

Volunteer Liability Question & Answer

- If a 911/Emergency Management Agency asks for my business's paid ski patrollers to respond to an emergency, are they covered by workers compensation?**

Answer: They are basically in a borrowed-servant situation. This falls under "Maybe." It would be beneficial for you to have a written agreement, such as a Memorandum of Understanding (MOU), with the 911/Emergency Management Agency.

For information on writing an MOU, please go to:

<http://www.ready.wv.gov/Resources/Documents/CARD%20MOU.pdf>.

Do you know of any upcoming legislative changes in state law that would require BrickStreet and other workers compensation providers to offer coverage for volunteers and volunteer organizations?

Answer: No. I looked in the current legislation to see if I could find any pending bills or statutes on this topic. You can look online at both current legislation as well as pending legislation. I did not find any bills addressing this concern during the research period (July 2010).

However, there is a policy group coordinated through the State Department of Health and Human Resources that is in the process of drafting legislation which will offer liability protection for medical professionals who volunteer during a public health crisis.

- Is the state legislature in the process of rewriting the law to include emergency service workers that are not volunteers?**

Answer: I am not aware that they are currently re-writing any laws; however, if your volunteers are responding to a disaster, they may be covered by the statutes I've already discussed in the Volunteer Liability seminar. They may well be covered if they are operating a shelter, even if they are not associated with the police, fire department, etc.

- To what level would you need a background check for your volunteers?**

Answer: The legislation doesn't say specifically. I would recommend doing the same level of background check for volunteers that is done for employees at your organization. The background check should be tailored to the functions the employee/volunteer will be performing. For example, a person that will be working with children will need a more extensive background check than someone that is doing office work. Someone that will be driving a vehicle should have their driving record checked. However, a specific requirement is not set

forth in the statute. Also, research what the emergency service organization(s) that the volunteers will be working with does for its employees, and then do a similar level of background check for those volunteers.

4. **In your experience across the nation, how often have you seen a case in which a volunteer was injured and it went to trial?**

Because I've been asked that question frequently, PERI put together a survey to see if there were any such cases of a volunteer organization being sued by a volunteer and we didn't get any responses back in which that had happened. That doesn't mean it's never happened, but there is no reason to think that this is an unusually big problem for volunteer organizations.

5. **If I am called out by an emergency response organization (police/fire/etc), will I be covered by the organization's workers compensation?**

Answer: No, not necessarily. It is optional for these organizations to provide coverage for volunteers, so you should check with the organization first.

There is a list of agencies who will write workers compensation coverage for the state on the Insurance Commissioners website posted at:

<http://www.wvinsurance.gov/Default.aspx?tabid=73>

<http://www.wvinsurance.gov/LinkClick.aspx?fileticket=eiYwSD0ITbQ%3d&tabid=73&mid=752>

6. **What does it mean to be *registered* as a volunteer?**

Answer: There should be a clear record that an individual is a member of that organization, and has met the requirements for membership/registration for that particular organization. Then, during the event in question, there should be a clear record of the volunteers that are activated.

This can be accomplished in a variety of ways. The best way is for a local organization that deploys volunteers to train them and issue identification in advance. A volunteer can also be registered at a reception center at the time a response is needed. Policies and procedures exist for this spontaneous volunteer registration. To receive information about how to operate a spontaneous volunteer reception center please contact Heather.R.Foster@wv.gov.