

General Considerations for All Volunteers

- Discuss your desire to function as a disaster volunteer with your employer well before the need arises.
- Advise your employer of disaster-related training you have taken. Request the employer to maintain a copy of disaster-related training certificates, CEUs, etc. in your employee file. Bring copies with you when you deploy.
- Notify your employer if you join any emergency-response teams, such as a National Disaster Medical Service (NDMS), Metropolitan Medical Response (MMR) or Red Cross Disaster Team. Explain details regarding alert status and deployment.
- Arrange with your employer a process for requesting, approving and defining leave for disaster response purposes. Remember that, depending on the situation, the employer may not immediately be able to release you for response; however, typically employers will carefully consider the request before denying leave to respond. Special rules apply for NDMS volunteers.
- Ascertain before agreeing to respond the practical issues related to leave, including:
 - Will the leave be paid or unpaid?
 - Will benefits continue during disaster response leave?
 - Will malpractice coverage through your employer be available to cover your work during the disaster?
 - Will you be covered by your employer's workers' compensation when you volunteer?
- Request leave for disaster response purposes in writing if at all possible.
- Maintain communications with your employer regarding anticipated length of leave, etc.
- Establish a means by which your employer may reach you while deployed.

Legal Considerations for Healthcare Volunteers.

Not only practical, but legal issues must be considered before volunteering to respond to a disaster. The most important legal considerations will be:

Licensure. Will your healthcare professional license be honored if you are deployed to another state or territory?

Liability. Consider both professional liability (malpractice) and other types of liability, such as damages related to operation of a motor vehicle, libel, and allegations of assault or battery.

On-Duty Injury: Workers' Compensation. By their nature, disaster response activities pose a risk of injury, particularly given the arduous conditions which often exist. What will be the consequences if you are injured during training or deployment?

Travel and Other Deployment Costs. Unless the disaster is in your locality, it is likely that you will incur costs related to travel to the affected area and related deployment costs. Will those costs be reimbursed?

Employment/Reemployment Protection. Is your job protected if you take leave to volunteer for disaster response? How does volunteering affect your participation in employment-related benefit programs such as retirement and medical insurance programs?

The answers to these questions vary, depending on whether you are a "federalized" volunteer, an EMAC volunteer, or an independent/NGO (non-governmental organization) volunteer. The information in this brochure has been prepared to help you evaluate the legal issues, but is not legal advice and should not be relied on in making important decisions.

"Federalized" Volunteers.

National Disaster Medical Service (NDMS) Volunteers.

Volunteers who are members of National Disaster Medical Service teams are treated as temporary employees of the U.S. government when training or deployed.

- **Licensure.** So long as the volunteer holds a valid professional license in one of the 50 states or the District of Columbia, the volunteer may provide professional services anywhere in the nation when deployed through NDMS. Some states have raised issues regarding this. (See, for example, the memo regarding counseling professionals dated April 24, 2006 from the Office of General Counsel, Texas Department of State Health Services).
- **Liability/Malpractice.** NDMS volunteers are treated as employees of the Public Health Service when activated or in approved training, and have immunity under the Federal Tort Claims Act.
- **Liability/Other.** As federal employees, NDMS volunteers are immune from liability under the Federal Tort Claims Act when activated or in approved training.
- **On-Duty Injury: Workers' Compensation.** Volunteers who are members of NDMS are treated as employees of the Public Health Service when activated; if they are injured in the course of disaster response or training, they are eligible for workers' compensation through the Federal Employees Compensation Act (FECA) as determined by the Secretary of Labor.
- **Travel and Deployment Costs.** Travel must be organized through the National Travel Services. Entitlement for coverage of travel costs is determined at activation.
- **Medical Insurance.** NDMS volunteers who have employment-based medical insurance are guaranteed continuing coverage while on deployment, although the volunteer may be responsible for some costs, depending on the length of deployment.
- **Employment and Reemployment Protections.** NDMS volunteers are treated as members of the uniformed services of the United States and have employment and reemployment protections under the USERRA when deployed under federally (not state or local) authorized training or activation.

- PHS Disaster Volunteers.** Under 42 U.S.C. 217b, individuals may volunteer to provide disaster-related services under the Public Health Service. Services must be provided pursuant to a formal agreement, without compensation, and only to patients in DHHS facilities, federal beneficiaries, or others authorized to receive benefits through DHHS programs. Benefits of government service may, but are not required to be, provided to PHS Disaster Volunteers. Benefits must be approved by administrative or regulatory action of DHHS.
- **Licensure.** To the extent that PHS Disaster Volunteers are treated as federal employees, a valid license in any state will be honored.
 - **Liability/Malpractice.** Civil liability protection may be available through the Federal Tort Claims Act, if authorized by DHHS.
 - **Liability/Other.** Civil liability protection may be available through the Federal Tort Claims act, if authorized by DHHS.
 - **On-Duty Injury: Workers' Compensation.** Coverage through the FECA may be available, if authorized by DHHS.
 - **Travel and Deployment Costs.** Coverage of travel costs may be provided, if authorized by DHHS. Although it is not completely clear, the receipt of reimbursement for travel costs should not cause the individual to be deemed compensated.
 - **Medical Insurance.** There are no special provisions regarding medical insurance.
 - **Employment and Reemployment Protections.** Members of the Public Health Service Commissioned Corps are protected by USERRA; however, it is not clear that PHS volunteers are protected.

Schedule A Excepted Services Volunteers. Schedule A permits employment of temporary federal personnel when a critical hiring need exists and normal hiring processes can't be followed.

- **Licensure.** As temporary federal personnel, licensure in one state will be honored by other states.
- **Liability/Malpractice.** As temporary federal personnel, liability protection through the Federal Tort Claims Act will be available.
- **Liability/Other.** Federal workers are immune from liability for non-malpractice claims which arise in the scope of employment under the Federal Tort Claims Act.
- **On-Duty Injury: Workers' Compensation.** As a temporary federal employee, the volunteer will qualify for coverage through the FECA.
- **Travel and Deployment Costs.** Travel costs may be covered by the government or applicable grants. Volunteers should determine whether reimbursement is available, and rules for reimbursement, before committing to respond. Non-reimbursed travel costs may be tax deductible in some cases.
- **Medical Insurance.** There are no special provisions for medical insurance.
- **Employment and Reemployment Protections.** Employment and re-employment rights are not protected by USERRA. Volunteers can be required to use vacation time for response.

Stafford Act Temporary Disaster Workers

- **Licensure.** As temporary federal employees, a valid license in one state will be honored by other states.
- **Liability/Malpractice.** As temporary federal employees, volunteers receive immunity under the Federal Tort Claims Act.
- **Liability/Other.** As temporary federal employees, volunteers receive immunity under the Federal Tort Claims Act.
- **On-Duty Injury: Workers' Compensation.** As temporary federal employees, volunteers are covered under the FECA for on-duty injuries.
- **Travel and Deployment Costs.** Travel costs may be covered by the government or applicable grants. Volunteers should determine whether reimbursement is available, and rules for reimbursement, before committing to respond. Non-reimbursed travel costs may be tax deductible in some cases.
- **Medical Insurance.** There are no special rules regarding medical insurance.
- **Employment and Reemployment Protections.** There are no employment or re-employment protections.

Emergency Management Assistance Compact (EMAC)

Volunteers. Under the Emergency Management Assistance Compact, states agree to share resources when a disaster is declared. Because EMAC is an agreement between states, EMAC protections only extend to state employees or those volunteers who have otherwise entered into eligible agreements to respond under EMAC (such as volunteer services agreements). **EMAC only applies when a disaster has been properly declared** and only covers volunteers who are formally deployed through the EMAC process.

- **Licensure.** Licensed EMAC volunteers who deploy in response to a request from another EMAC state are deemed licensed in the disaster state, subject to any limitations imposed by the Governor of the disaster state.
- **Liability/Malpractice.** EMAC volunteers deployed or training under EMAC procedures are immune from liability for good-faith acts.
- **Liability/Other.** EMAC volunteers deployed or training under EMAC procedures are immune from liability for good-faith acts
- **On-Duty Injury: Workers' Compensation.** Responding EMAC volunteers may be covered by the home state workers' compensation law.
- **Travel and Deployment Costs.** Typically, EMAC volunteers may obtain reimbursement for deployment travel expenses. The requesting state will reimburse the responding state. Requirements for reimbursement should be reviewed prior to response.
- **Medical Insurance.** EMAC volunteers who are employees of the responding state remain covered under employment-related medical insurance. Typically there are no special medical insurance provisions regarding EMAC volunteers under VSAs.
- **Employment and Reemployment Protections.** There are no federal employment or reemployment protections. Some states provide such protection to state employees who volunteer for emergency response. EMAC volunteers who are state employees are acting in the scope of employment. Other states offer protection to all emergency response volunteers.

"Other" Volunteers. Healthcare workers may volunteer for disaster service through non-governmental organizations (such as the Red Cross), religious organizations, or other agencies.

- **Licensure.** Volunteers will need to comply with licensure requirements of the state to which they are responding. Volunteers should also confirm the scope of practice of given license categories before providing care.
 - **Nurse Licensure Compact States.** States which participate in the Nurse Licensure Compact recognize a nursing license issued by another Compact state. Nurses acting under this multi-state license must comply with the laws of the state in which the patient care is rendered. Limitations in practice may be imposed by executive order.
 - **Model Nursing Practice Act States.** States which have adopted the MNPA may have adopted a provision which permits nursing license reciprocity in certain situations. The volunteer should check with the state in question prior to providing services both to confirm reciprocity and scope of practice.
 - **Emergency/Temporary Licenses.** Most states have provisions for issuance of emergency/temporary licenses in extraordinary situations. The law governing issuance of such licenses may limit the scope of practice in some cases.
 - **Waiver/Temporary Recognition of Licensure.** Most states have mechanisms which permit the Governor or other appropriate authority to waive licensure requirements or temporarily recognize licenses granted by other jurisdictions in an emergency/disaster situation. However, laws differ between the states and the volunteer should review the waiver/recognition order carefully.

"Other" Volunteers, Continued

- **Liability/Malpractice.**
 - **Volunteer Protection Act.** This federal law protects volunteers from liability if: (1) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission; (2) the volunteer held any required licensure, etc. in the State in which the harm occurred; (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed; and (4) the harm was not caused by the operation of a motorized vehicle. Restricts punitive damages to clearly willful or criminal misconduct, or conscious, flagrant indifference to the rights or safety of the individual harmed. Excludes from protection claims related to violent crimes, acts of terrorism, hate crimes, sexual offenses, violation of state or federal law, or acts occurring while under the influence of alcohol or intoxicating drugs. Non-economic damages are excluded. State law may pre-empt this law in certain cases.
 - **State Liability Protection.** Each state has liability protection statutes which benefit volunteers; however, the scope of coverage varies widely. The volunteer should check the law of the disaster state to determine which protections are available.
 - **State Emergency Management Act.** Many state Emergency Management Acts provide that disaster response personnel are entitled to the rights and immunities of state employees while on disaster response. In Wisconsin, volunteer emergency management personnel who are registered in writing with an emergency management unit are indemnified against tort liability by that unit, so long as the volunteer is acting in good faith and in a reasonable manner. Healthcare providers who volunteer in Wisconsin during a declared public health emergency are treated as state agents for purposes of workers' compensation and immunity from liability.
 - **Good Samaritan Statutes.** Although the specific coverage varies, Good Samaritan statutes typically limit liability for damages related to negligence in the provision of uncompensated care in an emergency. Gross negligence, willful and wanton misconduct, and violation of law are typically excluded from the limitation of liability. Situations where a duty to respond existed are also typically excluded.
- **Special Situations: Athletic Events, AEDs, Etc.** Many states have special liability limitations related to the use of automated external defibrillators (AEDs). Some states have special liability limitations for emergency care rendered in connection with athletic events or activities.
- **Corporate Indemnity Statutes.** Some states authorize corporations to indemnify volunteers for actions as a volunteer. As with other liability protection laws, many exclude willful/wanton or reckless acts and vehicular liability.
- **Sovereign Immunity.** Some, but not all, states have laws which grant immunity for civil claims to state employees acting in the scope of their employment. In some cases, this protection may extend to emergency volunteers. In some states, however, this immunity is not available for healthcare workers.
- **Liability/Other.** Immunity or release of liability for actions, such as operation of a motor vehicle, are typically excluded from state liability protection laws, and from the federal Volunteer Protection Act.
 - The entity with which the volunteer is working may or may not have insurance coverage which extends to volunteers.
 - Check your personal insurance for coverage of this type of claim prior to deployment.
- **On-Duty Injury: Workers' Compensation.** . In Wisconsin, volunteer emergency management personnel who are registered in writing with an emergency management unit or who volunteer during a declared public health emergency are treated as agents of the state for purposes of workers' compensation.
- **Travel/Deployment Costs.** Volunteers should clearly understand whether the sponsoring organization covers travel and deployment costs. If not, those costs may in some cases be deductible on your income taxes, if you meet requirements and have sufficient supporting documentation.
- **Medical Insurance.** Typically, no medical insurance protections are offered to volunteers.
- **Employment/Re-Employment Protection.** No federal employment or re-employment protection exists for non-affiliated volunteers. State law may in some cases grant protection. Volunteers should check applicable state law.