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Volunteers in the workplace

As a general rule, an injury is not covered by workers' compensation in Minnesota unless an employer/employee relationship exists. To establish this relationship, the injured person must have been receiving some form of payment from the employer in exchange for services rendered. When there is no remuneration, the injured person is considered a volunteer rather than an employee and is generally not eligible for workers' compensation benefits. For example, if a bookstore or other retail establishment were moving to a new location and several friends and relatives of employees volunteered, without pay, to assist in boxing and moving inventory, equipment and furniture, these unpaid volunteers would not be eligible for workers' compensation benefits in the event one of them were injured during the moving process.

Nature of remuneration or intent to create employment relationship

Where the parties contemplate that the worker will receive compensation for his or her services, the compensation need not be monetary. Payment in kind—such as free meals from a restaurant employer or reduced rent from a landlord employer—may give rise to an employer/employee relationship making the recipient eligible for workers' compensation.

However, receiving something of value in exchange for performing work for an employer does not necessarily make the recipient an employee. For example, the fact that a volunteer at a church supper receives a free meal does not transform him into an employee for purposes of workers' compensation benefits. The parties must agree that the worker will be compensated for his or her services; a mere gratuity is not enough. There must be some intent, express or implied, to enter into an employment relationship.

Good samaritans who are injured when they come to the aid of others are almost always ineligible for workers' compensation benefits because (i) there is usually no intent to establish an employment relationship between the good samaritan and the assisted party or the assisted party's employer, and (ii) the good samaritan is usually not compensated for his or her services. In the case of *Huebner v. Farmers Co-op*, 167 N.W.2d 369 (1969), the operator of a grain elevator requested assistance from someone driving a tractor nearby. The tractor driver was seriously injured while helping the operator and applied for workers' compensation benefits through the farm cooperative that owned the grain elevator. In rejecting his claim for benefits, the Minnesota Supreme Court cited the lack of any intent between the parties to enter into an employment contract, either express or implied.

Statutory exceptions to the general rule

Certain types of volunteers, even though not paid for their services, are specifically included under the definition of "employee" under Minn. Stat. §176.011, subd. 9, and are eligible to receive workers' compensation benefits if injured while performing volunteer services. Almost all of these statutory exceptions involve the provision of volunteer services to programs or institutions administered by state or local government. These exceptions include:

- Volunteers rendering services in state institutions (e.g. correctional facilities) under the supervision of the commissioner of Human Services or the commissioner of Corrections.
- Volunteers participating in programs established by local social services agencies.
- Volunteers in the building and construction industry who are rendering services for joint labor-management nonprofit community service projects.

- Volunteers providing services at a Minnesota veterans home.
- Volunteer ambulance drivers and attendants, who are considered employees of the political subdivision, nonprofit hospital, nonprofit corporation, or other entity for which they perform services.
- Volunteer first responders (i.e., providers of emergency services such as firefighters) while acting under the authority of a municipality or other political subdivision.

For purposes of calculating workers' compensation wage-loss benefits, the "daily wage" of these volunteers is the "usual wage paid at the time of injury or death for similar services performed by paid employees" on the basis of an eight-hour day. See Minn. Stat. §176.011, subd. 9 (8)-(11), (13)-(15), (19)-(21). If a volunteer has earnings from a regular job, the income from that job may in some cases be combined with the imputed volunteer wage to arrive at an average weekly wage. However, such combination cannot unfairly exaggerate lost income. [See *Johnson v. City of Plainview*, 431 N.W.2d

109, 113 (1988).] In many cases, therefore, only the higher wage is used to calculate benefits.

Conclusion

Most volunteers are not entitled to benefits under the Minnesota Workers' Compensation Act. So, before seeking or accepting assistance from volunteers, employers should think about the likelihood and potential legal and financial consequences of a workplace injury. If an injured volunteer is not eligible for workers' compensation benefits, will the employer's general liability or some other insurance policy defend the employer and pay any damages resulting from a claim or lawsuit pursued by an injured volunteer? An employer's potential liability may well exceed the value of the volunteer's services.

If you have any questions about the issues addressed in this *Legal Advisory*, please call Lynn, Scharfenberg & Associates at (952) 838-4450 or (800) 937-1181, option 6.