



Quick Reference Guide: Mutual Aid in Massachusetts

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I. INTRODUCTION

This document serves to provide a basic overview of the different means of mutual aid available to the Massachusetts fire service. The information presented here is for informational purposes only and does not, nor is it intended to, constitute legal advice. Prior to providing mutual aid, or entering into any mutual aid agreements, the municipality/governmental unit is advised to consult with their own attorney.

II. MUTUAL AID OVERVIEW

Mutual aid is defined as “the cross-jurisdictional provision of emergency services, materials or facilities from one party to another when existing resources are, or may be, inadequate. Such aid is generally available at any event, emergency, or natural or man-made disaster, that threatens or causes harm to public health, safety or welfare and that exceeds, or reasonably may be expected to exceed, the response or recovery capabilities of a governmental unit.

Statewide mutual aid and resources are addressed via the General Laws and the Massachusetts Fire and EMS Mobilization Plan (“MFMP”), interstate mutual aid is addressed in the Emergency Management Assistance Compact (“EMAC”), and international mutual aid is addressed in the International Emergency Management Assistance Compact (“IEMAC”).

III. STATEWIDE MUTUAL AID AND RESOURCES

There are two statutes which establish the authority for fire departments to provide and receive mutual aid within the Commonwealth’s borders. The first is the general statewide mutual aid plan found in M.G.L. c.40 s. 4J (“s. 4J”), and the second, which is specific to fire departments, is contained in M.G.L. c. 48 s. 59A (“59A”). In addition, identification and utilization of resources can be found in the MFMP.

A. M.G.L. c. 40 s. 4J – Public Safety Mutual Aid Agreement

Statewide mutual aid is available to any municipality or governmental unit which participates in the Statewide Mutual Aid Agreement (“SMAA”)¹. Communities or governmental units that have opted in to this agreement may request or provide emergency response assistance to or from any other community or governmental agency that has also opted in. A list of communities/governmental units that have opted in can be found on the mass.gov website.²

¹ See M.G.L. c 40 s.4J for full text of the statute

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40/Section4J>

² <https://www.mass.gov/doc/statewide-mutual-aid-opt-in-communities/download>



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Some key components of s. 4J include:

- Ability for the municipality or governmental unit to opt-in or opt-out of the agreement;
- Requesting party maintains overall control of incident, sending party retains direct supervision of its resources unless otherwise agreed upon;
- Sending party incurs all costs, unless an agreement for reimbursement is entered into by the parties;
- While providing mutual aid assistance under the agreement, employees of a sending party shall: (i) be afforded the same powers, duties, rights and privileges as they are afforded in the sending party's geographical jurisdiction or location; and (ii) receive the same salary, including overtime, that they would be entitled to receive if they were operating in their own governmental unit. In the absence of an agreement to the contrary, the sending party shall be responsible for all such salary expenses, including overtime;
- While in transit to, returning from and providing mutual aid assistance under the agreement, employees of a sending party shall have the same rights of defense, immunity and indemnification that they otherwise would have under the law if they were acting within the scope of their employment under the direction of their employer. A sending party shall provide to, and maintain for, each of its employees who provide mutual aid assistance under the agreement the same indemnification, defense, right to immunity, employee benefits, death benefits, workers' compensation or similar protection and insurance coverage that would be provided to those employees if they were performing similar services in the sending party's jurisdiction;
- Each party to the agreement shall waive all claims and causes of action against each other party to the agreement that may arise out of their activities while rendering or receiving mutual aid assistance under the agreement, including travel outside of its jurisdiction; and
- Each requesting party shall defend, indemnify and hold harmless each sending party from all claims by third parties for property damage or personal injury which may arise out of the activities of the sending party or its employees, including travel, while providing mutual aid assistance under the agreement.

B. M.G.L. c. 48 s. 59A – Fire Department Aid to Other Municipalities

Section 59A was enacted in 1925 and is specific to fire departments. The statute states, in part, that cities, towns, and fire districts may, by ordinance or by-law, or by vote of the board of



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aldermen, selectmen or of the prudential committee or board exercising similar powers, authorize their respective fire departments to go to aid another city, town, fire district or area under federal jurisdiction in this commonwealth or in any adjoining state in extinguishing fires therein, or rendering any other emergency aid or performing any detail as ordered by the head of the fire department, or the Joint Base Cape Cod.

However, since the enactment of s. 4J in 2010, reliance on s. 59A is essentially limited to those municipalities who have not signed the SMAA or for sending resources to a federal jurisdiction. The protections afforded by s. 4J are much broader than s. 59A

C. Massachusetts Fire and EMS Mobilization Plan

The MFMP is a tool to provide communities with easy access to resources located outside of their district in the event that district mutual aid has been exhausted or will soon be exhausted. The most recent version of the MFMP was released in December of 2019 and can be found at <https://www.mass.gov/doc/statewide-fire-mobilization-plan/download>

IV. OUT OF STATE MUTUAL AID

A. No Statewide Procedure

Unlike the State Police, who can provide out of state mutual aid in an emergency pursuant to the New England State Police Compact, there are no formal agreements in place between the Commonwealth and its five (5) bordering states for fire departments to do the same on more of a “routine” basis. Although some cities and towns may have their own agreements, ordinances or bylaws that govern mutual aid (through M.G.L. c. 48, s. 59A) with out of state communities, these arrangements are generally *ad hoc* in nature.

It is important to note that, while it may be routine to provide/receive mutual aid to/from an out of state community, any such agreement or arrangement should be carefully reviewed by legal counsel to ensure that all legal factors have been considered.

B. Emergency Management Assistance Compact (“EMAC”)

EMAC is a national disaster–relief compact, which offers assistance during governor-declared states of emergency or disaster through a responsive, straightforward system that allows states to send personnel, equipment, and commodities to assist with response and recovery efforts in other states. EMAC does not allow for resources to move directly from county-to-county or city to city, instead it is strictly state to state. EMAC is unique among mutual-aid compacts because it



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allows the deployment of any resource a state is willing to send to another state, including law enforcement, firefighting, public health, transportation and human services.

Because the declaration of a state of emergency is required for activation, EMAC is not an option for routine mutual aid needs.

C. International Emergency Management Assistance Compact (IEMAC)

The International Emergency Management Assistance Compact (IEMAC) is a mutual aid agreement between the Eastern Canadian provinces and the New England states. IEMAC functions similarly to the interstate mutual aid agreement, but the Governor is not required to declare a state of emergency in order to request assistance through IEMAC. The signatories of the mutual aid agreement, which is outlined in the Commonwealth's Chapter 300 Section 58 of the Acts of 2002, are Massachusetts, New Hampshire, Connecticut, Rhode Island, Vermont, Maine, New Brunswick, Prince Edward Island, Nova Scotia, Quebec, Newfoundland and Labrador.

Although the declaration of a state of an emergency is not necessary to request mutual aid from any of the participants, the request must be made by the authorized representative of the requesting party's jurisdiction to the authorized representative the requested party's jurisdiction. As such, use of the IEMAC is not practical for routine requests for interstate requests for mutual aid.

D. Comparison of Mutual Aid

For a chart detailing the different forms of mutual aid, please see Appendix A

V. LEGAL CONSIDERATIONS

A. Powers, Duties, Rights, and Privileges

The various forms of mutual aid also come with varying levels of privileges, immunities, indemnification, and other requirements. Generally speaking, each of the mutual aid plans grant employees³ operating during mutual aid the same powers, duties, rights, and privileges as is they were performing the same within their respective states, cities, towns, or districts.

The plans also generally afford the employees the same employee benefits, death benefits, workers' compensation or similar protection and insurance coverage that would be provided to those employees if they were performing similar services in the sending party's jurisdiction.

³ "Employee" means a person employed full-time or part-time by a governmental unit, a volunteer officially operating under a governmental unit, or a person contractually providing services to a governmental unit (M.G.L. c. 40, s. 4J).



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Benefits which may be affected include, but are not limited to, pensions to surviving spouses⁴, Killed In the Line of Duty Benefits⁵, Leave with Pay for Incapacitated Employees⁶, and Accidental Disability Retirement⁷.

B. Defenses, Immunity, and Indemnification

Sections 59A and 4J also generally afford the same rights of defense and immunity that the municipalities and employees otherwise would have under the law if they were acting within the scope of their employment under the direction of their employer. Two of the more common defenses/immunities are those found under the Massachusetts Tort Claim Act⁸ and the Emergency Medical Services System Act.⁹

VI. ADDITIONAL INFORMATION

For additional information or questions, please consult your municipal administrator, emergency manager, city solicitor/town counsel, MEMA, or the Massachusetts Department of Fire Services Office of the General Counsel.

⁴ M.G.L. c. 32 s.100

⁵ M.G.L. c. 32 s.100A

⁶ M.G.L. c. 41 s. 111F

⁷ M.G.L. c. 32 s.7

⁸ M.G.L. c. 258

⁹ M.G.L. c. 111C, s. 21.

**APPENDIX A
COMPARISON OF MUTUAL AID**

Ch. 48 § 59A

Ch. 40 § 4J

EMAC

IEMAC

Membership/ Authority	Fire department may give/receive mutual aid if authorized by ordinance, bylaw or vote of selectmen, aldermen, or prudential committee	<ul style="list-style-type: none"> • Authorized by municipal head • Other governmental units by CEO • Must notify MEMA of intent to join in writing. 	All U.S. States, Commonwealth of Puerto Rico, District of Columbia and all U.S. territorial possessions (Party States)	All New England States and the Canadian Provinces of Quebec, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland.
Aid Given to or Received From	If authorized, any city, town, fire district, or federal area within MA or in an adjoining state (unique to Chapter 48, s. 59A)	Any city, town, fire district in Mass, who is a party and requests assistance (does not include federal areas or adjoining states)	<ul style="list-style-type: none"> • Applies to state resources • Any other state who is a signatory to the agreement • Not designed for everyday mutual aid needs 	<ul style="list-style-type: none"> • Applies to state resources • States and/or Provinces who are signatories to the agreement • Not designed for everyday mutual aid needs
How Request is Made	No formal process, subject to any conditions or restrictions as set by head of fire department	<ul style="list-style-type: none"> • Party to party or party to MEMA • May be made oral or written • Oral requests must be confirmed in writing within 72 hours 	<ul style="list-style-type: none"> • Declaration of State of Emergency required • State to state acting through Governor's designee (MEMA) 	<ul style="list-style-type: none"> • Declaration of State of Emergency not required • State to state acting through Governor's designee (MEMA)
Privileges and Immunities	Same as if operating in their own city, town, or district	Same as if operating in their own city, town, or district	Privileges/Certifications/Licensure/Immunities same as if operating in their own state.	Privileges/Certifications/Licensure/Immunities same as if operating in their own state.
Control Over Equipment & Personnel	Sending party responsible for operation of its equipment and damages and retains control over its personnel unless agreed otherwise.	Sending party responsible for operation of its equipment and damages and retains control over its personnel unless agreed otherwise.	<ul style="list-style-type: none"> • Emergency forces remain under regular leadership • Operational control by receiving state 	<ul style="list-style-type: none"> • Emergency forces remain under regular leadership • Operational control by receiving state
Personal Injury, Benefits	Sending dept. responsible payments made to widow/dependents on account of injuries or death	Same as if within employee's own state.	Same as if within employee's own state.	Same as if within employee's own state.
Modifications Allowed	Costs and liabilities	Costs, salary, and OT	Broad authority to enter into supplemental agreements	May be amended by agreement of the party jurisdictions
Liability/ Indemnification	Dept. rendering aid liable up to limitations of municipal liability for personal injury sustained or caused by a member of its FD	Express indemnification for sending party by requesting party.	<ul style="list-style-type: none"> • Officers and employees of responding state considered agents of requesting state for tort liability so long as acting in good faith • No express indemnification 	<ul style="list-style-type: none"> • Officers and employees of responding state considered agents of requesting state for tort liability so long as acting in good faith • No express indemnification