



INFORMATION MEMO

Considerations in Mutual Aid Agreements

Use this discussion and the linked model mutual aid agreement when you are working with another local government to address liability, workers' compensation and equipment damage in mutual aid situations in ways recommended by the League of Minnesota Cities Insurance Trust.

RELEVANT LINKS:

[Mutual Aid Agreement, LMC Model Contract.](#)

[Minn. Stat. Ch. 466.](#)

I. Basic policy elements

The League of Minnesota Cities Insurance Trust (LMCIT) has developed a Model Mutual Aid agreement for cities to consider when they are working with other local governments. It provides a system to address liability, workers' compensation and equipment damage in mutual aid situations. Generally, the basic elements of the model agreement are workers' compensation, equipment, responding party as employees of the requesting party, indemnification, command and reimbursement. This memo addresses those basic elements and why LMCIT believes this is the best way to handle liability.

A. Workers' compensation

Each governmental unit retains the financial responsibility for workers' compensation benefits for its own employees and for any injuries that occur in mutual aid situations. Cities should also agree not to bring claims against the other governmental units to recover the cost of workers' compensation benefits to its employees.

B. Equipment

Each governmental unit retains the financial responsibility for damage to or loss of its own equipment that may occur in a mutual aid situation.

C. Responding party

The responding party's employees are considered to be employees of the requesting party for the purposes of the Minnesota Municipal Tort Liability Act.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

See also LMC information memo, [Intergovernmental Cooperative Agreements](#).

[Minn. Stat. § 12.331](#).

D. Indemnification

The governmental unit receiving the assistance agrees to defend and indemnify the governmental unit(s) providing the assistance and for any liability claims by third parties that may arise from the mutual aid situation (to the extent of the governmental unit's statutory liability limits).

E. Command

The personnel providing assistance act under the command of the requesting governmental unit's officer in charge at the scene. The receiving governmental unit bears the liability risk since it is in a position to best control that risk.

II. Why handle liability this way

These provisions eliminate the potential for conflicts and litigation between governmental units when determining liability. The basic idea is that there are better ways for the cities and LMCIT to use the taxpayers' money than to spend it suing other governmental units. Incidentally, the law authorizing inter-local disaster assistance enacted in 1998, sets out a very similar scheme for handling liability, workers' compensation, and equipment damage.

A. Workers' compensation

This provision helps eliminate conflicts between governmental units for injuries to each other's employees. Each governmental unit pays the workers' compensation coverage on its own employees, thus it makes sense that each governmental unit should be responsible for injuries to its own employees. By waiving the right to recover any damages from the other governmental units to the mutual aid agreement, the parties avoid spending time and money suing each other.

B. Equipment

Similarly, since each party pays for property coverage for its own equipment, it is simpler for each party to be responsible for any damages or loss of its own equipment. Even if another party causes damage to another party's equipment, with this waiver of subrogation, the parties agree that they will not sue other parties for that loss. Again, it eliminates conflicts between the local governments, potentially saving time and money.

RELEVANT LINKS:

[Minn. Stat. § 471.59, subd. 1a\(b\).](#)
[Minn. Stat. § 12.331](#) and
[Minn. Stat. § 626.77.](#)

C. Responding party

The provision that states that an employee of the responding party will be considered to be an employee of the requesting party for liability purposes will help reduce the costs of defending a lawsuit by allowing one attorney to represent all the parties in defending the action. This method should also ensure that there is only one liability limit at stake. State law establishes a similar method for mutual aid when there is no agreement and when federal law enforcement officers or police officers from another state provide assistance in Minnesota.

D. Indemnification

Using the defense and indemnification provisions suggested in the model agreement makes defending liability claims simpler and less expensive. Paying one attorney to defend the claim, rather than paying several attorneys to both defend the claim and fight with each other, can significantly reduce defense costs and save time.

The defense and indemnification provisions for liability claims are intended to make it possible to appoint a single defense attorney to defend all of the parties that might be the target of tort liability claims arising from a mutual aid situation. That attorney can then provide a unified defense of all of the parties, since the liability is covered under the receiving party's coverage. It doesn't matter which governmental unit or individual employee is ultimately determined to have been negligent.

If the agreement makes each governmental unit responsible for its own employees' negligence, defending potential liability claims is more complicated and expensive. If several cities were all sued for something that occurred in a mutual aid situation, each of those cities would need to have its own defense attorney. Because "who pays" depends on "whose fault it was," all those multiple defense attorneys are automatically in conflict with each other, each trying to make sure that if anyone is held liable, it's one of the other defendants.

Through taking on the liability damages of other cities, LMCIT members and other governmental units and their liability providers all benefit from the reduced amount spent on attorneys' fees. Attorney fees are a significant cost in most lawsuits. In fact, attorneys' fees often exceed the amount paid as damages. So to the extent that less money is spent on attorneys' fees, litigation costs can be significantly reduced. Reduced litigation costs also benefit LMCIT members by reducing their liability claims experience which helps control future liability coverage premiums.

RELEVANT LINKS:

[FEMA Policy 9523.6, Mutual Aid Agreements for Public Assistance and Fire Management Assistance.](#)

[LMCIT Contract Review Service.](#)

Christopher Smith
Risk Management Attorney
800.925.1122
651.281.1269
csmith@lmc.org

Some cities do not like the idea of taking on another city’s negligence. They are uncomfortable with how some employees from other cities may act or whether the employees have had adequate training. Therefore, it is important for cities to discuss these concerns. In order for mutual aid to be beneficial, cities shouldn’t have to worry if the response from the other city is going to be appropriate.

E. Command

The model agreement addresses these concerns by making it clear that the requesting party that is taking on the liability for the responding party is in command of the mutual aid scene. It places the requesting party in a position to help control the potential risks by being the party that decides how to handle the emergency site including the use of personnel and equipment.

III. Coverage issues

Each city’s LMCIT liability coverage covers liability that the city assumes by contract. Therefore, the city’s LMCIT liability coverage picks up the duty to defend and indemnify which the city assumes under the mutual aid agreement. Note also that the city’s duty to defend and indemnify the other parties is limited to the amount of the statutory liability limits for one city.

IV. Charges

Traditionally, local governments do not charge for services to each other in a mutual aid situation. However, the provision in the model agreement allows for charges after 8 hours of assistance is provided. This is to comply with a Federal Emergency Management Association’s (FEMA) policy that states if local governments do not have a written agreement that provides for charges to be paid to a responding party, FEMA will not reimburse the responding party for those costs. The policy allows short-term assistance to be given for no charge. The 8-hour figure is suggested as an example, but it is something that can be negotiated by the parties.

V. Further assistance

If you’re not sure about a particular contract, LMCIT will review it to help ensure that the contract’s insurance and liability provisions adequately protect the city’s interests.