

Volunteers in the workplace

As a general rule, an injury is not covered by worker's compensation in Wisconsin unless an employer/employee relationship exists. It is not surprising, then, that the Wisconsin Worker's Compensation Act does not provide for worker's comp coverage for most volunteers. Under Wisconsin law a volunteer is a person who (i) provides services of his or her own free will to or on behalf of an organization or entity and (ii) neither receives nor expects to receive any kind of payment or other compensation for his or her services.

A volunteer for a nonprofit organization (for example, the Salvation Army) who receives nominal payments of money or other things of value totalling not more than \$10.00 per week is not considered to be an employee under Wisconsin law, unless the nonprofit organization specifically elects to cover the volunteer under its policy.

The compensation does not have to be in the form of money. 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 worker's compensation. In the case of *Nordic Hills, Inc., v. LIRC*, the Wisconsin Court of Appeals upheld a Labor & Industry Review Commission (LIRC) decision holding that a volunteer ski patroller for the National Ski Patrol was actually an employee because she received compensation in the form of free beverages, discounts on food, discount vouchers on ski equipment, and free ski passes. In another case, LIRC ruled that a scholarship student was an employee of the foundation that gave her the scholarship.

Receiving something of value alone 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 automatically transform her into an employee for purposes of worker's compensation benefits. The parties must have some agreement or understanding 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 create an employment relationship.

Good samaritans who are injured when they come to the aid of others are almost always ineligible for worker's 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.

Statutory exceptions to the general rule

Certain types of volunteers, even though not paid for their services, are specifically included under the definition of an employee under Wis. Stat. §102.07 and are eligible to receive worker's 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:

- Members of volunteer fire companies or of any legally organized rescue squad or diving team.
- Students in a technical college district who, as part of their training program, perform services

for which the school collects a fee or who produce a product that is sold by the school.

- Public or private school students performing services as part of a school work training, work experience, or work study program, if certain conditions are met.
- Employees, volunteers, or members of emergency management units, and members of certain regional emergency response teams.

Conclusion

Most volunteers are not entitled to benefits under the Wisconsin Worker's 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 worker's compensation benefits, will the employer's general liability or some other insurance policy defend the employer and pay any damages resulting from a claim pursued by the 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 7.



The Work Comp Experts