

Summary of Liability and Workers' Compensation Protections for Massachusetts Health Care Volunteers in Disaster Response

Disclaimer: This information is only a brief outline of liability and Workers' Compensation protections in Massachusetts. It is provided for educational purposes only and is not to be construed as legal advice. Consult your own attorney for legal advice.

Definitions

Liability – legal responsibility for damages that result from someone's acts or omissions

Immunity – an exemption from liability

- Someone who is immune from liability will not have to pay any damages

Indemnify – hold harmless; promise to pay any costs or claims which may arise from another's act or failure to act

- **Example:** employer promises employee to pay third parties for injuries suffered because of the employee's conduct

Workers' Compensation – a system of providing benefits to an employee for injuries occurring in the scope of employment

- **Trade-offs:** makes it easy for employee to recover (no-fault standard) but limits recovery and employee loses right to sue employer

A. Protections Available to BOTH State Employees and Others

1. "Federalization"

There are several ways in which people can be "federalized." None require a federal declaration of disaster or emergency. The first three options may be used to hire paid employees as well as unpaid volunteers.

- Temporary federal employee under Schedule A of the Excepted Service (used during Hurricane Katrina relief)
 - Authority: 5 CFR § 213.3102(i)(2). Federal agencies may hire temporary personnel when a critical hiring need exists and normal hiring procedures are impracticable.
 - Appointment lasts for 30 days and can be extended for another 30 days when essential to the federal agency's operations.
 - This appointment provides:
 - ***Liability protection under the Federal Tort Claims Act***
 - ***Coverage under the federal Workers' Compensation program***
- Intermittent disaster-response personnel of the National Disaster Medical System (NDMS)
 - Authority: 42 U.S.C. § 300hh-11(d)(1). The Secretary of Health and Human Services may appoint these personnel for the purpose of assisting NDMS in carrying out its duties.
 - This appointment provides:
 - ***Liability protection under the Federal Tort Claims Act***

- **Coverage under the federal Workers' Compensation program**
Benefits will be determined based on a formula that considers existing income and other factors.
- Temporary personnel under the Stafford Act
 - Authority: 42 U.S.C. § 5149(b)
 - Appointment is for performing any service under the Stafford Act, which includes activities conducted before, during, or after a disaster.
 - This appointment provides:
 - **Liability protection under the Federal Tort Claims Act**
 - **Coverage under the federal Workers' Compensation program**
- Public Health Service volunteer (no pay available)
 - Authority: 42 U.S.C. § 217b
 - This appointment requires a **formal agreement**, and the volunteer can **only provide services to patients in specific settings or meeting specific criteria** outlined by Secretary of HHS.
 - There is **no guarantee of legal protections; Secretary of HHS must decide whether they apply, presumably through administrative action.**

2. Federal Volunteer Protection Act, 42 U.S.C. § 14501 et seq.

- Provides **immunity from liability for negligence** for people who volunteer for a government entity or a non-profit organization. The volunteer is not liable to a person they harm, **BUT** the organization that the volunteer is working under may still sue the volunteer personally for negligence
 - Volunteer must be properly licensed, certified, or authorized, and must act within the scope of his/her authority in the organization.
 - Negligence arising from operation of a motorized vehicle is NOT covered
 - Protection only extends to UNPAID volunteers
- The FVPA protects state employees who volunteer for a non-profit organization or for another government entity.
- **There is NO Workers' Compensation protection**

3. Good Samaritan Laws

- General
 - These state laws **protect health care workers from liability** when they render **emergency care or treatment**. **Coverage depends on there being an emergency**. The emergency need not be declared, but it is not clear whether the concept of "emergency" extends beyond an immediate, urgent need.
 - Care must be provided in good faith.
 - **There is NO Workers' Compensation protection in most situations**
- Physicians, nurses, physician assistants: M.G.L. c. 112, § 12B
 - Provides immunity from liability for damages resulting from the person's acts or omissions.
 - Care must be given **other** than in the ordinary course of practice
 - Protection only extends to UNPAID volunteers (therefore applies only to **off-duty** state employees)
 - Protection extends to doctors, nurses, and PAs from another state or Canada

- Respiratory therapists: M.G.L. c. 112, § 23BB
 - Provides immunity from liability for damages resulting from the person's acts or omissions.
 - Care must be given **other** than in the ordinary course of practice
 - Protection only extends to UNPAID volunteers (therefore applies only to **off-duty** state employees)
 - Protection does NOT extend to respiratory therapists from another state or Canada
- Physicians, dentists and hospitals: M.G.L. c. 112, § 12F
 - Protects doctors, dentists, and hospitals from liability for **failure to obtain consent** from a parent of a child, or spouse of a patient when delay will endanger the life, limb, or mental well-being of the patient
 - Care may be paid or unpaid; within or outside the ordinary course of practice
 - Protection does NOT extend to people from another state or Canada
- Any person whose usual and regular duties do not include the provision of emergency medical care: M.G.L. c. 112, § 12V
 - Protects members of the general public, whose usual and regular duties do not include the provision of emergency medical care, from liability for acts or omissions, including but not limited to cardiopulmonary resuscitation or defibrillation, when they attempt to render emergency care.
 - Care must be given in good faith and without compensation
 - Does NOT protect against gross negligence or willful or wanton misconduct

4. Protection for EMS Personnel: M.G.L. c. 111C, § 21

- Protects certified, accredited or approved EMS personnel, and EMS personnel certified or authorized under c. 111C, s. 9, from personal liability when they “in the performance of their duties” render first aid, CPR, transportation or other emergency medical services.
- Does NOT protect off-duty EMS personnel.
- Protection does NOT extend to people from another state or Canada
- ***Workers’ Compensation may be available through the employer***

5. Protection for Doctors and Nurses in Public Health Programs:

M.G.L. c. 112, § 12C

- Provides immunity from liability for physicians and nurses “administering immunization or other protective programs under public health programs” (i.e. government-sponsored programs)
- Covers BOTH PAID AND UNPAID doctors and nurses
- NOT limited to emergency situations
- ***There is NO Workers’ Compensation protection***

6. Volunteering with Private Organizations (American Red Cross, Salvation Army, etc.)

- **Check with the organization about whether it offers liability or Workers’ Compensation protection.**

B. Protections Available ONLY to State Employees

1. Massachusetts Tort Claims Act

- M.G.L. c. 258: Public employees are *protected from liability for negligent acts or omissions if they acted within the scope of their employment.*

2. Workers' Compensation

- M.G.L. c. 152, §§ 69-75 provide *Workers' Compensation benefits* to state employees when they are injured at work.

3. Assistance in Another State under the Emergency Management Assistance Compact (EMAC)

- Mass. joined EMAC through Chapter 339 of the Acts of 2000. MEMA is responsible for deploying people under EMAC.
- When a person is deployed:
 - S/he is on official assignment for the Commonwealth, and is entitled to regular compensation and overtime/comp time for hours worked.
 - His or her Massachusetts-issued license, certificate, or permit is valid in the requesting state, subject to any limitations prescribed by the Governor of that state.
 - S/he has *immunity from liability for any acts or omissions done in good faith*, and is considered an agent of the requesting state for tort liability and immunity purposes.
 - *Massachusetts Workers' Compensation benefits apply.*
- Who is a state employee for EMAC purposes?
 - Regular employees
 - Seasonal, intermittent, 120 day and contract employees may be deployed under EMAC and would be covered by its provisions

4. NO State Law Protections: Paid Leave to Volunteer with the American Red Cross (ARC)

- M.G.L. c. 30, § 9I allows state employees up to 15 calendar days per year of paid leave to serve as an ARC volunteer in specialized disaster relief services.
 - The leave is at the sole discretion of the employee's supervisor
 - Leave is only available to Commonwealth employees registered as certified disaster service volunteers of the ARC
 - The employee is entitled to regular pay, but NOT overtime, shift differential pay, hazardous duty pay or any other form of compensation
 - *The employee is NOT covered by the Mass. Tort Claims Act*
 - *Massachusetts Workers Compensation benefits do NOT apply*
 - *Federal Volunteer Protection Act does NOT apply because person is paid*
 - **Check with the Red Cross to see if it offers liability or Workers' Compensation protection.**

C. Protections Available ONLY to People Employed in the Private Sector

Coverage under current employer (hospital, health clinic, etc.)

- Employer must agree to keep the volunteer on payroll. Coverage is less likely to exist if the person is not paid. (The employer cannot guarantee how the insurance company will interpret the policy, so it's best if person looks as much like an employee as possible.)
- If the person is considered an employee, liability protection and Workers' Compensation benefits would be available as they normally are in the person's job.