk Manager, Alaska Dept. of Administration)
- Volunteers under the supervision, direction or control of a state agency are, for workmen's compensation purposes, considered to be state employees. (March 26, 1976 memorandum from Risk Manager, Alaska Dept. of Administration)
- A few types of volunteers are covered, such as certified ambulance drivers, volunteer firemen and policemen and volunteers of a licensed health care institution. (Ariz. Rev. Stat. sec. 23-901)
- According to the Office of the California Attorney General, if the volunteer is under the control and direction of a state agency and is working for the benefit of the state, the volunteer would be protected the same as a state civil service employee.
- Several types of volunteers are specifically covered by statute--volunteers combating oil spills (Govt. Code sec. 6574.3); volunteer workers of recreation and park districts (Labor Code sec. 3361.5). Each Calif. agency has the option of declaring its volunteers "employees" of the agency for purposes of workmen's compensation (Labor Code sec. 3363.5). Further, the board of directors of a nonprofit organization is authorized to declare its volunteers "employees" of the organization for purposes of participating in the state's workmen's compensation plan (Labor Code sec. 3363.6)
- Members of volunteer fire departments, volunteer rescue teams, ambulance teams and search teams are covered. (Col. Rev. Stat. sec. 8-41-106)
- While Chapter 766.28 does not specifically mention volunteers, the Florida Secretary of Administration informed NCVA that volunteers "may be considered state employees for purposes of liability protection" under this provision.
- However, some agencies reimburse volunteers for certain expenses, such as mileage, bus fare and \$1.00 for a meal if the service is for more than four hours a day.
- Hawaii Revised Statutes sec. 386.171 provides that any person who is injured in performing services for the state in any voluntary capacity is eligible for workmen's compensation benefits in the form of reasonable hospital and medical expenses only.
- However, Idaho Code sec. 67-2335 authorizes agencies to accept volunteers and to reimburse them for reasonable and necessary expenses actually incurred in the course of their participation.
- According to the Lt. Governor, volunteers are "generally covered."
- According to the Lt. Governor, volunteers are "generally covered." Most volunteer work done for state agencies is defined and regulated by departmental policy rather than state statute.
- The possibility of having volunteers covered by workmen's compensation was examined about three years ago, but because of the awkwardness of Kentucky's plan, it was estimated that including volunteers would be too costly.
- State personnel board will accept it; reprinted applications will provide room for indicating such experience.
- However, the State Treasurer maintains a general accident policy which is available to state agencies for the purpose of protecting volunteers injured on the job. House Bill 1186, which would have authorized state agencies to provide medical benefits to volunteers, passed the House and Senate. The Governor vetoed the bill, stating that "the bill is poorly drafted in terms of defining what and who a volunteer is." The Governor explained in his veto message that if the state were to exercise its option under this bill to provide health insurance benefits to volunteers, it would be important to know how many people, and what kinds of people, would have to be included without some clearer definition of who is, or would be, covered by it, the decision to extend coverage to one group of volunteers could well involve a large, unknown, and unintended financial obligation.
- The sponsor of H.G. 1186 intends to reintroduce the bill with some modification during the next session of the legislature.
- H. 26, pending before the State House of Representatives, would provide medical benefits to state volunteers.
- While NCVA was informed by the Lt. Governor that volunteers are not protected, Montana Revised Code Annotated sec. 63-4301 defines an employee as one who acts on behalf of a governmental entity in any official capacity "whether with or without compensation."
- Chapter 615 also provides that persons who perform volunteer work in any "formal program" which is being conducted by a nonprofit organization which provides services to the general community shall be entitled to benefits if the organization elects to have its volunteers covered by the state's Industrial Insurance Act.
- The opinion is discussed in the next section of the survey, "Highlights."
- Payment of wages is an absolute requirement for the existence of an employment relation to bring into focus the workmen's compensation laws. N.J.S.A. 34-15-7. See Opinion of Attorney General, April 29, 1975.
- For specific statutes, see the "Highlights" section of the survey.
- The practice of giving credit for volunteer experience is not uniform. Only some state departments permit it, especially those having jobs which coordinate outreach programs.
- A standard mileage deduction and a deduction for modest food expenses are allowed.
- Each agency must decide whether its volunteers should be covered. See a discussion of the New York provision in the "Highlights" section of the survey.
- The issue of whether employees of the state should be protected from liability claims is under discussion. Volunteers serving in the Social Service Board Volunteer Program will be included if such protection is approved.
- State workmen's compensation is also available to volunteers serving through private, nonprofit agencies.
- While the definition of employee includes volunteers "in the service of the state or of any county, municipal corporation, township..." Ohio officials have informed NCVA that volunteers serving through state agencies are generally not covered. See Pages Ohio Revised Code sec. 4121.01. Volunteer firemen, civil defense teams, etc. would be covered under the definition.
- Activities of voluntary organizations that are deemed essential would be allocated assistance.
- Volunteer firemen, ambulance drivers and forest fighters are covered under sec. 601 of the Pa. Workmen's Comp. Act.
- Workmen's compensation isn't available to volunteers or state employees.
- Volunteers may receive medical aid benefits for out-of-pocket expenses arising from an injury or industrial illness. State agencies must elect to cover the volunteers. Volunteers serving through a private, nonprofit organization may also receive medical aid benefits at the option of the organization. (Wash. Revised Code sec. 51.12.035)
- Volunteers may be covered if agency regulations include volunteers and the workmen's compensation commission approves the agency's action.

agencies as an independent class which is eligible for medical benefits under the state's workmen's compensation plan. California, North Dakota, and Washington have gone further by enacting statutes which authorize private, nonprofit institutions to consider their volunteers as employees for the purpose of providing medical benefits under their workmen's compensation laws.

ENERGY

"Is there a planned assistance program for voluntary agencies in the event of severe energy shortages?"

"Have there been any discussions with the state energy offices in regard to the use of volunteers in case of fuel shortage?"

During the 1973 oil embargo, volunteers serving through nonprofit agencies found it difficult to obtain sufficient gasoline to reach their location of service and to transport the needy to doctor's offices, nutrition programs, etc. Further, when there has been a shortage of home heating fuels, the demand placed on voluntary agencies and volunteers for assistance and protection increased. Under current federal energy regulations, state energy offices are given some authority to determine how the damaging effects of fuel shortages may be remedied within the state. The two energy questions were designed to help assess the attitude of state government toward the role of nonprofits during energy shortages.

HIGHLIGHTS

Interesting and varying approaches are being taken by state officials in an effort to recognize the value of volunteer service to state agencies. This section of the survey highlights the approaches being taken in Florida, New Jersey and New York. In Florida, the state legislature has considered omnibus legislation which contains provisions on issues such as reimbursement, liability protection, volunteer recognition and the impact of volunteer services on a state agency's budget. In a few states such as New Jersey, the Attorney General, rather than the legislature, has specifically included state volunteers in a statute protecting state "employees" from liability claims. Many other states, such as New York, have specific statutory provisions relating to liability protection for volunteers serving in certain agencies.

Florida

An "omnibus" volunteer bill, H.B. 2499, containing several provisions affecting state volunteers was introduced by State Rep. Tom Gallagher of Coral Gables during the last session of the Florida legislature. The bill would have:

- authorized every state agency to recruit, train and accept volunteers;
- authorized state agencies to provide reimbursement to volunteers for transportation and lodging expenses;
- authorized volunteers to use state vehicles;
- codified Florida's policy that state volunteers shall be covered by state liability protection; (According to the Florida Lieutenant Governor, passage of H.B. 2499 would result in workmen's compensation being extended to volunteers.)
- directed state agencies utilizing volunteers to develop "meaningful opportunities" for volunteers;
- directed state agencies to establish written rules governing the recruitment, training and supervision of volunteers;

- codified Florida's policy of recognizing prior volunteer experience as partial fulfillment of state employment requirements; and
- provided that each budget request to the legislature by an agency be accompanied by a "volunteer impact statement outlining the number and types of services which volunteers will provide during the budget period and the fiscal savings reflected by such service."

The bill passed the Florida House of Representatives, but died in a Senate committee due to a lack of time in the legislative calendar. Rep. Gallagher informed NCVA that he intends to reintroduce the bill during the next legislative session. The bill may serve as model legislation covering many issues of concern to volunteers.

New Jersey

The New Jersey Tort Claims Act (N.J.S.A. 59:1-1) entitles state employees to legal representation at state expense and provides for the state to pay any money damages in the event the employee loses a lawsuit charging him/her with negligence.

Unlike several other states which require that an individual be "hired" by the state to be termed an "employee," the New Jersey statute's definition of "employee" includes persons who are not compensated for their services. In an opinion of the Attorney General to Charles E. Archbald, April 29, 1975, the Attorney General noted:

If the state . . . does . . . exercise supervisory control over the activities of the volunteer to a similar extent to which it exercises controls over its own employees, the volunteer will be an employee within the meaning of the New Jersey Tort Claims Act.

A New Jersey volunteer falling under this definition of employee would be entitled to the protective services of the state for any claim which arises in the course of the scope of the volunteer's assigned duties for the state. The state will assume the responsibility of presenting the defense.

New York

New York state statutes permit each state agency to determine whether or not it desires to provide its volunteers with workmen's compensation benefits. Under section 3 of the workmen's compensation statute, the head of any department may, with the prior approval of the director of the budget, allow any bureau or agency within the department to accept the services of a volunteer worker. Such volunteers are considered employees of the state for the purpose of workmen's compensation.

New York provides a state volunteer with liability protection under several statutes covering specific departments. By implication, volunteers serving through state agencies not covered by the several indemnification statutes are not provided with liability protection. Those departments covered by volunteer indemnification statutes are probation, youth division, mental hygiene, health and corrections.

The statutes state that if there is a claim of alleged negligence against a volunteer in one of the above departments, New York will provide for an attorney and those fees necessary to defend the volunteer in any civil action against him/her. A volunteer's financial loss arising out of the litigation would be assumed by New York provided that at the time the claim arose the volunteer was acting within the scope of his authorized duties and that the claim did not result from the willful act or gross negligence of such volunteer.