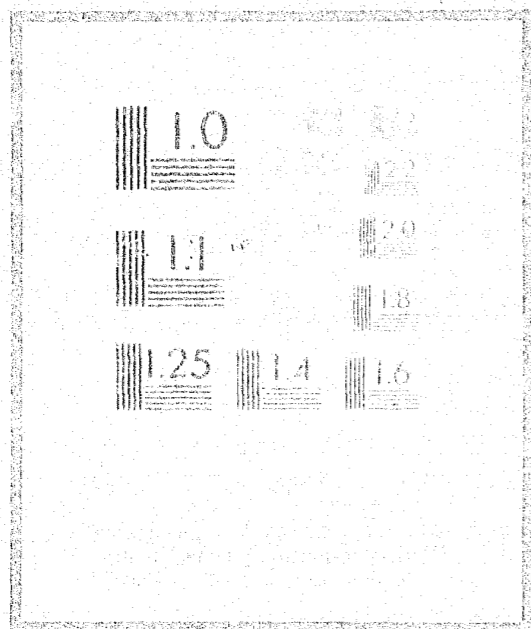


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7/25/77

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INFORMATIONAL SERIES NO. 3

INSURANCE COVERAGE FOR

VOLUNTEERS IN PUBLIC ENTITIES

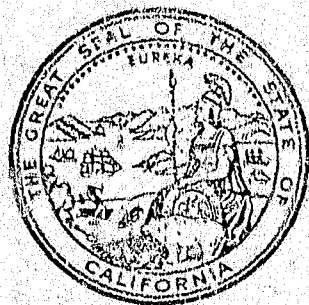
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INSURANCE COVERAGE FOR VOLUNTEERS IN PUBLIC ENTITIES

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FOREWORD

Historically, volunteers have enriched services in churches, hospitals and schools as well as other uncounted areas of service. More recently, volunteers have merged as a valuable adjunct to the criminal justice system and other public agencies. It has been clear since the inception of the California Youth Authority's Model Volunteer Project in 1972 that lack of information in the area of liability and insurance coverage for volunteers has hampered the inception of new programs and that agencies with existing programs view this problem with considerable concern. Informational packets illustrating actions taken by other agencies regarding this problem have been distributed upon request by the Model Volunteer Project. This publication is the latest of these efforts to shed light on this critical area. The Model Volunteer Project gratefully acknowledges the invaluable efforts of the contributors named on the title page. It is also sincerely hoped that the information contained herein will assist in removing a stumbling block to the utilization of volunteers whose unique contributions daily enrich the lives of many.

INSURANCE COVERAGE FOR
VOLUNTEERS IN PUBLIC ENTITIES

INTRODUCTION

When a public entity uses volunteers in performing a service, there are questions of a "what if" variety. For instance:

What if a volunteer is injured while working?

What if the public entity is sued for some act of the volunteer?

What if a volunteer steals or embezzles from the agency?

What if there is an accident while the volunteer is driving his/her own car?

What if such an accident occurs while the volunteer is driving a car owned by the public entity?

The use of volunteers in corrections work is new enough that there are areas where no definitive answer may be given. This publication offers general guidance, but reliance should not be placed thereon without consultation with the legal counsel of a public entity and the person on whom that agency relies for advice in matters concerning insurance.

LIABILITY FOR INJURY TO THIRD PARTIES WHERE USE OF AUTOMOBILE IS NOT INVOLVED

The kind of situation referred to here is an accident which involves the acts of the volunteer within the scope of his/her duties and some other person is injured (either a member of the general public or a client).

If a claim or suit is brought against the public entity, the liability insurance purchased by the public entity will provide protection. That is, the insurance company will defend the public entity and satisfy judgments against it.

In addition to the chance that a public entity can be sued for the act of the volunteer, it is possible for the volunteer to be named in a suit (either jointly with the public entity or alone). The question then becomes, "Will the public entity's liability insurance protect the volunteer?"

Most liability policies issued to public entities name "officers, agents and servants" as being protected against claims or suit brought against them as individuals. If volunteers were considered by a court to be either employees or servants, it is clear that they would receive protection from the public entities' insurance. There is, however, no definitive body of law which assures that volunteers would be so considered.

So that there may be no doubts, the public entity should have its policy endorsed to state clearly that volunteers are protected. It should be possible to do this at no additional cost or at a modest premium.

LIABILITY FOR AUTOMOBILE ACCIDENTS

If there is an accident while a volunteer is driving a vehicle owned by a public entity or while driving a personal vehicle while involved in the business of the agency, it is possible for claim to be made against either the public entity, the volunteer, or both.

Whether or not the court found that the volunteer was an "employee" (as discussed under the Liability Section above), both the volunteer and the public entity would be covered by its policy if he were driving a vehicle owned by the public entity with its permission.

In addition, a public entity ordinarily carries "automobile non-ownership" coverage as a part of its motor vehicle liability. This coverage will provide protection for the entity for whatever liability might be incurred

in case a volunteer injures someone while driving his personal vehicle in the business of the public entity.

In some respects, a volunteer should be treated no differently than an employee. If employees are required to take a course in defensive driving, be in good physical condition, be properly licensed, etc., before driving a vehicle owned by the public entity, the same should be required of volunteers. If before driving their own vehicles on business of the public entity, employees are required to certify that they carry automobile liability insurance at least equal to statutory financial responsibility, the same should be required of volunteers.

SPECIAL PROBLEMS ENGENDERED BY THE GOVERNMENT CODE

Section 995 of the Government Code requires that a public entity provide for the defense of an action against an employee if he demands it. Section 815.2 of the same code makes the entity responsible for any ensuing judgment (see also Section 825). Section 810.2 provides that "'employee' includes an officer, employee or servant, whether or not compensated..." (emphasis ours). These statutes, which cover the type of injuries discussed above, make it prudent to have volunteers covered by the entity's comprehensive public liability and automobile liability policies.

INJURIES TO VOLUNTEERS

For a person to be a true volunteer, he or she may receive no remuneration for services. "Remuneration" can be anything of value, not only money. However, reimbursement of expenses, by itself, does not constitute remuneration. If there is remuneration, a person who is thought of as a volunteer could be found to be an employee and, therefore, entitled to workmen's compensation benefits if injured while in the course and scope of his duties. Also, if

there is an expectation by the entity and the volunteer that he might, by virtue of his experience, later become a paid employee, he might be deemed an "apprentice" and treated as an employee for workmen's compensation purposes.

This discussion is, however, concerned only with true volunteers.

Public entities have no legal obligation to provide workmen's compensation benefits or to buy accident insurance for volunteers. This is entirely optional on the part of such agencies.

Accident insurance providing limited amounts of medical expense reimbursement and fixed benefits for death or dismemberment can be purchased from several insurance companies. These benefits which can be purchased for a premium of as little as \$1.50 per volunteer annually, may be quite limited in amount and scope or can provide more benefits with a commensurate increase in costs. The type of duties performed by volunteers can also affect cost.

A volunteer's right to sue the public entity for its negligence would not be precluded because accident insurance benefits had been provided.

A public entity may elect to provide workmen's compensation benefits to volunteers (Labor Code Section 3363.5). In order for a volunteer to benefit from such election, it would have to have been made before his injury.

If the public entity self-insures its workmen's compensation obligation, the cost of benefits to volunteers would be borne no differently than those payable to employees.

Insured public entities may have their workmen's compensation policy endorsed, without additional deposit premium, to include volunteers. At the annual audit, an additional premium based upon the number of volunteers and the nature of their activities would be assessed. The basis of computing the additional premium should be discussed with the insurer and, if possible, an agreement reached which would not require the public entity to keep records on the amount of hours spent by volunteers. Including volunteers in this manner could affect the public entity's experience rating.

Workmen's compensation benefits are likely to be greater and more inclusive than accident insurance benefits and for that reason the cost is likely to be greater. One benefit of electing to have volunteers covered pursuant to the authority of Labor Code Section 3363.5 is that an injured volunteer would, by reason of the exclusive remedy rule, be barred from suing the public entity on the basis of negligence on its part.

THEFT BY VOLUNTEERS

As with employees, if equipment or property of any kind or even money is used by volunteers, entrusted to volunteers, or accessible to volunteers, it is possible that theft from the public entity may occur. There is one point which should be made -- employee dishonesty bonds, which public entities typically carry to protect themselves against loss by employee theft, do not automatically protect against loss from theft by volunteers. For an added cost, such protection may be added to the employee dishonesty bond if doing so is acceptable to the bonding company.

CONCLUSION

In summary, we suggest consideration of the following steps:

- o Endorse your comprehensive public liability policy and automobile liability policy to expressly include coverage for volunteers. As stated above, this should result in little, if any, additional cost.
- o Provide for the eventuality of a volunteer being injured through inclusion under workmen's compensation laws (Labor Code Section 3363.5).
- o By express provision, have volunteers included in the entity's employee dishonesty bond.

APPENDIX

1. An amendment of the Labor Code effective January 1, 1975.
2. A resolution by Board of Supervisors, Merced County, concerning insurance for their volunteers.

Assembly Bill No. 2861

CHAPTER 912

An act to amend Section 3363.5 of, and to add Section 3363.6 to, the Labor Code, relating to workmen's compensation insurance.

[Approved by Governor September 19, 1974. Filed with Secretary of State September 19, 1974.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2861, Keene. Workmen's compensation: volunteers.

Provides that a person who performs voluntary service without pay for any public agency, rather than county, as designated and authorized by the governing body of the agency or its designee, or for specified private nonprofit organization, as designated and authorized by the board of directors of the organization, shall, upon adoption of a resolution by the governing body of the agency or the board of directors of the organization so declaring, be deemed to be an employee of the agency or organization for workmen's compensation purposes.

The people of the State of California do enact as follows:

SECTION 1. Section 3363.5 of the Labor Code is amended to read:
3363.5. Notwithstanding Sections 3351 and 3352, a person who performs voluntary service without pay for a public agency, as designated and authorized by the governing body of the agency or its designee, shall, upon adoption of a resolution by the governing body of the agency so declaring, be deemed to be an employee of the agency for purposes of this division while performing such service.

SEC. 2. Section 3363.6 is added to the Labor Code, to read:

3363.6. Notwithstanding Sections 3351 and 3352, a person who performs voluntary service without pay for a private, nonprofit organization which is exempt from federal income tax under subsection (c) of Section 501 of the Internal Revenue Code, as designated and authorized by the board of directors of the organization, shall, when the board of directors of the organization, in its sole discretion, so declares, be deemed an employee of the organization for purposes of this division while performing such service.

RECEIVED
APR 23 1973
MERCED COUNTY
PROBATION D.P.T.

BEFORE THE BOARD OF SUPERVISORS

OF THE COUNTY OF MERCED, STATE OF CALIFORNIA

In the Matter of]
DESIGNATING CERTAIN PERSONS OR]
GROUPS OF PERSONS ACTING AS VOL-]
UNTEERS TO BE EMPLOYEES FOR THE] RESOLUTION NO. 73-85
PURPOSES OF WORKMENS COMPENSATION]
INSURANCE AND ALSO PROVIDING LIA-]
BILITY INSURANCE COVERAGE FOR SUCH]
PERSONS.]

WHEREAS, the Board of Supervisors of the County of Merced does hereby express the desire that certain volunteers or groups of volunteers performing a variety of tasks on behalf of the County shall be covered by Workmens Compensation Insurance and liability insurance; and

WHEREAS, all such volunteers and groups of volunteers shall work under the supervision of regular County employees; and

WHEREAS, Labor Code Section 3363.5 provides that a person who performs voluntary service without pay for a county, as designated and authorized by the board of supervisors, shall be deemed an employee for purposes of Workmens Compensation Insurance benefits; and

WHEREAS, this Board of Supervisors has now also made the necessary arrangements for such volunteers or groups of volunteers to be insured by the County's liability insurance policy.

NOW, THEREFORE, BE IT RESOLVED that:

1. Each and every person who shall hereafter be involved in the volunteer program of the County, shall be deemed an employee of the County for purposes of Division 4 of the Labor Code. This declaration is made in accordance with and is subject to the provisions of Labor Code Section 3363.5.

2. Any volunteer worker while performing services on behalf of the County of Merced shall be deemed an insured under the general liability policy of the County. Such persons shall be designated and authorized by this Board to perform volunteer services on behalf of the County or shall be an enrolled member in good standing of an organization or association designated and authorized by this Board to perform volunteer services on behalf of the County. Such insurance shall, however, be deemed to be excess insurance over and above any valid and collective insurance which said volunteer may have in full force and effect and be subject to the exclusions contained in said County liability policy.

3. Record of the names of said volunteers and the hours worked by each volunteer during each month shall be kept by the responsible County department head utilizing the services of said volunteers and a copy thereof sent to the County Personnel Office.

4. A copy of said information pertaining to the number of volunteers and the hours worked by each volunteer shall also be forwarded to the agent of the liability carrier by the responsible County department head.

5. The County Administrator is hereby directed to initiate any further procedures which may be necessary to implement the foregoing and to assure that such volunteers are covered by the County's Workmens Compensation and Employers Liability policy issued by the State Compensation Insurance Fund and are further covered by the County's liability insurance policy.

I, KENNETH L. RANDOL, County Clerk of Merced County and ex-officio Clerk of the Board of Supervisors of said County, do hereby certify that the foregoing Resolution was regularly introduced,

passed and adopted by said Board at a regular meeting thereof
held on April 3, 1973, by the following vote:

AYES: Supervisors Wack, Nordman, Goman
and O'Banion
NOES: None
ABSENT: Supervisor Ramondini

WITNESS my hand and the Seal of this Board this

3rd day of April, 1973.

KENNETH L. RANDOL, Clerk

by

R. Kennel
Deputy

END

7/11/73