

Workers Compensation Coverage for Volunteer Firefighters

Generally, volunteers are not considered employees and are not covered by workers compensation. The Workers Compensation Act (Title 39-A) makes three exceptions, and in two of these exceptions the Workers Compensation Act references another body of law outside the WC Act. Section 102, paragraph 11 of the Workers Compensation Act states:

11. Employee. The term “employee” is defined as follows.

(2) Firefighters, including volunteer firefighters who are active members of a volunteer fire association as defined in Title 30-A, section 3151; volunteer emergency medical services persons as defined in Title 32, section 83, subsection 12; and police officers are employees within the meaning of this Act.

As the Workers Compensation Act has now steered us to a separate body of law in Title 30-A, we need to examine the definitions contained there.

Title 30-A, section 3151 contains the following definitions. Paragraph 4 defines “Volunteer firefighter” and also references paragraph 3, “Volunteer fire association.

§3151. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Municipal fire department. “Municipal fire department” means an organized firefighting unit established under municipal charter, ordinance or bylaw to prevent and extinguish fires and, if authorized by charter, ordinance or bylaw, to provide emergency services.

1-A. Provide emergency services. “Provide emergency services” means to respond to and manage other public safety emergencies, including, but not limited to, medical emergencies, hazardous materials

incidents or natural or man-made disasters.

2. Municipal firefighter. “Municipal firefighter” means an active member, whether full-time, part-time or on call, of a municipal fire department, who aids in the extinguishment of fires or an individual who receives compensation from the municipality for aiding in the extinguishment of fires.

3. Volunteer fire association. “Volunteer fire association” means an organized firefighting unit incorporated under Title 13, chapter 81, or Title 13-B, and which is officially recognized by the municipality.

A. Any volunteer fire association incorporated under either Title 13, chapter 81, or Title 13-B, on or after January 1, 1978, shall be considered incorporated for the purposes of this section.

B. The appropriation of money by a municipality toward the support of an organized firefighting unit

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Injuries, Fines, and Deadlines

The Workers Compensation Board is monitoring reporting deadlines with an eagle eye, and late reporting and payment of claims exposes you to significant penalties. As a reminder, the Workers Compensation Law requires that any case that involves an employee losing time from work must be reported to the WC Board within 7 calendar days. Fail to do so and you will pay a \$100 penalty.

In addition, if there is no ongoing dispute about a claim, benefits must be paid within 30 days after they are due and payable. Fail to do so and you will be assessed a fine of \$50 per day. This \$50 per day fine will continue for each day benefits are overdue up to a maximum of \$1,500. We are aware that there are municipalities where the WC Board has demanded the maximum \$1,500 penalty.

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Volunteer Fire Fighters (Cont'd)

incorporated under Title 13, chapter 81, or Title 13-B, is prima facie evidence of official recognition.

4. Volunteer firefighter. "Volunteer firefighter" means an active member of a volunteer fire association who receives no compensation from the municipality other than injury and death benefits.

The Workers Compensation Act is silent as to the circumstances under which volunteer firefighters are covered. Section 201 of the WC Act does state that an injury must arise "out of and in the course of employment" for the individual to be eligible for workers compensation benefits. The question becomes when are volunteer firefighters considered to be "in the course of employment" for the municipality? In other words, when are they "volunteer firefighters" (and covered by workers compensation) and when are they purely "volunteers" (and not covered by the workers compensation)?

Turning again to Title 30-A for assistance, section 3154 defines the duties of firefighters.

§3154. Firefighters

1. Duties. Firefighters are under a duty to extinguish all fires to which they are called, to protect lives and property endangered by fires and to carry out all other related activities as directed by the fire chief.

Breaking this down:

- Firefighters are under a duty to extinguish fires to which they are called
- Firefighters are under a duty to protect lives and property endangered by fire
- Firefighters are to carry out all other activities

The Municipal Risk Manager

The Municipal Risk Manager is published seasonally to inform you of developments in municipal risk management which may be of interest to you in your daily business activities. The information in these articles is general in nature and should not be considered advice for any specific risk management or legal question; you should consult with legal counsel or other qualified professional of your own choice.

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related to the above, as directed by the fire chief.

On its face, this seems to be a very narrow window for coverage, as volunteer firefighters are frequently called out for other emergency situations (floods, search and rescue, ice storms).

For many of the smaller communities in the state, the volunteer fire department is the closest and fastest source of emergency assistance available. The MMA WC Fund has long recognized this and has consistently provided WC coverage to volunteer firefighters who were engaged in response to "other public safety emergencies," even if it was not a fire emergency. This remains the position of the WC Fund today.

When does WC coverage begin and end?

Workers compensation is coverage for employment hazards, not hazards that are associated with the employee's household. Therefore coverage for volunteer firefighters begins when they enter the public highway in response to an emergency. Coverage ends when the Chief has dismissed them from the call.

When are volunteer firefighters "volunteers" and when are they "firefighters"?

"Volunteer fire associations" are frequently organized as legal entities that are separate and distinct from the municipality. These associations frequently engage in fundraising activities, and the funds raised are usually controlled solely by the association, not by the Town. Therefore, any injuries that result from these fundraising activities will not be covered by the Town's workers compensation coverage.



However, when volunteer

Did you know?

The MMA Workers Compensation Fund has paid over **\$12 million dollars** in workers compensation benefits to firefighters or their families since 1979?

firefighters respond to a “public safety emergency” they are considered to be acting in the Town’s interest and behalf, and are therefore covered by workers compensation.

It is important to note that many municipal fire departments also engage in fundraising activities. Again, if this activity is not being done within the scope of the firefighters’ employment or duties for the Town, these fundraising activities are not covered under the Town’s workers compensation coverage. If the participants in the fundraising activity are volunteering their time, they are not covered by workers compensation.

Maintenance of emergency response equipment is covered by workers compensation, as it falls into the category of “other related activities as directed by the fire chief”. Firefighting apparatus must be kept in a state of constant readiness to be effective. Therefore, injuries that take place in the course of maintenance of these items are covered by workers compensation. Volunteer firefighters who volunteer to paint the firehouse, sweep the bays or perform other activities that do not involve maintenance of firefighting apparatus are not covered by workers compensation, should they become injured while performing these activities. If they are not being paid for these activities, participants are “volunteers” and are not eligible for workers compensation coverage. Their status is the same as other volunteers for the town who donate their time to the library, town hall, or recreation department.

What about training?

Title 30-A, section 3154 also discusses training:

2. Training. All firefighters shall attend training sessions as scheduled by the fire chief.

Volunteer firefighters who are injured in training programs that have been scheduled by the fire chief are covered by workers compensation.

Benefits

The workers compensation wage benefits for volunteer firefighters are based on the earnings from any concurrent employment they were engaged in at the time of the injury. It is not based solely on the earnings from the fire department.

Waiting Period

Section 204 of the Workers Compensation Act states that injured persons are not eligible for wage benefits for the first 7 days of disability. Firefighters are exempt from

this waiting period. Wage benefits for injured firefighters begin on the first day of disability.

What if there is a dispute as to whether a volunteer firefighter is entitled to workers compensation benefits?

Most claims are paid. However, on occasion questions will arise as to whether a firefighter is covered by workers compensation. The Workers Compensation Board has a process to resolve disputed claims.

If a claim is contested, a Notice of Controversy is filed with the Workers Compensation Board. Copies are sent to the firefighter, and the employer.

A “troubleshooter” employed by the Board sends a letter to the firefighter asking him/her to contact the Board if the firefighter disagrees with the denial of benefits. If the firefighter responds and wishes to pursue the claim further, the troubleshooter contacts the parties by telephone to see if the dispute can be resolved. If the “troubleshooter” cannot resolve the claim, the case goes to mediation before the Board. The firefighter can request the assistance of a Board-appointed Advocate to help with the claim, at no charge. The parties meet with the mediator, and the mediator tries to resolve the case. Most contested cases resolve at mediation.

While it does not happen often, sometimes the parties cannot reach agreement at mediation. If this happens, the Employee has the option of pursuing the claim further by filing a Petition, and the case will be scheduled for hearings before a Hearing Officer. The Hearing Officer hears the evidence and gives a decision in a decree.

Either side can appeal a decree, which may be appealed to the State Supreme Court. The Court decides if they will hear the case. This is very rare. In 2005 the State Supreme Court heard only 6 cases that involved workers compensation issues (none of these involved the MMA Workers Compensation Fund).



Injuries, Fines, and Deadlines (Cont'd)

To avoid this situation, members must be diligent in complying with the WC Law and reporting their claims promptly. For those members who participate in the MMA WC Fund, claims should be reported through the MMA website at www.memun.org. Click on the Risk Management and First Reports of Injury links. If you are not able to report via the Internet, submit the First Report of Injury form by fax at 207-626-0513. Reports may also be mailed, however, be conscious that mailing may take up to 5 days and the 7-calendar day requirement for reporting has no dispensation for mailing time. You may always call the Claim Department at 800-590-5583 or 207-626-5583 if you have any questions about how or when a claim should be reported. When in doubt, report.

Sometimes an employee suffers a work related injury that does not result in an immediate absence from work. However, any time the status of that injured employee changes and they begin to miss time from work related to the injury, notify the Claim Department immediately. Even if the employee is only missing a few hours here and there from work, you must report this to us. If an employee is scheduled for surgery as a result of a work related injury but will not miss time from work in the interim, notify MMA as soon as possible. If you have any questions, call us. When in doubt, report.

The only way to avoid penalties from the WC Board is timely reporting. Err on the side of caution.

IT'S TIME TO ENROLL IN ACCIDENT INSURANCE FOR VOLUNTEERS

Coverage term:	July 1, 2006 through June 30, 2007
Cost:	\$3.75 per volunteer, per year
Coverage:	Medical and dental reimbursement, death and dismemberment benefits for individuals injured while performing volunteer duties. (Coverage is secondary to the injured party's health insurance, if any).
Requirements:	Enrolling entity must participate in the MMA Workers Compensation Fund or Property and Casualty Pool and must include ALL volunteers.
Special Features:	Blanket coverage allows enrolling entities to cover all volunteers for the coverage year even if the names of all volunteers are not known at the time the enrollment application is submitted.

A GREAT WAY TO PROTECT AND HONOR YOUR VALUABLE VOLUNTEERS!!!

For more information, contact Pam Corrigan at MMA Risk Management Services,
1-800-590-5583, ext 255, pcorrigan@memun.org.